

**ESSB 5726** - H COMM AMD

By Committee on Insurance, Financial Services & Consumer Protection

ADOPTED AND ENGROSSED 04/05/2007

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

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as the  
4 insurance fair conduct act.

5 **Sec. 2.** RCW 48.30.010 and 1997 c 409 s 107 are each amended to  
6 read as follows:

7 (1) No person engaged in the business of insurance shall engage in  
8 unfair methods of competition or in unfair or deceptive acts or  
9 practices in the conduct of such business as such methods, acts, or  
10 practices are defined pursuant to subsection (2) of this section.

11 (2) In addition to such unfair methods and unfair or deceptive acts  
12 or practices as are expressly defined and prohibited by this code, the  
13 commissioner may from time to time by regulation promulgated pursuant  
14 to chapter 34.05 RCW, define other methods of competition and other  
15 acts and practices in the conduct of such business reasonably found by  
16 the commissioner to be unfair or deceptive after a review of all  
17 comments received during the notice and comment rule-making period.

18 (3)(a) In defining other methods of competition and other acts and  
19 practices in the conduct of such business to be unfair or deceptive,  
20 and after reviewing all comments and documents received during the  
21 notice and comment rule-making period, the commissioner shall identify  
22 his or her reasons for defining the method of competition or other act  
23 or practice in the conduct of insurance to be unfair or deceptive and  
24 shall include a statement outlining these reasons as part of the  
25 adopted rule.

26 (b) The commissioner shall include a detailed description of facts  
27 upon which he or she relied and of facts upon which he or she failed to  
28 rely, in defining the method of competition or other act or practice in

1 the conduct of insurance to be unfair or deceptive, in the concise  
2 explanatory statement prepared under RCW 34.05.325(6).

3 (c) Upon appeal the superior court shall review the findings of  
4 fact upon which the regulation is based de novo on the record.

5 (4) No such regulation shall be made effective prior to the  
6 expiration of thirty days after the date of the order by which it is  
7 promulgated.

8 (5) If the commissioner has cause to believe that any person is  
9 violating any such regulation, the commissioner may order such person  
10 to cease and desist therefrom. The commissioner shall deliver such  
11 order to such person direct or mail it to the person by registered mail  
12 with return receipt requested. If the person violates the order after  
13 expiration of ten days after the cease and desist order has been  
14 received by him or her, he or she may be fined by the commissioner a  
15 sum not to exceed two hundred and fifty dollars for each violation  
16 committed thereafter.

17 (6) If any such regulation is violated, the commissioner may take  
18 such other or additional action as is permitted under the insurance  
19 code for violation of a regulation.

20 (7) An insurer engaged in the business of insurance may not  
21 unreasonably deny a claim for coverage or payment of benefits to any  
22 first party claimant. "First party claimant" has the same meaning as  
23 in section 3 of this act.

24 NEW SECTION. Sec. 3. A new section is added to chapter 48.30 RCW  
25 to read as follows:

26 (1) Any first party claimant to a policy of insurance who is  
27 unreasonably denied a claim for coverage or payment of benefits by an  
28 insurer may bring an action in the superior court of this state to  
29 recover the actual damages sustained, together with the costs of the  
30 action, including reasonable attorneys' fees and litigation costs, as  
31 set forth in subsection (3) of this section.

32 (2) The superior court may, after finding that an insurer has acted  
33 unreasonably in denying a claim for coverage or payment of benefits or  
34 has violated a rule in subsection (5) of this section, increase the  
35 total award of damages to an amount not to exceed three times the  
36 actual damages.

1 (3) The superior court shall, after a finding of unreasonable  
2 denial of a claim for coverage or payment of benefits, or after a  
3 finding of a violation of a rule in subsection (5) of this section,  
4 award reasonable attorneys' fees and actual and statutory litigation  
5 costs, including expert witness fees, to the first party claimant of an  
6 insurance contract who is the prevailing party in such an action.

7 (4) "First party claimant" means an individual, corporation,  
8 association, partnership, or other legal entity asserting a right to  
9 payment as a covered person under an insurance policy or insurance  
10 contract arising out of the occurrence of the contingency or loss  
11 covered by such a policy or contract.

12 (5) A violation of any of the following is a violation for the  
13 purposes of subsections (2) and (3) of this section:

14 (a) WAC 284-30-330, captioned "specific unfair claims settlement  
15 practices defined";

16 (b) WAC 284-30-350, captioned "misrepresentation of policy  
17 provisions";

18 (c) WAC 284-30-360, captioned "failure to acknowledge pertinent  
19 communications";

20 (d) WAC 284-30-370, captioned "standards for prompt investigation  
21 of claims";

22 (e) WAC 284-30-380, captioned "standards for prompt, fair and  
23 equitable settlements applicable to all insurers"; or

24 (f) An unfair claims settlement practice rule adopted under RCW  
25 48.30.010 by the insurance commissioner intending to implement this  
26 section. The rule must be codified in chapter 284-30 of the Washington  
27 Administrative Code.

28 (6) This section does not limit a court's existing ability to make  
29 any other determination regarding an action for an unfair or deceptive  
30 practice of an insurer or provide for any other remedy that is  
31 available at law.

32 (7) This section does not apply to a health plan offered by a  
33 health carrier. "Health plan" has the same meaning as in RCW  
34 48.43.005. "Health carrier" has the same meaning as in RCW 48.43.005.

35 (8)(a) Twenty days prior to filing an action based on this section,  
36 a first party claimant must provide written notice of the basis for the  
37 cause of action to the insurer and office of the insurance  
38 commissioner. Notice may be provided by regular mail, registered mail,

1 or certified mail with return receipt requested. Proof of notice by  
2 mail may be made in the same manner as prescribed by court rule or  
3 statute for proof of service by mail. The insurer and insurance  
4 commissioner are deemed to have received notice three business days  
5 after the notice is mailed.

6 (b) If the insurer fails to resolve the basis for the action within  
7 the twenty-day period after the written notice by the first party  
8 claimant, the first party claimant may bring the action without any  
9 further notice.

10 (c) The first party claimant may bring an action after the required  
11 period of time in (a) of this subsection has elapsed.

12 (d) If a written notice of claim is served under (a) of this  
13 subsection within the time prescribed for the filing of an action under  
14 this section, the statute of limitations for the action is tolled  
15 during the twenty-day period of time in (a) of this subsection."

EFFECT: The reference to insurance rules that can serve as a  
basis for treble damages or attorneys' fees is narrowed. The  
substitute bill referred to any rule adopted under the authority of RCW  
48.30.010. The amendment includes five existing rules and any rules  
adopted as unfair claims settlement practice rules by the Insurance  
Commissioner that are intended to implement this act. The five  
existing rules address the following areas: Specific unfair claims  
settlement practices; misrepresentation of policy provisions; failure  
to acknowledge pertinent communications; standards for prompt  
investigation; standards for prompt, fair and equitable settlements  
applicable to all insurers. The provision that states that the  
remedies in the bill are separate from any remedies prescribed in RCW  
19.86.090 of the Consumer Protection Act is removed. A court's  
existing ability to make any other determination regarding an unfair  
practice by an insurer or provide for any other remedy that is  
available at law is not limited by the bill.

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