

HOUSE BILL REPORT

HB 3052

As Passed Legislature

Title: An act relating to self-audits by insurers.

Brief Description: Authorizing self-audits by insurers.

Sponsors: Representatives L. Thomas, Smith, Mielke, Grant, DeBolt, Dyer, Hickel, Sullivan and Robertson.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/2/98, 2/5/98 [DP].

Floor Activity:

Passed House: 2/12/98, 65-31.

Senate Amended.

House Concurred.

Passed Legislature.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 8 members: Representatives L. Thomas, Chairman; Smith, Vice Chairman; Zellinsky, Vice Chairman; Grant, Assistant Ranking Minority Member; Benson; DeBolt; Sullivan and Wensman.

Minority Report: Do not pass. Signed by 3 members: Representatives Wolfe; Constantine and Keiser.

Staff: Jim Morishima (786-7191).

Background: Insurance and insurance transactions are governed by state law. Generally speaking, a person who files reports or furnishes information required by the insurance code is immune from civil liability. Likewise, the insurance commissioner and the National Association of Insurance Commissioners are generally immune from civil liability for publishing insurance information.

An insurer must file an antifraud plan with the commissioner. The plan, which must be approved by the commissioner, must establish specific procedures to prevent insurance fraud, including internal fraud involving employees or company representatives. Each year, an insurer must file a summary of the actions it took under its antifraud plan. Both

the plan and the annual reports are not public records, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation.

Currently, however, an insurer's internal audits, designed to improve compliance with state and federal law, are not privileged from discovery or admissibility in court.

Summary of Bill: The House Financial Institutions and Insurance committee and the Senate Financial Institutions, Insurance, and Housing committee must study insurance compliance self-evaluative audits and recommend whether the Legislature should recognize a limited privilege for such audits. The two committee chairs must organize a study group that includes voluntary participation by the insurance industry, the Office of the Insurance Commissioner, and other interested parties. The ranking minority members of each committee must also participate in the study group. If the committees recommend that the Legislature should recognize the privilege, the study must develop a bill for consideration in the 1999 legislative session.

Appropriation: None.

Fiscal Note: Requested on February 5, 1998.

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

Testimony For: Insurer's are concerned that their internal audits will be disclosed in court. Without the privilege established by this bill, there will either be no audits at all, or audits that do not disclose any wrongdoing on the part of the insurer. The privilege in this bill is narrowly drawn and will not prevent parties from discovering the facts underlying the audit.

Testimony Against: This bill will make enforcement of the insurance law more difficult by enabling insurers to conceal information. This bill would put an end to the practice of investigators using an insurer's internal audits as a "road map" to investigate wrongdoing. Furthermore, many insurers do not act on their internal audits. Therefore, encouraging more internal audits is not necessarily a good idea. Protections for certain internal documents already exist; e.g., the attorney work product privilege.

Testified: Mike Kapphahn, Farmers Insurance (pro); Jim Odiorne, Office of the Insurance Commissioner (con); Pam Martin, Office of the Insurance Commissioner (con); Mel Sorensen, National Association of Independent Insurers (pro); Larry Shannon, Washington State Trial Lawyers Association (con); and Jean Leonard, Washington Insurers (pro).