

HOUSE BILL REPORT

HB 1557

As Reported By House Committee On:
Financial Institutions & Insurance
Appropriations

Title: An act relating to insurance fraud.

Brief Description: Combatting insurance fraud.

Sponsors: Representatives L. Thomas, Dellwo, Mielke, Wolfe, G. Fisher, Blanton and Poulsen; by request of Insurance Commissioner and Attorney General.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/6/95, 3/1/95 [DPS];

Appropriations: 3/4/95 [DP2S(w/o sub FII)].

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives L. Thomas, Chairman; Beeksma, Vice Chairman; Smith, Vice Chairman; Benton; Campbell; Dyer; Huff; Mielke and Pelesky.

Minority Report: Do not pass. Signed by 6 members: Representatives Wolfe, Ranking Minority Member; Grant, Assistant Ranking Minority Member; Costa; Dellwo; Kessler and Ogden.

Staff: Charlie Gavigan (786-7340).

Background: Washington has several provisions in current law regarding insurance fraud. It is unlawful for an agent or broker to make a false statement on an application for insurance. The insurance contract may be voided if the insured obtained insurance by providing a fraudulent application. It is unlawful for any person to make a false claim for benefits under an insurance policy in general and for health care in particular. Willful destruction of insured property is a felony. Immunity is provided for disclosing information regarding arson.

Summary of Substitute Bill: Current laws are modified or expanded to address insurance fraud, and new provisions are added to fight insurance fraud, including

anti-rebating laws, anti-fraud plans by insurance companies, and anti-fraud units operated by the Washington State Patrol and Attorney General.

In addition to current requirements regarding providing proof of loss when filing an insurance claim, an insurance company may require that the claimant be examined under oath. The current provision making it unlawful for an agent or broker to make a false statement on an application for insurance is expanded to cover all persons and includes making misleading statements. The Arson Reporting Immunity Act is amended to become the Insurance Fraud Reporting Immunity Act; immunity is provided for disclosing information regarding insurance fraud.

New crimes are defined for commercial bribery, rebates relating to insurance claims, and trafficking in insurance claims, while the following crimes are expanded or the seriousness level increased: unlawful practice of law, unlicensed practice of a profession or business, and health care false claims.

It is unlawful to direct or refer a person with an insurance claim to a provider of health, automotive repair, or insurance claim services unless the conduct is purely social or gratuitous, is authorized by rules adopted by the Supreme Court for attorneys, is authorized by business and professional statutes, is authorized by rules adopted by the Department of Licensing or the Department of Health, or is done as part of a group-buying arrangement. A provider of health, automotive, or insurance claim services cannot engage in the regular practice of waiving, rebating, or paying an insurance claimant's insurance deductible. A single violation of these provisions is a gross misdemeanor, and subsequent violations are a class C felony; a violation is also a violation of the Consumer Protection Act. Injunctive relief is available for violation or threatening to violate anti-fraud provisions. When a person is found by a court to have violated certain anti-fraud provisions, the attorney general or prosecuting attorney must provide written notice of the judgment to the appropriate regulatory or disciplinary body.

Every insurance company licensed to write property and casualty insurance in Washington must prepare and maintain an insurance anti-fraud plan. The company must certify to the Insurance Commissioner that they have completed the plan.

An insurance fraud prosecution unit is created in the Office of the Attorney General and an insurance fraud investigation unit is created in the Washington State Patrol. The Attorney General coordinates both units. The Office of the Insurance Commissioner contracts with the Attorney General regarding the prosecution unit.

The Insurance Antifraud Account is established in the custody of the State Treasurer to fund the activities of the Washington State Patrol insurance fraud investigation unit. The account is funded from a transfer of three-tenths of 1 percent of the existing premium tax collected from the insurance industry (all the premium tax currently goes

to the general fund). The insurance fraud prosecution unit in the Attorney General's office is funded through \$750,000 that is to come out of the Insurance Commissioner's current level operating budget.

The Washington State Bar Association is requested to submit to the Legislature by November 1995 a report on the recommendations of its task force on nonlawyer practice.

Substitute Bill Compared to Original Bill: The Insurance Fraud Bureau, which was located jointly in the Office of the Attorney General (prosecution) and the Office of the Insurance Commissioner (investigation) in the original bill, is changed. In the substitute bill, an insurance fraud prosecution unit is created in the Office of the Attorney General and an insurance fraud investigation unit is created in the Washington State Patrol. The Attorney General coordinates both units.

The funding method is changed. The original bill funded the fraud bureau through an annual fee of 25 cents on vehicle licenses. The proposed substitute funds the Attorney General's prosecution unit by having the Insurance Commissioner give the Attorney General \$750,000 per biennium from the commissioner's operating budget (through a contract between the two agencies). The investigation unit in the Washington State Patrol is funded by diverting approximately \$1 million per biennium from the premium taxes paid by the insurance industry (which currently goes to the General Fund).

The anti-fraud insurance plan does not have to be approved by the Insurance Commissioner. The substitute bill also changes or redefines some elements in defining insurance fraud, makes clarifications, and makes technical corrections.

Appropriation: None.

Fiscal Note: Requested February 3, 1995.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Insurance fraud is a major issue, costing the industry and consumers substantially. This bill goes after organized fraud, which current law is not adequately addressing. In order to successfully fight organized fraud, public agencies must be involved. As other states strengthen their anti-fraud provisions, Washington will be an appealing target if we do not strengthen our laws. A fraud bureau can be very helpful in fighting organized insurance fraud. (Concerns were expressed regarding where to place an insurance fraud bureau, how to fund it, and regarding the clarity of some provisions.)

Testimony Against: None.

Testified: Deborah Senn, Insurance Commissioner (pro); Christine Gregoire, Attorney General (pro); Patrick Musick (pro); Sharron Sellers, Washington State Trial Lawyers Association (pro, with concerns); George Thornton, Washington State Trial Lawyers Association (pro, with concerns); Mel Sorensen, National Association of Insurance (pro, with concerns); Steve Schweun, State Farm Insurance (pro); Doug Blank, Safeco (pro); Patrick Sainsbury, Washington Association of Prosecuting Attorneys (pro); Susan Storey, Washington Association of Prosecuting Attorneys (pro); Cliff Webster, Washington State Medical Association (pro, if amended); and Robert Weldon, Washington State Bar Association (pro).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Financial Institutions & Insurance. Signed by 19 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Beeksmas; Brumsickle; Carlson; Cooke; Crouse; Foreman; Hargrove; Hickel; Lambert; Lisk; McMorris; Reams; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 11 members: Representatives Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Chappell; Dellwo; G. Fisher; Grant; Jacobsen; Poulsen; Rust; Thibaudeau and Wolfe.

Staff: Jim Lux (786-7152).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Financial Institutions & Insurance: The second substitute bill returns to provisions in the original bill regarding: (1) the definition of crimes of trafficking in insurance claims and making false statements; (2) remedies available when obtaining an injunction against prohibited activity; (3) available defenses; and (4) the prohibition against non-lawyers lending money to lawyers at interest rates that are not commercially reasonable.

Appropriation: None.

Fiscal Note: Requested on February 3, 1995.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 1995.

Testimony For: The level of insurance fraud, particularly organized insurance fraud, is sufficient to justify the need for better tools and greater emphasis.

Testimony Against: The underlying bill is necessary; however, the funding of the Insurance Fraud Prosecution Unit using funds from Office of the Insurance Commissioner will divert funding from the insurance commissioner's consumer protection efforts. The addition of new crimes and increased seriousness levels, as well as the requirement that only the Office of the Attorney General can bring a cause of action, will increase costs and result in an added workload without a corresponding increase in funding.

Testified: (In favor) Representative Les Thomas, prime sponsor; and Representative Todd Mielke. (In favor with amendments) Mel Sorenson, National Association of Insurance; and Jean Leonard, State Farm Insurance and Washington Insurance Industry. (Against regarding funding) Patrick Musick, Office of the Insurance Commissioner; and Richard Heath, Office of the Attorney General.