
**Financial Institutions &
Insurance Committee**

SB 6234

Brief Description: Creating the insurance fraud program.

Sponsors: Senators Fairley, Keiser, Spanel and Esser; by request of Insurance Commissioner.

Brief Summary of 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.

Hearing Date:

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.

Summary of 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 application 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 member 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.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.