

# HOUSE BILL REPORT

## HB 2482

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**As Reported by House Committee On:**  
Financial Institutions & Insurance

**Title:** An act relating to insurance fraud.

**Brief Description:** Creating the insurance fraud program.

**Sponsors:** Representatives O'Brien, Ericks, Kirby, Williams, Rodne, Morrell, Lovick, B. Sullivan, Simpson and Schual-Berke; by request of Insurance Commissioner.

**Brief History:**

**Committee Activity:**

Financial Institutions & Insurance: 1/17/06, 2/2/06 [DPS].

### Brief Summary of Substitute Bill

- Creates an insurance fraud program within the Office of the Insurance Commissioner (OIC).
- Funds the program out of the Insurance Commissioner's Regulatory Account.
- Allows the OIC to investigate and aid in the prosecution of insurance fraud.
- Exempts specific information from public disclosure.
- Provides rule-making authority.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Kirby, Chair; Ericks, Vice Chair; O'Brien, Santos, Simpson and Williams.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, Serben and Strow.

**Staff:** Jon Hedegard (786-7127).

**Background:**

Fraud against insurers is a crime. Acts of alleged fraud may be investigated by state and local law enforcement. Acts of alleged fraud may be prosecuted by county prosecutors or the Attorney General.

Insurers may investigate suspicious claims. Generally, property and casualty insurers must file an insurance anti-fraud plan with the Insurance Commissioner (Commissioner) that establishes specific procedures to:

- prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud;
- review claims in order to detect evidence of possible insurance fraud and to investigate claims where fraud is suspected;
- report fraud to appropriate law enforcement agencies and cooperate with those agencies in their prosecution of fraud cases;
- undertake civil actions against persons who have engaged in fraudulent activities; and
- train company employees and agents in the detection and prevention of fraud.

The Commissioner must notify an insurer if a plan is not approved. The Commissioner may audit an insurer to determine if the insurer is in compliance with the plan. An insurer may be fined if they are not in compliance. Annually, insurers must submit a summary report on actions taken under its anti-fraud plan to prevent and combat insurance fraud.

An anti-fraud plan and the summary of the insurer's anti-fraud activities are not public records and are exempt from public disclosure. The plans and summary are not discoverable or admissible in civil litigation.

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### **Summary of Substitute Bill:**

The bill adds definitions of "insurance fraud" and "insurer."

The bill creates an insurance fraud program within the Office of the Insurance Commissioner (OIC). The fraud program is funded from the Insurance Commissioner's Regulatory Account.

#### Staffing.

The Chief of the Fraud Program is a full-time position appointed by the Insurance Commissioner. The Commissioner may employ staff in the insurance fraud program. Staff levels for this program shall not exceed eight full-time equivalents until June 30, 2010. The Commissioner may also use funds in the insurance fraud program budget to:

- fund one or more state patrol officers to work with the insurance fraud program;
- fund one or more assistant attorney generals to work with the insurance fraud program;
- fund support staff for the assistant attorney generals; and
- make grants to or reimburse local prosecuting attorneys.

#### Authority under the program.

The Commissioner may:

- initiate inquiries and conduct investigations;
- conduct independent examinations;
- review notices, reports, and complaints of suspected insurance fraud filed with federal, state, or local law enforcement to determine if further investigation is needed;

- share records and evidence with federal, state, and local law enforcement agencies and enter into interagency agreements;
- conduct investigations outside of Washington;
- designate officials outside of Washington to inspect information outside of the state;
- administer oaths, subpoena witnesses, and require the production of materials;
- report incidents of alleged insurance fraud to the appropriate prosecutorial authority and to any other appropriate law enforcement, administrative, regulatory, or licensing agency; and
- assemble evidence, prepare charges and work with any prosecutorial authority that has the jurisdiction to prosecute insurance fraud.

#### Requirement to disclose - licensees.

When a licensee of the Commissioner has a reasonable belief that an act of insurance fraud will be, is being, or has been committed, the licensee must disclose the information to the Commissioner, the National Insurance Crime Bureau (NICB), or the National Association of Insurance Commissioners (NAIC).

#### Ability to disclose - any person.

Any person who has a reasonable belief that an act of insurance fraud will be, is being, or has been committed, may disclose information to the Commissioner or to the representative of an insurer that requests the information for the purpose of detecting, prosecuting or preventing insurance fraud.

#### Immunity.

A licensee or any other person who discloses information to the Commissioner, the National Insurance Crime Bureau, the NAIC, or law enforcement agency is immune from liability in any civil or criminal action, suit or prosecution unless actual malice on the part of the licensee or other person can be shown.

#### Confidentiality.

There are categories of information that are exempt from public disclosure including:

- specific records where nondisclosure is essential to effective law enforcement;
- specific records where nondisclosure is essential for protection of a person's right of privacy; and
- information that would endanger the life, physical safety, or property of a witness or victim if disclosed.

The Commissioner may share the documents, materials and other information with:

- other state, federal and international insurance regulatory agencies;
- the NICB;
- the NAIC; and
- other law enforcement agencies.

#### Penalties.

In a criminal prosecution where the insurance company is a victim, a court may consider the insurer a victim for the purpose of ordering restitution as part of a criminal penalty.

### Insurance application and claim form disclosure.

Within six months of the effective date of the section, all applications for insurance and all claims forms must include a notice that includes a statement that it is a crime to provide false, incomplete, or misleading information to an insurer for the purposes of defrauding the insurer.

The lack of the notice is not a defense to any criminal or civil action

### Insurance Fraud Advisory Board.

The Commissioner must appoint an Insurance Fraud Advisory Board (Board) to advise the Commissioner upon the effectiveness and the resources allocated to the program. The Board members serve staggered terms and receive no compensation. The Board consists of nine members and is composed as follows:

- four members must represent insurers doing business in Washington (one must be a domestic insurer);
- two must represent consumers;
- one must represent the National Insurance Crime Bureau;
- one must represent law enforcement; and
- one must represent other law enforcement agencies.

### Report.

The Commissioner must report annually on the activities of the fraud program. The report must be submitted to the Legislature by March 1 of each year. The report must include at least the number of cases reported to the Commissioner, number of cases referred for prosecution, the number of convictions, and the amount of money recovered.

### Rules.

The Commissioner may adopt rules to implement and administer the act.

The OIC is named as a limited authority Washington law enforcement agency.

Fraud program investigators who are certified as peace officers under RCW 43.101.095 have the powers and status of a limited Washington peace officer.

### **Substitute Bill Compared to Original Bill:**

Language is added stating that the definition of fraud is for illustrative purposes and is not intended to create a crime or modify an existing crime. Additional details are provided regarding the granting of money by the Commissioner to local prosecutors. The provision tolling time with regard to unfair claims practices is removed. The new section provision regarding immunity is removed. An existing section regarding immunity, RCW 48.50.070, is amended to include immunity for health maintenance organizations, health care service contractors, and their staff. The confidentiality provisions are revised. Materials are no longer automatically exempt from public disclosure. References to and from the Open Records Act are included. The restitution provisions are modified. An insurer may be entitled to be considered as a victim for the purpose of restitution. A ninth member is added to the advisory committee. The composition of the advisory committee is altered.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect July 1, 2006.

**Testimony For:** The issue was brought to the Legislature's attention by a constituent who has worked in fraud investigation for 20 years. Most states have anti-fraud bureaus. Fraud is a major issue in Washington. Fraud costs insurers and consumers hundreds of millions of dollars. The goal of the bill is to reduce fraud and to save money for consumers and insurers. Fraud can occur in many ways. It can occur when an innocent party is the victim of a staged accident by an organized crime ring. A crime ring may involve unscrupulous attorneys, health clinics, and auto shops. Forty-one states have dedicated anti-fraud units. Fraud adds an estimated 10 percent to claims. In Washington, that works out to over \$400 million in the property and casualty line alone. Health care may add another \$800 million if the 10 percent estimate is used. The OIC has worked with law enforcement, prosecutors and the insurance industry to craft a bill. The bill includes an advisory board, an annual report to the Legislature, and a complete program review in 2010. Funding will require an appropriation from the Commissioner Regulatory Account. The restitution provisions can be significant. Utah courts ordered \$8 million in restitution to victims. The tolling provisions for claims payment in the discussion draft replicate existing law. Washington insurance companies reported 1,502 questionable claims to NICB in 2005. Since 2002, Washington has increased from 18th to 11th in the nation for the number of questionable claims reported by our member insurance companies. A single glass shop in Eastern Washington has submitted over 50,000 questionable automobile windshield replacement claims, totaling over \$25 million to insurance companies in 19 states, and has refunded nearly \$750,000 in deductibles to insureds in Washington in a three year period. This shop is engaged in rate evasion practices; operating ghost shops, and rebating deductibles, which is an unlawful insurance act. States with fraud bureaus handle investigations more rapidly and more efficiently. If Washington had a fraud bureau, the illegal activities of these glass shops and the resulting changes to billing practices would have, presumably, been accomplished several years ago potentially saving Washington insurance companies hundreds of thousands of dollars in payments of fraudulent claims, thereby possibly reducing insurance premiums paid by Washington citizens. The lack of dedicated resources has hampered the efforts to investigate and prosecute insurance fraud in Washington. The creation of an insurance fraud program will go a long way towards providing the necessary infrastructure, resources, and personnel to begin to address Washington's insurance fraud problem. In addition, it will provide a venue for the reporting of suspected insurance fraud activity. It is essential to utilize the Insurance Fraud Advisory Board in the bill to measure the effectiveness of programs and to properly allocate resources. The OIC would have a memorandum of agreement with other agencies to establish processes in sharing resources. The industry has been concerned about making sure the program is appropriate in size and does not quickly grow in excess of the need for the program. The staffing language in the discussion draft is reassuring. Industry funds this program out of the Regulatory Account. The definition of insurance fraud is an issue that is still being discussed

by the OIC and prosecutors. A new crime or a new defense should not be created and the existing crimes should not be made harder to prosecute. If the prosecutors are happy with the language then industry is satisfied. Industry supports the bill now that the funding and staffing issues have been addressed. There are other possible anti-fraud measures that should be discussed in the future. The State Patrol supports the bill.

(With concerns) The concept of fighting insurance fraud is appealing. The bill itself was not available until recently and leads to some concerns. About 10 years ago, there was a fraud task force that included the OIC, the Attorney General, prosecutors, industry, trial lawyers, and providers. A bill was developed that served as a model for the country for quite some time. Under current law, an insurer can investigate fraud. That is a provision that everyone supported. The new bill goes further. It appears that the investigation may take an indeterminate amount of time. An insurer could investigate and delay claim payment for a year and then turn it into the OIC for another lengthy investigation. This could serve as a toll to delay claims payment. The confidentiality provisions are extremely broad. Any information connected to the investigation can never be seen by the public. The discussion draft raises more questions. The definition of insurance fraud is extremely broad. The state is no longer reimbursed for investigation or prosecution. The oversight board was changed from six members of industry and two consumers to seven members of industry and one consumer. This is not enough consumer oversight. The confidentiality provisions are a problem. The only citizen who could ever possibly see any of this information is the lone citizen board member. That is not enough public participation and oversight.

**Testimony Against:** None.

**Persons Testifying:** Dana MacDonald, National Insurance Crime Bureau; Mike Kreidler, Office of the Insurance Commissioner; Mel Sorensen, Allstate, Property and Casualty Insurers; Mike Kappahn, Farmers Insurers; Carrie Tellefsa, Progressive Insurance; and Steve Davis, Washington State Patrol.

(With concerns) Larry Shannon, Washington State Trial Lawyers Association; and Rowland Thompson, Allied Daily Newspaper.

**Persons Signed In To Testify But Not Testifying:** None.