

ESSB 5726 - H COMM AMD

By Committee on Insurance, Financial Services & Consumer Protection

ADOPTED AS AMENDED 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."

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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