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SENATE BILL 5736

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State of Washington

56th Legislature

1999 Regular Session

By Senators Prentice, Winsley, Heavey, Shin and Fairley

Read first time 02/04/1999. Referred to Committee on Commerce, Trade, Housing & Financial Institutions.

1 AN ACT Relating to insurance liability; amending RCW 48.30.010;  
2 adding new sections to chapter 48.30 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This chapter may be known and cited as the  
5 insurance liability bad faith act.

6 NEW SECTION. **Sec. 2.** The definitions in this section apply  
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Insurer" means any insurer as defined in RCW 48.01.050 and any  
9 self-insurer, including a self-insured entity as defined by chapter  
10 51.14 RCW.

11 (2) "Insured" means any individual, company, insurer, association,  
12 organization, reciprocal or interinsurance exchange, partnership,  
13 business trust, corporation, or other entity that has purchased  
14 insurance or is defined as an insured under a policy of insurance,  
15 including any direct or third-party beneficiary to a policy of  
16 insurance issued to any "insured."

1 (3) "Insurance claim" means any request by an insured for coverage  
2 or benefits pursuant to a policy of insurance that arises after binder,  
3 execution, or issuance of a contract of insurance to an insured.

4 **Sec. 3.** RCW 48.30.010 and 1997 c 409 s 107 are each amended to  
5 read as follows:

6 (1) No person engaged in the business of insurance shall engage in  
7 unfair methods of competition or in unfair or deceptive acts or  
8 practices in the conduct of such business as such methods, acts, or  
9 practices are defined pursuant to subsection (2) of this section.

10 (2) In addition to such unfair methods and unfair or deceptive acts  
11 or practices as are expressly defined and prohibited by this code, the  
12 commissioner may from time to time by regulation promulgated pursuant  
13 to chapter 34.05 RCW, define other methods of competition and other  
14 acts and practices in the conduct of such business reasonably found by  
15 the commissioner to be unfair or deceptive after a review of all  
16 comments received during the notice and comment rule-making period.

17 (3)(a) In defining other methods of competition and other acts and  
18 practices in the conduct of such business to be unfair or deceptive,  
19 and after reviewing all comments and documents received during the  
20 notice and comment rule-making period, the commissioner shall identify  
21 his or her reasons for defining the method of competition or other act  
22 or practice in the conduct of insurance to be unfair or deceptive and  
23 shall include a statement outlining these reasons as part of the  
24 adopted rule.

25 (b) The commissioner shall include a detailed description of facts  
26 upon which he or she relied and of facts upon which he or she failed to  
27 rely, in defining the method of competition or other act or practice in  
28 the conduct of insurance to be unfair or deceptive, in the concise  
29 explanatory statement prepared under RCW 34.05.325(6).

30 (c) Upon appeal the superior court shall review the findings of  
31 fact upon which the regulation is based de novo on the record.

32 (4) No such regulation shall be made effective prior to the  
33 expiration of thirty days after the date of the order by which it is  
34 promulgated.

35 (5) If the commissioner has cause to believe that any person is  
36 violating any such regulation, the commissioner may order such person  
37 to cease and desist therefrom. The commissioner shall deliver such  
38 order to such person direct or mail it to the person by registered mail

1 with return receipt requested. If the person violates the order after  
2 expiration of ten days after the cease and desist order has been  
3 received by him or her, he or she may be fined by the commissioner a  
4 sum not to exceed two hundred and fifty dollars for each violation  
5 committed thereafter.

6 (6) If any such regulation is violated, the commissioner may take  
7 such other or additional action as is permitted under the insurance  
8 code for violation of a regulation.

9 (7) An insurer engaged in the business of insurance shall not  
10 unreasonably deny a claim for coverage and payment of benefits to any  
11 insured.

12 NEW SECTION. Sec. 4. The following methods, acts, and practices  
13 in the settlement and payment of insurance claims are deemed  
14 unreasonable:

15 (1) Misrepresenting a pertinent fact or insurance policy provision  
16 to an insured who inquires about or makes a claim for policy benefits;

17 (2) Failing to acknowledge and act reasonably promptly upon  
18 communications with respect to claims arising under insurance policies,  
19 when made by an insured or beneficiary to a policy of insurance;

20 (3) Failing to promptly investigate claims arising under policies  
21 when made by an insured or beneficiary to a policy of insurance;

22 (4) Failing to pay claims to an insured or beneficiary of a policy  
23 of insurance without conducting a reasonable investigation;

24 (5) Failing to affirm or deny coverage of claims to an insured  
25 within a reasonable time after a proof of loss has been completed or  
26 after a written request for coverage and claim benefits has been made;

27 (6) Failing to affirm or deny coverage of claims against an insured  
28 within a reasonable time after an examination under oath has been  
29 requested and the insured has participated and has submitted to an exam  
30 under oath;

31 (7) Unreasonably failing to settle claims promptly when coverage  
32 for the loss or claim has become reasonably clear and in situations  
33 where liability on the part of the insurer to pay the claim has become  
34 reasonably clear;

35 (8) Compelling an insured to institute litigation in order to  
36 obtain a defense to or recover amounts due under a policy of insurance  
37 when coverage for the claim is available and it is reasonably clear  
38 that the insured is entitled to benefits under the insurance policy;

1 (9) Making a claim payment to an insured or beneficiary to an  
2 insurance policy without a statement setting forth the coverages under  
3 which the payments are being made;

4 (10) Failing to promptly provide to an insured or beneficiary of a  
5 policy of insurance a reasonable explanation of the basis in the  
6 insurance policy in relation to the specific facts of the claim or the  
7 applicable law involving such claim for the denial of coverage or  
8 policy benefits pursuant to the claim;

9 (11) Unreasonably failing to pay and process a claim promptly once  
10 coverage and responsibility for payment of the claim have been  
11 established; and

12 (12) Unreasonably failing to promptly settle a claim of an insured  
13 or beneficiary to a policy of insurance where liability is reasonably  
14 clear under one portion of the policy of insurance coverage in order to  
15 influence a settlement under other portions of the applicable insurance  
16 policy.

17 NEW SECTION. **Sec. 5.** (1) Any insured or beneficiary of a policy  
18 of insurance who is unreasonably denied a claim for coverage or payment  
19 of benefits by an insurer may bring an action in a superior court of  
20 this state to recover the resulting damages sustained and the costs of  
21 the action, including attorneys' fees.

22 (2) If the trier of fact finds that an insurer has acted  
23 unreasonably in denying a claim for coverage or payment of benefits,  
24 the superior court shall increase the total award of damages to an  
25 amount not to exceed three times the actual damages, exclusive of costs  
26 and attorneys' fees.

27 (3) If the trier of fact finds that an insurer has acted  
28 unreasonably in denying a claim for coverage or payment of benefits,  
29 the superior court shall award reasonable attorneys' fees and costs as  
30 set forth in RCW 4.84.010 to the insured or any beneficiary of an  
31 insurance contract who is a prevailing party in any such action.

32 (4) In actions brought under RCW 48.30.010(7), section 4 of this  
33 act, and this section, the remedies set forth in this section, shall  
34 supersede and replace the remedies prescribed by RCW 19.86.090.

1        NEW SECTION.   **Sec. 6.**   Sections 1, 2, 4, and 5 of this act are each  
2   added to chapter 48.30 RCW.

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