

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5726

60th Legislature
2007 Regular Session

Passed by the Senate April 14, 2007
YEAS 31 NAYS 18

President of the Senate

Passed by the House April 5, 2007
YEAS 59 NAYS 38

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5726** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5726

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

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

READ FIRST TIME 02/16/07.

1 AN ACT Relating to creating the insurance fair conduct act;
2 amending RCW 48.30.010; adding a new section to chapter 48.30 RCW;
3 creating a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the
6 insurance fair conduct act.

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

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

13 (2) In addition to such unfair methods and unfair or deceptive acts
14 or practices as are expressly defined and prohibited by this code, the
15 commissioner may from time to time by regulation promulgated pursuant
16 to chapter 34.05 RCW, define other methods of competition and other
17 acts and practices in the conduct of such business reasonably found by

1 the commissioner to be unfair or deceptive after a review of all
2 comments received during the notice and comment rule-making period.

3 (3)(a) In defining other methods of competition and other acts and
4 practices in the conduct of such business to be unfair or deceptive,
5 and after reviewing all comments and documents received during the
6 notice and comment rule-making period, the commissioner shall identify
7 his or her reasons for defining the method of competition or other act
8 or practice in the conduct of insurance to be unfair or deceptive and
9 shall include a statement outlining these reasons as part of the
10 adopted rule.

11 (b) The commissioner shall include a detailed description of facts
12 upon which he or she relied and of facts upon which he or she failed to
13 rely, in defining the method of competition or other act or practice in
14 the conduct of insurance to be unfair or deceptive, in the concise
15 explanatory statement prepared under RCW 34.05.325(6).

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

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

21 (5) If the commissioner has cause to believe that any person is
22 violating any such regulation, the commissioner may order such person
23 to cease and desist therefrom. The commissioner shall deliver such
24 order to such person direct or mail it to the person by registered mail
25 with return receipt requested. If the person violates the order after
26 expiration of ten days after the cease and desist order has been
27 received by him or her, he or she may be fined by the commissioner a
28 sum not to exceed two hundred and fifty dollars for each violation
29 committed thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (f) An unfair claims settlement practice rule adopted under RCW

1 48.30.010 by the insurance commissioner intending to implement this
2 section. The rule must be codified in chapter 284-30 of the Washington
3 Administrative Code.

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

8 (7) This section does not apply to a health plan offered by a
9 health carrier. "Health plan" has the same meaning as in RCW
10 48.43.005. "Health carrier" has the same meaning as in RCW 48.43.005.

11 (8)(a) Twenty days prior to filing an action based on this section,
12 a first party claimant must provide written notice of the basis for the
13 cause of action to the insurer and office of the insurance
14 commissioner. Notice may be provided by regular mail, registered mail,
15 or certified mail with return receipt requested. Proof of notice by
16 mail may be made in the same manner as prescribed by court rule or
17 statute for proof of service by mail. The insurer and insurance
18 commissioner are deemed to have received notice three business days
19 after the notice is mailed.

20 (b) If the insurer fails to resolve the basis for the action within
21 the twenty-day period after the written notice by the first party
22 claimant, the first party claimant may bring the action without any
23 further notice.

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

26 (d) If a written notice of claim is served under (a) of this
27 subsection within the time prescribed for the filing of an action under
28 this section, the statute of limitations for the action is tolled
29 during the twenty-day period of time in (a) of this subsection.

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