
**Insurance, Financial Services &
Consumer Protection Committee**

ESSB 5726

Brief Description: Creating the insurance fair conduct act.

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

Brief Summary of Engrossed Substitute Bill

- Prohibits the unfair practice of an insurer unreasonably denying a claim for coverage or payment of benefits to a first party claimant.
- Requires a court to award actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs if an insurer unreasonably denied a claim or has violated a rule adopted under unfair practice rule-making authority by the Insurance Commissioner.
- Allows a court to award up to triple the amount of actual damages if an insurer unreasonably denied a claim or has violated a rule adopted under unfair practice rule-making authority by the Insurance Commissioner.

Hearing Date: 3/22/07

Staff: Jon Hedegard (786-7127).

Background:

The Insurance Commissioner (Commissioner) oversees the insurance business in this state. The Commissioner reviews rates and policy forms. The Commissioner conducts financial examinations and reviews fiscal information to ensure solvency. The Commissioner performs market conduct examinations to ensure compliance with laws regarding claims practices, marketing, sales, rates, forms, and underwriting.

Consumer Protection Act

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Washington Consumer Protection Act (CPA) declares that unfair and deceptive practices in trade or commerce that harm the public interest are illegal. The CPA gives the Office of the Attorney General the authority to bring lawsuits against businesses, and to ask the court for injunctions and restitution for consumers. It also allows individuals to hire their own attorneys to bring consumer protection lawsuits. If the consumer wins in court, the law allows the court to award up to triple the amount of actual damages, up to \$10,000, as well as attorneys' fees.

Unfair Insurance Practices

Chapter 48.30 RCW includes specific practices that the Legislature has determined to be unfair or deceptive practices. The Commissioner has the authority in RCW 48.30.010 to adopt rules to prohibit unfair or deceptive practices. These rules are primarily found in Chapter 284-30 WAC and are generally categorized as either unfair claims settlement practices or unfair trade practices.

Violations of the statutes and rules can be punished by fine by the Commissioner. The Commissioner may also issue a cease and desist order.

Violations of provisions of the unfair practice statutes and rules have been held to be violations of the CPA.

Summary of Bill:

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

An insurer may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant.

Any first party claimant who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs.

If the insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule adopted under unfair practice rule-making authority by the commissioner, the superior court must award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant.

If the insurer has acted unreasonably in denying a claim or has violated a rule adopted under unfair practice rule-making authority by the commissioner, the superior court may increase the total award of damages to an amount not to exceed three times the actual damages.

These remedies are separate from the remedies prescribed in the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Requested on March 19, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.