

**ESSB 5726** - H AMD TO IFCP COMM AMD (H-3265.2/07) **541**  
By Representative Rodne

**FAILED 04/05/2007**

1 Beginning on page 2, line 24 of the amendment, strike all of  
2 section 3 and insert the following:

3 "NEW SECTION. **Sec. 3.** A new section is added to chapter 48.30 RCW  
4 to read as follows:

5 (1) Any first party claimant to a policy of insurance who is  
6 unreasonably denied a claim for coverage or payment of benefits by an  
7 insurer may bring an action in the superior court of this state to  
8 recover the actual damages sustained, together with the costs of the  
9 action, including reasonable attorneys' fees and litigation costs.

10 (2) Upon a finding that the insurer has acted unreasonably in  
11 denying a claim for coverage, the superior court may increase the total  
12 award of actual damages to an amount not to exceed three times the  
13 actual damages but only after the first party plaintiff shows by clear  
14 and convincing evidence that the acts giving rise to the actual damages  
15 occur with such frequency as to indicate a general business practice  
16 and these acts are:

17 (a) Willful, wanton, and malicious; or

18 (b) In reckless disregard for the rights of the first party  
19 claimant.

20 (3) The superior court may, after a finding of unreasonable denial  
21 of a claim for coverage or payment of benefits, award reasonably  
22 incurred attorneys' fees and reasonable actual and statutory litigation  
23 costs, including expert witness fees, to the first party claimant of an  
24 insurance contract who is the prevailing party in such an action.

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

1 (5) This section shall not be construed to authorize a class action  
2 suit against an insurer or any of their employees.  
3 (6) The remedies provided for in this section shall be the  
4 exclusive remedies available to any party seeking recovery under this  
5 section. No other remedy, common law or statutory, shall be awarded  
6 against an insurer with respect to a claim which is subject to this  
7 section. The damages recoverable under this section shall include  
8 those damages which are a reasonably foreseeable result of a specified  
9 violation of this section by the insurer. Violations of unfair  
10 practice laws in chapter 48.30 RCW or unfair practice rules in chapter  
11 284-30 WAC are not subject to a cause of action under this section.  
12 This section does not preempt any cause of action for those violations  
13 under the consumer protection act, chapter 19.86 RCW, or at common law.  
14 This section shall not be construed to create a common law cause of  
15 action."

EFFECT: In order to obtain treble damages, a first party claimant must show by clear and convincing evidence that an unreasonable denial of coverage or payment occurs with a frequency that it is a general business practice of the insurer and that the act was willful, wanton, and malicious or in reckless disregard of the first party claimant's rights. The court may award reasonable attorneys' fees and reasonable litigation costs to the prevailing first party claimant. The act does not create a class action suit against an insurer or their employees. The remedies provided for in this section shall be the exclusive remedies available to any party seeking recovery under this section. No other remedy, at common law or pursuant to statute, shall be awarded against an insurer with respect to a claim which is subject to this act. The damages recoverable include those damages which are a reasonably foreseeable result of a specified violation by the insurer.

--- END ---