
SENATE BILL 6234

State of Washington 59th Legislature 2006 Regular Session

By Senators Fairley, Keiser, Spanel and Esser; by request of Insurance Commissioner

Read first time 01/09/2006. Referred to Committee on Financial Institutions, Housing & Consumer Protection.

1 AN ACT Relating to insurance fraud; amending RCW 10.93.020; adding
2 a new chapter to Title 48 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The purpose of this act is to confront the
5 problem of insurance fraud in this state by making a concerted effort
6 to detect insurance fraud, reduce the occurrence of fraud through
7 criminal enforcement and deterrence, require restitution of
8 fraudulently obtained insurance benefits, 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

1 knowledge or belief that it will be presented to or by an insurer,
2 broker, or its agent, false information as part of, in support of, or
3 concerning a fact material to one or more of the following:

4 (i) An application for the issuance or renewal of an insurance
5 policy;

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

7 (iii) A claim for payment or benefit pursuant to an insurance
8 policy;

9 (iv) Premiums paid on an insurance policy;

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

12 (vi) The reinstatement of an insurance policy;

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

16 (c) Attempting to commit, aiding or abetting in the commission of,
17 or conspiracy to commit the acts or omissions specified in this
18 subsection.

19 (2) "Insurer" means an insurance company authorized under chapter
20 48.05 RCW, a health care service contractor registered under chapter
21 48.44 RCW, and a health care maintenance organization registered under
22 chapter 48.46 RCW.

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

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

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

5 (4) The commissioner may make grants to or reimburse local
6 prosecuting attorneys to assist in the prosecution of fraud. The
7 grants must be paid out of the budget of the insurance fraud program.

8 NEW SECTION. **Sec. 4.** The annual cost of operating the fraud
9 program is funded from the insurance commissioner's regulatory account
10 under RCW 48.02.190.

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

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

17 (b) Initiate inquiries and conduct investigations when the
18 commissioner has cause to believe that insurance fraud may have been or
19 is being committed;

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

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

26 (e) Share records and evidence with federal, state, or local law
27 enforcement or regulatory agencies, and enter into interagency
28 agreements;

29 (f) Conduct investigations outside this state. If the information
30 the commissioner seeks to obtain is located outside this state, the
31 person from whom the information is sought may make the information
32 available to the commissioner to examine at the place where the
33 information is located. The commissioner may designate
34 representatives, including officials of the state in which the matter
35 is located, to inspect the information on behalf of the commissioner,

1 and the commissioner may respond to similar requests from officials of
2 other states;

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

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

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

15 (j) Undertake independent studies to determine the extent of
16 fraudulent insurance acts.

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

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

28 (2) Any person that has a reasonable belief that an act of
29 insurance fraud will be, is being, or has been committed; or any person
30 who collects, reviews, or analyzes information concerning insurance
31 fraud may furnish and disclose any information in its possession
32 concerning such an act to the commissioner or to an authorized
33 representative of an insurer that requests the information for the
34 purpose of detecting, prosecuting, or preventing insurance fraud.

35 (3) If an insurer has a good faith belief that an insurance fraud
36 has been committed in connection with an insurance claim, and has
37 properly notified the commissioner of its suspicions, the notification

1 serves to toll any applicable time period in any unfair claims
2 practices statute or related regulation, or any action on the claim
3 against the insurer to whom such a claim has been presented for bad
4 faith, until thirty days after determination by the commissioner and
5 notice to the insurer that the commissioner will not recommend further
6 investigation of the claim.

7 NEW SECTION. **Sec. 7.** Any licensed insurance agent, any licensed
8 insurance broker, any insurer or person acting in the insurer's behalf,
9 health maintenance organization or person acting in the behalf of the
10 health maintenance organization, health care service contractor or
11 person acting in the behalf of the health care service contractor, or
12 other person who discloses information to the commissioner, the
13 national insurance crime bureau, the national association of insurance
14 commissioners, or other law enforcement agent or agency under section
15 5 of this act is immune from liability in any civil or criminal action,
16 suit, or prosecution arising from providing the information, unless
17 actual malice on the part of the agent, broker, insurer, or other
18 person is shown.

19 NEW SECTION. **Sec. 8.** (1) Any documents, materials, or other
20 information in the possession or control of the commissioner and
21 prosecutors that are provided or obtained by the commissioner in an
22 investigation of suspected or actual fraudulent insurance acts are
23 confidential by law, privileged, not subject to public disclosure under
24 chapter 42.17 or 42.56 RCW, not subject to subpoena, and not subject to
25 discovery or admissible in evidence in any private civil action.
26 However, the commissioner and prosecutors are authorized to use the
27 documents, materials, or other information in the furtherance of (a)
28 any regulatory or legal action brought as part of the commissioner's
29 official duties, or (b) criminal prosecution.

30 (2) Neither the commissioner nor any person who received the
31 documents, materials, or other information while acting under the
32 authority of this chapter may be permitted or required to testify in
33 any private civil action concerning any confidential documents,
34 materials, or information subject to subsection (1) of this section.

35 (3) In order to assist in the performance of the commissioner's
36 duties under this chapter, the commissioner may:

1 (a) Share documents, materials, or other information, including
2 confidential and privileged documents, material, or information subject
3 to subsection (1) of this section with other state, federal, and
4 international regulatory agencies, with the national association of
5 insurance commissioners and its affiliates and subsidiaries, and with
6 local, state, federal, and international law enforcement authorities,
7 and the national insurance crime bureau provided that the recipient
8 agrees to maintain the confidentiality and privileged status of the
9 document, material, or other information;

10 (b) Receive documents, materials, or information, including
11 otherwise confidential and privileged documents, materials, or
12 information from the national association of insurance commissioners
13 and its affiliates and subsidiaries and from regulatory and law
14 enforcement officials of other foreign or domestic jurisdictions, and
15 shall maintain as confidential or privileged any document, material, or
16 information received with the notice or the understanding that it is
17 confidential or privileged under the laws of the jurisdiction that is
18 the source of the document, material, or information; and

19 (c) Enter into agreements governing sharing and use of information
20 consistent with this section.

21 (4) A privilege or claim of confidentiality in the documents,
22 materials, or information is not waived as a result of disclosure to
23 the commissioner under this section or as a result of sharing as
24 authorized in subsection (3) of this section.

25 (5) Any investigative information gathered under this chapter is
26 criminal investigative information and may not be disclosed except as
27 provided in this chapter.

28 NEW SECTION. **Sec. 9.** (1) In a criminal prosecution for insurance
29 fraud under Washington law the court, in addition to the criminal
30 penalty imposed, shall assess against the defendant convicted for such
31 a violation:

32 (a) Double the amount of the fraud; and

33 (b) The costs of investigating and prosecuting.

34 (2) Payment of the amounts levied under subsection (1) this section
35 must first be paid to the victim of the fraud, until paid in full, and
36 then to the costs of investigating and prosecuting the defendant. An
37 insurance company is a victim under this subsection. The restitution

1 for the costs of investigating and prosecuting insurance fraud
2 recovered under subsection (1) of this section must be paid to the
3 commissioner's regulatory account under RCW 48.02.190.

4 (3) The civil forfeiture provisions of RCW 10.105.010 must be used
5 to the fullest extent possible to recover assets obtained as a result
6 of insurance fraud.

7 NEW SECTION. **Sec. 10.** This chapter does not:

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

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

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

17 NEW SECTION. **Sec. 11.** No later than six months after the
18 effective date of this section, all applications for insurance, and all
19 claim forms regardless of the form of transmission provided and
20 required by an insurer or required by law as condition of payment of a
21 claim, must contain a statement, permanently affixed to the application
22 or claim form, that clearly states in substance the following:

23 "It is a crime to knowingly provide false, incomplete, or
24 misleading information to an insurance company for the purpose of
25 defrauding the company. Penalties include imprisonment, fines, and
26 denial of insurance benefits."

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

29 NEW SECTION. **Sec. 12.** The commissioner shall appoint an insurance
30 fraud advisory board. The board shall consist of eight members. Two
31 members shall be representatives from insurers doing business in this
32 state, two members shall represent consumers, one member shall
33 represent the national insurance crime bureau or successor
34 organization, two members shall represent prosecutors, and one member
35 shall represent other law enforcement agencies. The members of the

1 board serve four-year terms and until their successors are appointed
2 and qualified. Two of the original members must be appointed to serve
3 an initial term of four years, two must be appointed to serve an
4 initial term of three years, two must be appointed to serve an initial
5 term of two years, and two must be appointed to serve an initial term
6 of one year. The members of the board receive no compensation. The
7 board advises the commissioner with respect to the effectiveness and
8 resources allocated to the fraud program.

9 NEW SECTION. **Sec. 13.** The commissioner shall prepare an annual
10 report of the activities of the fraud program. The report shall be
11 submitted to the legislature no later than March 1st for the prior
12 calendar year. The report shall, at a minimum, include information as
13 to the number of cases reported to the commissioner, the number of
14 cases referred for prosecution, the number of convictions obtained, and
15 the amount of money recovered.

16 NEW SECTION. **Sec. 14.** The commissioner may adopt rules to
17 implement and administer this chapter.

18 **Sec. 15.** RCW 10.93.020 and 2002 c 128 s 1 are each amended to read
19 as follows:

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

22 (1) "General authority Washington law enforcement agency" means any
23 agency, department, or division of a municipal corporation, political
24 subdivision, or other unit of local government of this state, and any
25 agency, department, or division of state government, having as its
26 primary function the detection and apprehension of persons committing
27 infractions or violating the traffic or criminal laws in general, as
28 distinguished from a limited authority Washington law enforcement
29 agency, and any other unit of government expressly designated by
30 statute as a general authority Washington law enforcement agency. The
31 Washington state patrol and the department of fish and wildlife are
32 general authority Washington law enforcement agencies.

33 (2) "Limited authority Washington law enforcement agency" means any
34 agency, political subdivision, or unit of local government of this
35 state, and any agency, department, or division of state government,

1 having as one of its functions the apprehension or detection of persons
2 committing infractions or violating the traffic or criminal laws
3 relating to limited subject areas, including but not limited to, the
4 state departments of natural resources and social and health services,
5 the state gambling commission, the state lottery commission, the state
6 parks and recreation commission, the state utilities and transportation
7 commission, the state liquor control board, the office of the insurance
8 commissioner, and the state department of corrections.

9 (3) "General authority Washington peace officer" means any full-
10 time, fully compensated and elected, appointed, or employed officer of
11 a general authority Washington law enforcement agency who is
12 commissioned to enforce the criminal laws of the state of Washington
13 generally.

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

21 (5) "Specially commissioned Washington peace officer", for the
22 purposes of this chapter, means any officer, whether part-time or full-
23 time, compensated or not, commissioned by a general authority
24 Washington law enforcement agency to enforce some or all of the
25 criminal laws of the state of Washington, who does not qualify under
26 this chapter as a general authority Washington peace officer for that
27 commissioning agency, specifically including reserve peace officers,
28 and specially commissioned full-time, fully compensated peace officers
29 duly commissioned by the states of Oregon or Idaho or any such peace
30 officer commissioned by a unit of local government of Oregon or Idaho.
31 A reserve peace officer is an individual who is an officer of a
32 Washington law enforcement agency who does not serve such agency on a
33 full-time basis but who, when called by the agency into active service,
34 is fully commissioned on the same basis as full-time peace officers to
35 enforce the criminal laws of the state.

36 (6) "Federal peace officer" means any employee or agent of the
37 United States government who has the authority to carry firearms and

1 make warrantless arrests and whose duties involve the enforcement of
2 criminal laws of the United States.

3 (7) "Agency with primary territorial jurisdiction" means a city or
4 town police agency which has responsibility for police activity within
5 its boundaries; or a county police or sheriff's department which has
6 responsibility with regard to police activity in the unincorporated
7 areas within the county boundaries; or a statutorily authorized port
8 district police agency or four-year state college or university police
9 agency which has responsibility for police activity within the
10 statutorily authorized enforcement boundaries of the port district,
11 state college, or university.

12 (8) "Primary commissioning agency" means (a) the employing agency
13 in the case of a general authority Washington peace officer, a limited
14 authority Washington peace officer, an Indian tribal peace officer, or
15 a federal peace officer, and (b) the commissioning agency in the case
16 of a specially commissioned Washington peace officer (i) who is
17 performing functions within the course and scope of the special
18 commission and (ii) who is not also a general authority Washington
19 peace officer, a limited authority Washington peace officer, an Indian
20 tribal peace officer, or a federal peace officer.

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

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

27 NEW SECTION. **Sec. 16.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 17.** Sections 1 through 14 and 16 of this act
32 constitute a new chapter in Title 48 RCW.

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