

FINAL BILL REPORT

ESSB 5726

C 498 L 07
Synopsis as Enacted

Brief Description: Creating the insurance fair conduct act.

Sponsors: Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Kline and Franklin).

Senate Committee on Consumer Protection & Housing
House Committee on Insurance, Financial Services & Consumer Protection

Background: Insurance claims are governed by general principles of contract and tort law, statute, and regulations promulgated by the Insurance Commissioner. If an insurer denies a valid claim, the insured may sue to enforce the insurance contract and force the insurer to pay according to the policy.

An insured may also bring an action against an insurer for acting in bad faith. To succeed on a claim of bad faith, the insured must demonstrate that the insurer's denial of the claim was unreasonable, frivolous, or unfounded. Additionally, an insured may bring a claim under the Consumer Protection Act if the insurer's denial of a claim amounts to an unfair or deceptive trade practice.

By statute, the Insurance Commissioner has the authority to promulgate rules prohibiting unfair and deceptive business practices by the insurance industry. Current insurance regulations require an insurer to attempt in good faith to make a fair, prompt, and equitable settlement of a claim when liability is relatively clear and to generally observe standards of reasonableness in all aspects of its claim settlement practices. The Commissioner may fine an insurer for failure to comply with these regulations.

Summary: Insurers may not unreasonably deny insurance coverage of payment of benefits. First party claimants to an insurance policy may sue insurers for unreasonable denials of coverage or payments of benefits.

First party claimant is defined as an individual, corporation, association, partnership or any other legal entity who asserts the right to payment as a covered person under the insurance policy at issue.

Damages are available to plaintiffs upon a finding that the insurer unreasonably denied coverage or payment. A plaintiff may also recover damages upon a finding that the insurer violated one of five rules adopted by the Office of the Insurance Commissioner (OIC) and codified in chapter 284-30 of the Washington Administrative Code (WAC) or any additional rules that the OIC adopts that are intended to implement this act. The five WAC rules regulate insurers' actions in the following areas: (1) specific unfair claims practices; (2) misrepresentation of policy provisions; (3) failure to acknowledge pertinent communications;

(4) standards for prompt investigation; and (5) standards for prompt fair, and equitable settlements.

Upon finding a violation of the act, the court must award: (1) the actual damages sustained; (2) reasonable attorney's fees; and (3) actual and statutory litigation costs, including expert witness fees. The court has the discretion to also increase the total award of damages to an amount that does not exceed three times the actual damages suffered by the plaintiff. A court's ability to make any other determination regarding unfair or deceptive practices or to provide any other available remedy is not limited.

Health plans offered by health carriers are exempt from this bill.

A claimant must provide 20 days written notice to both the insurer and the OIC before filing suit under this section. The notice must provide for the basis of the cause of action. If the insurer does not resolve the claim during that 20-day period, the claimant may then bring suit without any further notice to the insurer.

Votes on Final Passage:

Senate	30	17	
House	59	38	(House amended)
Senate	31	18	(Senate concurred)

Effective: July 22, 2007