

SSB 6234 - S AMD 129
By Senator Benton

NOT ADOPTED 02/13/2006

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 commissioner" means the insurance commissioner of
15 this state.

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

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

23 (i) An application for the issuance or renewal of an insurance
24 policy;

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

26 (iii) A claim for payment or benefit pursuant to an insurance
27 policy;

28 (iv) Premiums paid on an insurance policy;

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

3 (vi) The reinstatement of an insurance policy;

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

7 (c) Attempting to commit, aiding or abetting in the commission of,
8 or conspiracy to commit the acts or omissions specified in this
9 subsection.

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

16 (3) "Insurer" means an insurance company authorized under chapter
17 48.05 RCW, a health care service contractor registered under chapter
18 48.44 RCW, and a health care maintenance organization registered under
19 chapter 48.46 RCW.

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

31 (2) The attorney general may fund one or more state patrol officers
32 to work with the insurance fraud program and the funding for the
33 officers must be paid out of the budget of the insurance fraud program.

34 (3) The attorney general may make grants to or reimburse local
35 prosecuting attorneys to assist in the prosecution of insurance fraud.
36 The grants must be paid out of the budget of the insurance fraud
37 program. The attorney general may investigate and seek prosecution of

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

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

10 NEW SECTION. **Sec. 4.** The annual cost of operating the fraud
11 program is funded from the attorney general's insurance fraud account
12 which is hereby created. Moneys in the account may be spent only after
13 appropriation.

14 NEW SECTION. **Sec. 5.** (1) The attorney general 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 attorney general
18 determines necessary from time to time to accomplish the purposes of
19 this chapter;

20 (b) Initiate inquiries and conduct investigations when the attorney
21 general has cause to believe that insurance fraud has been, is being,
22 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 attorney general 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 attorney general to examine at the place where the
36 information is located. The attorney general may designate

1 representatives, including officials of the state in which the matter
2 is located, to inspect the information on behalf of the attorney
3 general, and the attorney general may respond to similar requests from
4 officials of 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 attorney general deems relevant or
9 material 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 other appropriate law enforcement, administrative,
13 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 insurance
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 attorney general or the national insurance crime
27 bureau, the national association of insurance commissioners, or similar
28 organization, who shall disclose the information to the attorney
29 general, and cooperate fully with any investigation conducted by the
30 attorney general.

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 attorney general or to an authorized representative of an insurer
2 that requests the information for the purpose of detecting,
3 prosecuting, or 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 attorney general 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 attorney general's
10 official duties.

11 (2) The attorney general:

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 investigative and law enforcement records obtained by
32 the attorney general, the nondisclosure of which is essential to
33 effective law enforcement or for the protection of any person's right
34 to privacy, are exempt under subsection (1) of this section.

35 (4) Information revealing the identity of persons who are witnesses
36 to or victims of crime obtained by the attorney general or
37 investigative or law enforcement agencies under this chapter, if

1 disclosure would endanger any person's life, physical safety, or
2 property, is exempt under subsection (1) of this section. If at the
3 time the documents, materials, or information are provided to the
4 attorney general or investigative or law enforcement agencies under
5 this chapter, and the victim or witness indicates a desire for
6 disclosure or nondisclosure, their desire governs.

7 (5) No waiver of an existing privilege or claim of confidentiality
8 in the documents, materials, or information may occur as a result of
9 disclosure to the attorney general under this section or as a result of
10 sharing documents, materials, or information as authorized in
11 subsection (2) of this section.

12 (6) Documents, materials, or other information that is in the
13 possession of persons other than the attorney general that would
14 otherwise not be confidential by law or privileged do not become
15 confidential by law or privileged by providing the documents,
16 materials, or other information to the attorney general.

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

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

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

27 (2) Prevent or prohibit a person from voluntarily disclosing any
28 information concerning insurance fraud to any law enforcement agency
29 other than the attorney general; or

30 (3) Limit any of the powers granted elsewhere in this title to the
31 attorney general to investigate and examine possible violations of the
32 law and to take appropriate action.

33 NEW SECTION. **Sec. 10.** No later than six months after the
34 effective date of this section, or when the insurer has used all its
35 existing paper application and claim forms which were in its possession

1 on the effective date of this section, whichever is later, all
2 applications for insurance, and all claim forms regardless of the form
3 of transmission provided and required by an insurer or required by law
4 as condition of payment of a claim, must contain a statement,
5 permanently affixed to the application or claim form, that clearly
6 states in substance the following:

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

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

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

32 NEW SECTION. **Sec. 12.** The attorney general shall prepare an
33 annual report of the activities of the fraud program. The report shall
34 be submitted to the legislature no later than March 1st for the prior
35 calendar year. The report shall, at a minimum, include information as
36 to the number of cases reported to the attorney general, the number of

1 cases referred for prosecution, the number of convictions obtained, the
2 amount of money recovered, and any recommendations of the insurance
3 advisory board.

4 NEW SECTION. **Sec. 13.** The attorney general may adopt rules to
5 implement and administer this chapter.

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

8 Any licensed insurance agent, any licensed insurance broker, or any
9 insurer or person acting in the insurer's behalf, health maintenance
10 organization or person acting in behalf of the health maintenance
11 organization, health care service contractor or person acting in behalf
12 of the health care service contractor, or any authorized agency which
13 releases information, whether oral or written, to the attorney general,
14 the national insurance crime bureau, the national association of
15 insurance commissioners, other law enforcement agent or agency, or
16 another insurer under RCW 48.50.030, 48.50.040, 48.50.050, ((~~or~~))
17 48.50.055, or section 5 of this act is immune from liability in any
18 civil or criminal action, suit, or prosecution arising from the release
19 of the information, unless actual malice on the part of the agent,
20 broker, insurer, health care maintenance organization, health care
21 service contractor, or authorized agency against the insured is shown.

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

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

32 Immunity under this section shall exist only so long as the
33 incident for which the claimant may be responsible is under active
34 investigation or prosecution, or the authorized agency states its

1 position that the claim includes or is a result of criminal activity in
2 which the claimant was a participant.

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

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

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

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

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

34 (4) "Limited authority Washington peace officer" means any full-
35 time, fully compensated officer of a limited authority Washington law
36 enforcement agency empowered by that agency to detect or apprehend
37 violators of the laws in some or all of the limited subject areas for

1 which that agency is responsible. A limited authority Washington peace
2 officer may be a specially commissioned Washington peace officer if
3 otherwise qualified for such status under this chapter.

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

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

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

32 (8) "Primary commissioning agency" means (a) the employing agency
33 in the case of a general authority Washington peace officer, a limited
34 authority Washington peace officer, an Indian tribal peace officer, or
35 a federal peace officer, and (b) the commissioning agency in the case
36 of a specially commissioned Washington peace officer (i) who is
37 performing functions within the course and scope of the special

1 commission and (ii) who is not also a general authority Washington
2 peace officer, a limited authority Washington peace officer, an Indian
3 tribal peace officer, or a federal peace officer.

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

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

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

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

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

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

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

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

27 (5) Information provided under RCW 48.05.510 through 48.05.535,
28 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
29 through 48.46.625;

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

32 (7) Examination reports and information obtained by the department
33 of financial institutions from banks under RCW 30.04.075, from savings
34 banks under RCW 32.04.220, from savings and loan associations under RCW
35 33.04.110, from credit unions under RCW 31.12.565, from check cashers
36 and sellers under RCW 31.45.030(3), and from securities brokers and

1 investment advisers under RCW 21.20.100, all of which is confidential
2 and privileged information;

3 (8) Information provided to the insurance commissioner under RCW
4 48.110.040(3);

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

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

11 (11) Documents, materials, or information obtained by the attorney
12 general under section 7 of this act.

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

15 Documents, materials, or information obtained by the attorney
16 general under section 7 of this act are exempt from disclosure under
17 this chapter.

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

22 NEW SECTION. Sec. 20. Sections 1 through 13 and 19 of this act
23 constitute a new chapter in Title 43 RCW.

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

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25 On page 1, line 1 of the title, after "fraud;" strike the remainder
26 of the title and insert "amending RCW 48.50.070, 48.50.075, 10.93.020,

1 and 42.56.400; adding a new section to chapter 42.17 RCW; adding a new
2 chapter to Title 43 RCW; prescribing penalties; and providing an
3 effective date."

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