

SSB 6234 - H COMM AMD

By Committee on Financial Institutions & Insurance

NOT CONSIDERED 03/02/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The purpose of this act is to confront the
4 problem of insurance fraud in this state by making a concerted effort
5 to detect insurance fraud, reduce the occurrence of fraud through
6 criminal enforcement and deterrence, require restitution of
7 fraudulently obtained insurance benefits and expenses incurred by an
8 insurer in investigating fraudulent claims, and reduce the amount of
9 premium dollars used to pay fraudulent claims. The primary focus of
10 the insurance fraud program is on organized fraudulent activities
11 committed against insurance companies.

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

14 (1) "Insurance fraud" means an act or omission committed by a
15 person who, knowingly, and with intent to defraud, commits, or conceals
16 any material information concerning, one or more of the following:

17 (a) Presenting, causing to be presented, or preparing with
18 knowledge or belief that it will be presented to or by an insurer,
19 broker, or its agent, false information as part of, in support of, or
20 concerning a fact material to one or more of the following:

21 (i) An application for the issuance or renewal of an insurance
22 policy;

23 (ii) The rating of an insurance policy or contract;

24 (iii) A claim for payment or benefit pursuant to an insurance
25 policy;

26 (iv) Premiums paid on an insurance policy;

27 (v) Payments made in accordance with the terms of an insurance
28 policy; or

29 (vi) The reinstatement of an insurance policy;

1 (b) Willful embezzlement, abstracting, purloining, or conversion of
2 moneys, funds, premiums, credits, or other property of an insurer or
3 person engaged in the business of insurance; or

4 (c) Attempting to commit, aiding or abetting in the commission of,
5 or conspiracy to commit the acts or omissions specified in this
6 subsection.

7 The definition of insurance fraud is for illustrative purposes only
8 under this chapter to describe the nature of the behavior to be
9 reported and investigated, and is not intended in any manner to create
10 or modify the definition of any existing criminal acts nor to create or
11 modify the burdens of proof in any criminal prosecution brought as a
12 result of an investigation under this chapter.

13 (2) "Insurer" means an insurance company authorized under chapter
14 48.05 RCW, a health care service contractor registered under chapter
15 48.44 RCW, and a health care maintenance organization registered under
16 chapter 48.46 RCW.

17 NEW SECTION. **Sec. 3.** (1) There is established an insurance fraud
18 program within the office of the insurance commissioner. The
19 commissioner may employ supervisory, legal, and investigative personnel
20 for the program, who must be qualified by training and experience in
21 the areas of detection, investigation, or prosecution of fraud in which
22 the insurance industry is a victim. The chief of the fraud program is
23 a full-time position that is appointed by the commissioner. The chief
24 serves at the pleasure of the commissioner. The commissioner shall
25 provide office space, equipment, supplies, investigators, clerical
26 staff, and other staff that are necessary for the program to carry out
27 its duties and responsibilities under this chapter.

28 (2) The commissioner may fund one or more state patrol officers to
29 work with the insurance fraud program and the funding for the officers
30 must be paid out of the budget of the insurance fraud program.

31 (3) The commissioner may fund one or more assistant attorney
32 generals and support staff to work with the insurance fraud program and
33 the funding for the assistant attorney generals and support staff must
34 be paid out of the budget of the insurance fraud program.

35 (4) The commissioner may make grants to or reimburse local
36 prosecuting attorneys to assist in the prosecution of insurance fraud.
37 The grants must be paid out of the budget of the insurance fraud

1 program. The commissioner may investigate and seek prosecution of
2 crimes involving insurance fraud upon the request of or with the
3 concurrence of the county prosecuting attorney of the jurisdiction in
4 which the offense has occurred. Before such a prosecution, the
5 commissioner and the county in which the offense occurred shall reach
6 an agreement regarding the payment of all costs, including expert
7 witness fees, and defense attorneys' fees associated with any such
8 prosecution.

9 (5) Staff levels for this program, until June 30, 2010, shall not
10 exceed 8.0 full-time equivalents.

11 NEW SECTION. **Sec. 4.** The annual cost of operating the fraud
12 program is funded from the insurance commissioner's regulatory account
13 under RCW 48.02.190 subject to appropriation by the legislature.

14 NEW SECTION. **Sec. 5.** (1) The commissioner may:

15 (a) Employ and train personnel to achieve the purposes of this
16 chapter and to employ legal counsel, investigators, auditors, and
17 clerical support personnel and other personnel as the commissioner
18 determines necessary from time to time to accomplish the purposes of
19 this chapter;

20 (b) Initiate inquiries and conduct investigations when the
21 commissioner has cause to believe that insurance fraud has been, is
22 being, or is about to be committed;

23 (c) Conduct independent examinations of alleged insurance fraud;

24 (d) Review notices, reports, or complaints of suspected insurance
25 fraud activities from federal, state, and local law enforcement and
26 regulatory agencies, persons engaged in the business of insurance, and
27 any other person to determine whether the reports require further
28 investigation;

29 (e) Share records and evidence with federal, state, or local law
30 enforcement or regulatory agencies, and enter into interagency
31 agreements;

32 (f) Conduct investigations outside this state. If the information
33 the commissioner seeks to obtain is located outside this state, the
34 person from whom the information is sought may make the information
35 available to the commissioner to examine at the place where the
36 information is located. The commissioner may designate

1 representatives, including officials of the state in which the matter
2 is located, to inspect the information on behalf of the commissioner,
3 and the commissioner may respond to similar requests from officials of
4 other states;

5 (g) Administer oaths and affirmations, subpoena witnesses, compel
6 their attendance, take evidence, and require the production of any
7 books, papers, correspondence, memoranda, agreements, or other
8 documents or records that the commissioner deems relevant or material
9 to an inquiry concerning insurance fraud;

10 (h) Report incidents of alleged insurance fraud disclosed by its
11 investigations to the appropriate prosecutorial authority, including
12 but not limited to the attorney general and to any other appropriate
13 law enforcement, administrative, regulatory, or licensing agency;

14 (i) Assemble evidence, prepare charges, and work closely with any
15 prosecutorial authority having jurisdiction to pursue prosecution of
16 insurance fraud; and

17 (j) Undertake independent studies to determine the extent of
18 fraudulent insurance acts.

19 (2) The fraud program investigators who have obtained certification
20 as a peace officer under RCW 43.101.095 have the powers and status of
21 a limited authority Washington peace officer.

22 NEW SECTION. **Sec. 6.** (1) Any insurer or licensee of the
23 commissioner that has reasonable belief that an act of insurance fraud
24 which is or may be a crime under Washington law has been, is being, or
25 is about to be committed shall furnish and disclose the knowledge and
26 information to the commissioner or the national insurance crime bureau,
27 the national association of insurance commissioners, or similar
28 organization, who shall disclose the information to the commissioner,
29 and cooperate fully with any investigation conducted by the
30 commissioner.

31 (2) Any person that has a reasonable belief that an act of
32 insurance fraud which is or may be a crime under Washington law has
33 been, is being, or is about to be committed; or any person who
34 collects, reviews, or analyzes information concerning insurance fraud
35 which is or may be a crime under Washington law may furnish and
36 disclose any information in its possession concerning such an act to

1 the commissioner or to an authorized representative of an insurer that
2 requests the information for the purpose of detecting, prosecuting, or
3 preventing insurance fraud.

4 NEW SECTION. **Sec. 7.** (1) Documents, materials, or other
5 information as described in subsection (3), (4), or both of this
6 section are exempt from public inspection and copying under chapters
7 42.17 and 42.56 RCW. The commissioner is authorized to use such
8 documents, materials, or other information in the furtherance of any
9 regulatory or legal action brought as a part of the commissioner's
10 official duties.

11 (2) The commissioner:

12 (a) May share documents, materials, or other information, including
13 the documents, materials, or information subject to subsection (1) of
14 this section, with (i) the national association of insurance
15 commissioners and its affiliates and subsidiaries, (ii) regulatory and
16 law enforcement officials of other states and nations, the federal
17 government, and international authorities, (iii) the national insurance
18 crime bureau, and (iv) an insurer with respect to whom the suspected
19 fraudulent claim may be perpetrated;

20 (b) May receive documents, materials, or information from (i) the
21 national association of insurance commissioners and its affiliates and
22 subsidiaries, (ii) regulatory and law enforcement officials of other
23 states and nations, the federal government, and international
24 authorities, (iii) the national insurance crime bureau, and (iv) an
25 insurer with respect to whom the suspected fraudulent claim may be
26 perpetrated and any such documents, materials, or information as
27 described in subsection (3), (4), or both of this section are exempt
28 from public inspection and copying; and

29 (c) May enter into agreements governing the sharing and use of
30 information consistent with this subsection.

31 (3) Specific intelligence information and specific investigative
32 records compiled by investigative, law enforcement, and penology
33 agencies, the fraud program of the office of the insurance
34 commissioner, and state agencies vested with the responsibility to
35 discipline members of any profession, the nondisclosure of which is
36 essential to effective law enforcement or for the protection of any

1 person's right to privacy, are exempt under subsection (1) of this
2 section.

3 (4) Information revealing the identity of persons who are witnesses
4 to or victims of crime or who file complaints with investigative, law
5 enforcement, and penology agencies, or the fraud program of the office
6 of the insurance commissioner, if disclosure would endanger any
7 person's life, physical safety, or property, is exempt under subsection
8 (1) of this section. If at the time a complaint is filed the
9 complainant, victim, or witness indicates a desire for disclosure or
10 nondisclosure, such desire shall govern.

11 (5) No waiver of an existing privilege or claim of confidentiality
12 in the documents, materials, or information may occur as a result of
13 disclosure to the commissioner under this section or as a result of
14 sharing documents, materials, or information as authorized in
15 subsection (2) of this section.

16 (6) Documents, materials, or other information that is in the
17 possession of persons other than the commissioner that would otherwise
18 not be confidential by law or privileged do not become confidential by
19 law or privileged by providing the documents, materials, or other
20 information to the commissioner.

21 NEW SECTION. **Sec. 8.** In a criminal prosecution for any crime
22 under Washington law in which the insurance company is a victim, the
23 insurance company is entitled to be considered as a victim in any
24 restitution ordered by the court under RCW 9.94A.753, as part of the
25 criminal penalty imposed against the defendant convicted for such a
26 violation.

27 NEW SECTION. **Sec. 9.** This chapter does not:

28 (1) Preempt the authority or relieve the duty of any other general
29 authority law enforcement agencies to investigate, examine, and
30 prosecute suspected violations of law;

31 (2) Prevent or prohibit a person from voluntarily disclosing any
32 information concerning insurance fraud to any law enforcement agency
33 other than the commissioner; or

34 (3) Limit any of the powers granted elsewhere in this title to the
35 commissioner to investigate and examine possible violations of the law
36 and to take appropriate action.

1 NEW SECTION. **Sec. 10.** No later than six months after the
2 effective date of this section, or when the insurer has used all its
3 existing paper application and claim forms which were in its possession
4 on the effective date of this section, whichever is later, all
5 applications for insurance, and all claim forms regardless of the form
6 of transmission provided and required by an insurer or required by law
7 as condition of payment of a claim, must contain a statement,
8 permanently affixed to the application or claim form, that clearly
9 states in substance the following:

10 "It is a crime to knowingly provide false, incomplete, or
11 misleading information to an insurance company for the purpose of
12 defrauding the company. Penalties include imprisonment, fines, and
13 denial of insurance benefits."

14 The lack of a statement required in this section does not
15 constitute a defense in any criminal prosecution nor any civil action.

16 NEW SECTION. **Sec. 11.** The commissioner shall appoint an insurance
17 fraud advisory board. The board shall consist of ten members. Five
18 members shall be representatives from the insurance industry doing
19 business in this state, at least one of which shall be from a
20 Washington domestic insurer, two members shall represent consumers, one
21 member shall represent the national insurance crime bureau or successor
22 organization, one member shall represent prosecutors, and one member
23 shall represent other law enforcement agencies. The members of the
24 board serve four-year terms and until their successors are appointed
25 and qualified. Three of the original members must be appointed to
26 serve an initial term of four years, three must be appointed to serve
27 an initial term of three years, two must be appointed to serve an
28 initial term of two years, and two must be appointed to serve an
29 initial term of one year. The members of the board receive no
30 compensation. The board shall advise the commissioner and the
31 legislature with respect to the effectiveness, resources allocated to
32 the fraud program, the source of the funding for the program, and
33 before June 30, 2010, if the staffing level restriction in section 3(5)
34 of this act should be renewed.

35 NEW SECTION. **Sec. 12.** The commissioner shall prepare an annual
36 report of the activities of the fraud program. The report shall be

1 submitted to the legislature no later than March 1st for the prior
2 calendar year. The report shall, at a minimum, include information as
3 to the number of cases reported to the commissioner, the number of
4 cases referred for prosecution, the number of convictions obtained, the
5 amount of money recovered, and any recommendations of the insurance
6 advisory board.

7 NEW SECTION. **Sec. 13.** The commissioner may adopt rules to
8 implement and administer this chapter.

9 **Sec. 14.** RCW 48.50.070 and 2000 c 254 s 5 are each amended to read
10 as follows:

11 Any licensed insurance agent, any licensed insurance broker, or any
12 insurer or person acting in the insurer's behalf, health maintenance
13 organization or person acting in behalf of the health maintenance
14 organization, health care service contractor or person acting in behalf
15 of the health care service contractor, or any authorized agency which
16 releases information, whether oral or written, to the commissioner, the
17 national insurance crime bureau, the national association of insurance
18 commissioners, other law enforcement agent or agency, or another
19 insurer under RCW 48.50.030, 48.50.040, 48.50.050, (~~or~~) 48.50.055, or
20 section 6 of this act is immune from liability in any civil or criminal
21 action, suit, or prosecution arising from the release of the
22 information, unless actual malice on the part of the agent, broker,
23 insurer, health care maintenance organization, health care service
24 contractor, or authorized agency against the insured is shown.

25 **Sec. 15.** RCW 48.50.075 and 1995 c 285 s 24 are each amended to
26 read as follows:

27 In denying a claim, an insurer, health maintenance organization, or
28 health care service contractor who relies upon a written opinion from
29 an authorized agency specifically enumerated in RCW 48.50.020(1) (a)
30 through (g) that criminal activity that is related to that claim is
31 being investigated, or a crime has been charged, and that the claimant
32 is a target of the investigation or has been charged with a crime, is
33 not liable for bad faith or other noncontractual theory of damages as
34 a result of this reliance.

1 Immunity under this section shall exist only so long as the
2 incident for which the claimant may be responsible is under active
3 investigation or prosecution, or the authorized agency states its
4 position that the claim includes or is a result of criminal activity in
5 which the claimant was a participant.

6 **Sec. 16.** RCW 10.93.020 and 2002 c 128 s 1 are each amended to read
7 as follows:

8 As used in this chapter, the following terms have the meanings
9 indicated unless the context clearly requires otherwise.

10 (1) "General authority Washington law enforcement agency" means any
11 agency, department, or division of a municipal corporation, political
12 subdivision, or other unit of local government of this state, and any
13 agency, department, or division of state government, having as its
14 primary function the detection and apprehension of persons committing
15 infractions or violating the traffic or criminal laws in general, as
16 distinguished from a limited authority Washington law enforcement
17 agency, and any other unit of government expressly designated by
18 statute as a general authority Washington law enforcement agency. The
19 Washington state patrol and the department of fish and wildlife are
20 general authority Washington law enforcement agencies.

21 (2) "Limited authority Washington law enforcement agency" means any
22 agency, political subdivision, or unit of local government of this
23 state, and any agency, department, or division of state government,
24 having as one of its functions the apprehension or detection of persons
25 committing infractions or violating the traffic or criminal laws
26 relating to limited subject areas, including but not limited to, the
27 state departments of natural resources and social and health services,
28 the state gambling commission, the state lottery commission, the state
29 parks and recreation commission, the state utilities and transportation
30 commission, the state liquor control board, the office of the insurance
31 commissioner, and the state department of corrections.

32 (3) "General authority Washington peace officer" means any full-
33 time, fully compensated and elected, appointed, or employed officer of
34 a general authority Washington law enforcement agency who is
35 commissioned to enforce the criminal laws of the state of Washington
36 generally.

1 (4) "Limited authority Washington peace officer" means any full-
2 time, fully compensated officer of a limited authority Washington law
3 enforcement agency empowered by that agency to detect or apprehend
4 violators of the laws in some or all of the limited subject areas for
5 which that agency is responsible. A limited authority Washington peace
6 officer may be a specially commissioned Washington peace officer if
7 otherwise qualified for such status under this chapter.

8 (5) "Specially commissioned Washington peace officer", for the
9 purposes of this chapter, means any officer, whether part-time or full-
10 time, compensated or not, commissioned by a general authority
11 Washington law enforcement agency to enforce some or all of the
12 criminal laws of the state of Washington, who does not qualify under
13 this chapter as a general authority Washington peace officer for that
14 commissioning agency, specifically including reserve peace officers,
15 and specially commissioned full-time, fully compensated peace officers
16 duly commissioned by the states of Oregon or Idaho or any such peace
17 officer commissioned by a unit of local government of Oregon or Idaho.
18 A reserve peace officer is an individual who is an officer of a
19 Washington law enforcement agency who does not serve such agency on a
20 full-time basis but who, when called by the agency into active service,
21 is fully commissioned on the same basis as full-time peace officers to
22 enforce the criminal laws of the state.

23 (6) "Federal peace officer" means any employee or agent of the
24 United States government who has the authority to carry firearms and
25 make warrantless arrests and whose duties involve the enforcement of
26 criminal laws of the United States.

27 (7) "Agency with primary territorial jurisdiction" means a city or
28 town police agency which has responsibility for police activity within
29 its boundaries; or a county police or sheriff's department which has
30 responsibility with regard to police activity in the unincorporated
31 areas within the county boundaries; or a statutorily authorized port
32 district police agency or four-year state college or university police
33 agency which has responsibility for police activity within the
34 statutorily authorized enforcement boundaries of the port district,
35 state college, or university.

36 (8) "Primary commissioning agency" means (a) the employing agency
37 in the case of a general authority Washington peace officer, a limited
38 authority Washington peace officer, an Indian tribal peace officer, or

1 a federal peace officer, and (b) the commissioning agency in the case
2 of a specially commissioned Washington peace officer (i) who is
3 performing functions within the course and scope of the special
4 commission and (ii) who is not also a general authority Washington
5 peace officer, a limited authority Washington peace officer, an Indian
6 tribal peace officer, or a federal peace officer.

7 (9) "Primary function of an agency" means that function to which
8 greater than fifty percent of the agency's resources are allocated.

9 (10) "Mutual law enforcement assistance" includes, but is not
10 limited to, one or more law enforcement agencies aiding or assisting
11 one or more other such agencies through loans or exchanges of personnel
12 or of material resources, for law enforcement purposes.

13 **Sec. 17.** RCW 42.56.400 and 2005 c 274 s 420 are each amended to
14 read as follows:

15 The following information relating to insurance and financial
16 institutions is exempt from disclosure under this chapter:

17 (1) Records maintained by the board of industrial insurance appeals
18 that are related to appeals of crime victims' compensation claims filed
19 with the board under RCW 7.68.110;

20 (2) Information obtained and exempted or withheld from public
21 inspection by the health care authority under RCW 41.05.026, whether
22 retained by the authority, transferred to another state purchased
23 health care program by the authority, or transferred by the authority
24 to a technical review committee created to facilitate the development,
25 acquisition, or implementation of state purchased health care under
26 chapter 41.05 RCW;

27 (3) The names and individual identification data of all viators
28 regulated by the insurance commissioner under chapter 48.102 RCW;

29 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

30 (5) Information provided under RCW 48.05.510 through 48.05.535,
31 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
32 through 48.46.625;

33 (6) Information gathered under chapter 19.85 RCW or RCW 34.05.328
34 that can be identified to a particular business;

35 (7) Examination reports and information obtained by the department
36 of financial institutions from banks under RCW 30.04.075, from savings
37 banks under RCW 32.04.220, from savings and loan associations under RCW

1 33.04.110, from credit unions under RCW 31.12.565, from check cashers
2 and sellers under RCW 31.45.030(3), and from securities brokers and
3 investment advisers under RCW 21.20.100, all of which is confidential
4 and privileged information;

5 (8) Information provided to the insurance commissioner under RCW
6 48.110.040(3);

7 (9) Documents, materials, or information obtained by the insurance
8 commissioner under RCW 48.02.065, all of which are confidential and
9 privileged; (~~and~~)

10 (10) Confidential proprietary and trade secret information provided
11 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
12 48.31C.070; and

13 (11) Documents, materials, or information obtained by the insurance
14 commissioner under section 7 of this act.

15 NEW SECTION. Sec. 18. A new section is added to chapter 42.17 RCW
16 to read as follows:

17 Documents, materials, or information obtained by the insurance
18 commissioner under section 7 of this act are exempt from disclosure
19 under this chapter.

20 NEW SECTION. Sec. 19. If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. Sec. 20. Sections 1 through 13 and 19 of this act
25 constitute a new chapter in Title 48 RCW.

26 NEW SECTION. Sec. 21. This act takes effect July 1, 2006."

27 Correct the title.

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