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**SUBSTITUTE HOUSE BILL 2482**

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**State of Washington**

**59th Legislature**

**2006 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives O'Brien, Ericks, Kirby, Williams, Rodne, Morrell, Lovick, B. Sullivan, Simpson and Schual-Berke; by request of Insurance Commissioner)

READ FIRST TIME 02/03/06.

1       AN ACT Relating to insurance fraud; amending RCW 48.50.070,  
2 48.50.075, 10.93.020, and 42.56.400; adding a new section to chapter  
3 42.17 RCW; adding a new chapter to Title 48 RCW; prescribing penalties;  
4 and providing an effective date.

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

6       NEW SECTION. **Sec. 1.** The purpose of this act is to confront the  
7 problem of insurance fraud in this state by making a concerted effort  
8 to detect insurance fraud, reduce the occurrence of fraud through  
9 criminal enforcement and deterrence, require restitution of  
10 fraudulently obtained insurance benefits and expenses incurred by an  
11 insurer in investigating fraudulent claims, and reduce the amount of  
12 premium dollars used to pay fraudulent claims. The primary focus of  
13 the insurance fraud program is on organized fraudulent activities  
14 committed against insurance companies.

15       NEW SECTION. **Sec. 2.** The definitions in this section apply  
16 throughout this chapter unless the context clearly requires otherwise.

17       (1) "Insurance fraud" means an act or omission committed by a

1 person who, knowingly, and with intent to defraud, commits, or conceals  
2 any material information concerning, one or more of the following:

3 (a) Presenting, causing to be presented, or preparing with  
4 knowledge or belief that it will be presented to or by an insurer,  
5 broker, or its agent, false information as part of, in support of, or  
6 concerning a fact material to one or more of the following:

7 (i) An application for the issuance or renewal of an insurance  
8 policy;

9 (ii) The rating of an insurance policy or contract;

10 (iii) A claim for payment or benefit pursuant to an insurance  
11 policy;

12 (iv) Premiums paid on an insurance policy;

13 (v) Payments made in accordance with the terms of an insurance  
14 policy; or

15 (vi) The reinstatement of an insurance policy;

16 (b) Willful embezzlement, abstracting, purloining, or conversion of  
17 moneys, funds, premiums, credits, or other property of an insurer or  
18 person engaged in the business of insurance; or

19 (c) Attempting to commit, aiding or abetting in the commission of,  
20 or conspiracy to commit the acts or omissions specified in this  
21 subsection.

22 The definition of insurance fraud is for illustrative purposes only  
23 under this chapter to describe the nature of the behavior to be  
24 reported and investigated, and is not intended in any manner to create  
25 or modify the definition of any existing criminal acts nor to create or  
26 modify the burdens of proof in any criminal prosecution brought as a  
27 result of an investigation under this chapter.

28 (2) "Insurer" means an insurance company authorized under chapter  
29 48.05 RCW, a health care service contractor registered under chapter  
30 48.44 RCW, and a health care maintenance organization registered under  
31 chapter 48.46 RCW.

32 NEW SECTION. **Sec. 3.** (1) There is established an insurance fraud  
33 program within the office of the insurance commissioner. The  
34 commissioner may employ supervisory, legal, and investigative personnel  
35 for the program, who must be qualified by training and experience in  
36 the areas of detection, investigation, or prosecution of fraud in which  
37 the insurance industry is a victim. The chief of the fraud program is

1 a full-time position that is appointed by the commissioner. The chief  
2 serves at the pleasure of the commissioner. The commissioner shall  
3 provide office space, equipment, supplies, investigators, clerical  
4 staff, and other staff that are necessary for the program to carry out  
5 its duties and responsibilities under this chapter.

6 (2) The commissioner may fund one or more state patrol officers to  
7 work with the insurance fraud program and the funding for the officers  
8 must be paid out of the budget of the insurance fraud program.

9 (3) The commissioner may fund one or more assistant attorney  
10 generals and support staff to work with the insurance fraud program and  
11 the funding for the assistant attorney generals and support staff must  
12 be paid out of the budget of the insurance fraud program.

13 (4) The commissioner may make grants to or reimburse local  
14 prosecuting attorneys to assist in the prosecution of insurance fraud.  
15 The grants must be paid out of the budget of the insurance fraud  
16 program. The commissioner may investigate and seek prosecution of  
17 crimes involving insurance fraud upon the request of or with the  
18 concurrence of the county prosecuting attorney of the jurisdiction in  
19 which the offense has occurred. Before such a prosecution, the  
20 commissioner and the county in which the offense occurred shall reach  
21 an agreement regarding the payment of all costs, including expert  
22 witness fees, and defense attorneys' fees associated with any such  
23 prosecution.

24 (5) Staff levels for this program, until June 30, 2010, shall not  
25 exceed 8.0 full-time equivalents.

26 NEW SECTION. **Sec. 4.** The annual cost of operating the fraud  
27 program is funded from the insurance commissioner's regulatory account  
28 under RCW 48.02.190 subject to appropriation by the legislature.

29 NEW SECTION. **Sec. 5.** (1) The commissioner may:

30 (a) Employ and train personnel to achieve the purposes of this  
31 chapter and to employ legal counsel, investigators, auditors, and  
32 clerical support personnel and other personnel as the commissioner  
33 determines necessary from time to time to accomplish the purposes of  
34 this chapter;

35 (b) Initiate inquiries and conduct investigations when the

1 commissioner has cause to believe that insurance fraud has been, is  
2 being, or is about to be committed;

3 (c) Conduct independent examinations of alleged insurance fraud;

4 (d) Review notices, reports, or complaints of suspected insurance  
5 fraud activities from federal, state, and local law enforcement and  
6 regulatory agencies, persons engaged in the business of insurance, and  
7 any other person to determine whether the reports require further  
8 investigation;

9 (e) Share records and evidence with federal, state, or local law  
10 enforcement or regulatory agencies, and enter into interagency  
11 agreements;

12 (f) Conduct investigations outside this state. If the information  
13 the commissioner seeks to obtain is located outside this state, the  
14 person from whom the information is sought may make the information  
15 available to the commissioner to examine at the place where the  
16 information is located. The commissioner may designate  
17 representatives, including officials of the state in which the matter  
18 is located, to inspect the information on behalf of the commissioner,  
19 and the commissioner may respond to similar requests from officials of  
20 other states;

21 (g) Administer oaths and affirmations, subpoena witnesses, compel  
22 their attendance, take evidence, and require the production of any  
23 books, papers, correspondence, memoranda, agreements, or other  
24 documents or records that the commissioner deems relevant or material  
25 to an inquiry concerning insurance fraud;

26 (h) Report incidents of alleged insurance fraud disclosed by its  
27 investigations to the appropriate prosecutorial authority, including  
28 but not limited to the attorney general and to any other appropriate  
29 law enforcement, administrative, regulatory, or licensing agency;

30 (i) Assemble evidence, prepare charges, and work closely with any  
31 prosecutorial authority having jurisdiction to pursue prosecution of  
32 insurance fraud; and

33 (j) Undertake independent studies to determine the extent of  
34 fraudulent insurance acts.

35 (2) The fraud program investigators who have obtained certification  
36 as a peace officer under RCW 43.101.095 have the powers and status of  
37 a limited authority Washington peace officer.

1        NEW SECTION.    **Sec. 6.** (1) Any insurer or licensee of the  
2 commissioner that has reasonable belief that an act of insurance fraud  
3 which is or may be a crime under Washington law has been, is being, or  
4 is about to be committed shall furnish and disclose the knowledge and  
5 information to the commissioner or the national insurance crime bureau,  
6 the national association of insurance commissioners, or similar  
7 organization, who shall disclose the information to the commissioner,  
8 and cooperate fully with any investigation conducted by the  
9 commissioner.

10        (2) Any person that has a reasonable belief that an act of  
11 insurance fraud which is or may be a crime under Washington law has  
12 been, is being, or is about to be committed; or any person who  
13 collects, reviews, or analyzes information concerning insurance fraud  
14 which is or may be a crime under Washington law may furnish and  
15 disclose any information in its possession concerning such an act to  
16 the commissioner or to an authorized representative of an insurer that  
17 requests the information for the purpose of detecting, prosecuting, or  
18 preventing insurance fraud.

19        NEW SECTION.    **Sec. 7.** (1) Documents, materials, or other  
20 information as described in subsection (3), (4), or both of this  
21 section are exempt from public inspection and copying under chapters  
22 42.17 and 42.56 RCW. The commissioner is authorized to use such  
23 documents, materials, or other information in the furtherance of any  
24 regulatory or legal action brought as a part of the commissioner's  
25 official duties.

26        (2) The commissioner:

27        (a) May share documents, materials, or other information, including  
28 the documents, materials, or information subject to subsection (1) of  
29 this section, with (i) the national association of insurance  
30 commissioners and its affiliates and subsidiaries, (ii) regulatory and  
31 law enforcement officials of other states and nations, the federal  
32 government, and international authorities, (iii) the national insurance  
33 crime bureau, and (iv) an insurer with respect to whom the suspected  
34 fraudulent claim may be perpetrated;

35        (b) May receive documents, materials, or information from (i) the  
36 national association of insurance commissioners and its affiliates and  
37 subsidiaries, (ii) regulatory and law enforcement officials of other

1 states and nations, the federal government, and international  
2 authorities, (iii) the national insurance crime bureau, and (iv) an  
3 insurer with respect to whom the suspected fraudulent claim may be  
4 perpetrated and any such documents, materials, or information as  
5 described in subsection (3), (4), or both of this section are exempt  
6 from public inspection and copying; and

7 (c) May enter into agreements governing the sharing and use of  
8 information consistent with this subsection.

9 (3) Specific investigative and law enforcement records obtained by  
10 the commissioner, the nondisclosure of which is essential to effective  
11 law enforcement or for the protection of any person's right to privacy,  
12 are exempt under subsection (1) of this section.

13 (4) Information revealing the identity of persons who are witnesses  
14 to or victims of crime obtained by the commissioner or investigative or  
15 law enforcement agencies under this chapter, if disclosure would  
16 endanger any person's life, physical safety, or property, is exempt  
17 under subsection (1) of this section. If at the time the documents,  
18 materials, or information are provided to the commissioner or  
19 investigative or law enforcement agencies under this chapter, and the  
20 victim or witness indicates a desire for disclosure or nondisclosure,  
21 their desire governs.

22 (5) No waiver of an existing privilege or claim of confidentiality  
23 in the documents, materials, or information may occur as a result of  
24 disclosure to the commissioner under this section or as a result of  
25 sharing documents, materials, or information as authorized in  
26 subsection (2) of this section.

27 (6) Documents, materials, or other information that is in the  
28 possession of persons other than the commissioner that would otherwise  
29 not be confidential by law or privileged do not become confidential by  
30 law or privileged by providing the documents, materials, or other  
31 information to the commissioner.

32 NEW SECTION. **Sec. 8.** In a criminal prosecution for any crime  
33 under Washington law in which the insurance company is a victim, the  
34 insurance company is entitled to be considered as a victim in any  
35 restitution ordered by the court under RCW 9.94A.753, as part of the  
36 criminal penalty imposed against the defendant convicted for such a  
37 violation.

1        NEW SECTION.    **Sec. 9.**    This chapter does not:

2            (1) Preempt the authority or relieve the duty of any other general  
3 authority law enforcement agencies to investigate, examine, and  
4 prosecute suspected violations of law;

5            (2) Prevent or prohibit a person from voluntarily disclosing any  
6 information concerning insurance fraud to any law enforcement agency  
7 other than the commissioner; or

8            (3) Limit any of the powers granted elsewhere in this title to the  
9 commissioner to investigate and examine possible violations of the law  
10 and to take appropriate action.

11        NEW SECTION.    **Sec. 10.**    No later than six months after the  
12 effective date of this section, or when the insurer has used all its  
13 existing paper application and claim forms which were in its possession  
14 on the effective date of this section, whichever is later, all  
15 applications for insurance, and all claim forms regardless of the form  
16 of transmission provided and required by an insurer or required by law  
17 as condition of payment of a claim, must contain a statement,  
18 permanently affixed to the application or claim form, that clearly  
19 states in substance the following:

20            "It is a crime to knowingly provide false, incomplete, or  
21 misleading information to an insurance company for the purpose of  
22 defrauding the company. Penalties include imprisonment, fines, and  
23 denial of insurance benefits."

24            The lack of a statement required in this section does not  
25 constitute a defense in any criminal prosecution nor any civil action.

26        NEW SECTION.    **Sec. 11.**    The commissioner shall appoint an insurance  
27 fraud advisory board. The board shall consist of nine members. Four  
28 members shall be representatives from the insurance industry doing  
29 business in this state, at least one of which shall be from a  
30 Washington domestic insurer, two members shall represent consumers, one  
31 member shall represent the national insurance crime bureau or successor  
32 organization, one member shall represent prosecutors, and one member  
33 shall represent other law enforcement agencies. The members of the  
34 board serve four-year terms and until their successors are appointed  
35 and qualified. Three of the original members must be appointed to  
36 serve an initial term of four years, two must be appointed to serve an

1 initial term of three years, two must be appointed to serve an initial  
2 term of two years, and two must be appointed to serve an initial term  
3 of one year. The members of the board receive no compensation. The  
4 board shall advise the commissioner and the legislature with respect to  
5 the effectiveness, resources allocated to the fraud program, the source  
6 of the funding for the program, and before June 30, 2010, if the  
7 staffing level restriction in section 3(5) of this act should be  
8 renewed.

9 NEW SECTION. **Sec. 12.** The commissioner shall prepare an annual  
10 report of the activities of the fraud program. The report shall be  
11 submitted to the legislature no later than March 1st for the prior  
12 calendar year. The report shall, at a minimum, include information as  
13 to the number of cases reported to the commissioner, the number of  
14 cases referred for prosecution, the number of convictions obtained, the  
15 amount of money recovered, and any recommendations of the insurance  
16 advisory board.

17 NEW SECTION. **Sec. 13.** The commissioner may adopt rules to  
18 implement and administer this chapter.

19 **Sec. 14.** RCW 48.50.070 and 2000 c 254 s 5 are each amended to read  
20 as follows:

21 Any licensed insurance agent, any licensed insurance broker, or any  
22 insurer or person acting in the insurer's behalf, health maintenance  
23 organization or person acting in behalf of the health maintenance  
24 organization, health care service contractor or person acting in behalf  
25 of the health care service contractor, or any authorized agency which  
26 releases information, whether oral or written, to the commissioner, the  
27 national insurance crime bureau, the national association of insurance  
28 commissioners, other law enforcement agent or agency, or another  
29 insurer under RCW 48.50.030, 48.50.040, 48.50.050, (~~(or))~~ 48.50.055, or  
30 section 6 of this act is immune from liability in any civil or criminal  
31 action, suit, or prosecution arising from the release of the  
32 information, unless actual malice on the part of the agent, broker,  
33 insurer, health care maintenance organization, health care service  
34 contractor, or authorized agency against the insured is shown.

1           **Sec. 15.** RCW 48.50.075 and 1995 c 285 s 24 are each amended to  
2 read as follows:

3           In denying a claim, an insurer, health maintenance organization, or  
4 health care service contractor who relies upon a written opinion from  
5 an authorized agency specifically enumerated in RCW 48.50.020(1) (a)  
6 through (g) that criminal activity that is related to that claim is  
7 being investigated, or a crime has been charged, and that the claimant  
8 is a target of the investigation or has been charged with a crime, is  
9 not liable for bad faith or other noncontractual theory of damages as  
10 a result of this reliance.

11           Immunity under this section shall exist only so long as the  
12 incident for which the claimant may be responsible is under active  
13 investigation or prosecution, or the authorized agency states its  
14 position that the claim includes or is a result of criminal activity in  
15 which the claimant was a participant.

16           **Sec. 16.** RCW 10.93.020 and 2002 c 128 s 1 are each amended to read  
17 as follows:

18           As used in this chapter, the following terms have the meanings  
19 indicated unless the context clearly requires otherwise.

20           (1) "General authority Washington law enforcement agency" means any  
21 agency, department, or division of a municipal corporation, political  
22 subdivision, or other unit of local government of this state, and any  
23 agency, department, or division of state government, having as its  
24 primary function the detection and apprehension of persons committing  
25 infractions or violating the traffic or criminal laws in general, as  
26 distinguished from a limited authority Washington law enforcement  
27 agency, and any other unit of government expressly designated by  
28 statute as a general authority Washington law enforcement agency. The  
29 Washington state patrol and the department of fish and wildlife are  
30 general authority Washington law enforcement agencies.

31           (2) "Limited authority Washington law enforcement agency" means any  
32 agency, political subdivision, or unit of local government of this  
33 state, and any agency, department, or division of state government,  
34 having as one of its functions the apprehension or detection of persons  
35 committing infractions or violating the traffic or criminal laws  
36 relating to limited subject areas, including but not limited to, the  
37 state departments of natural resources and social and health services,

1 the state gambling commission, the state lottery commission, the state  
2 parks and recreation commission, the state utilities and transportation  
3 commission, the state liquor control board, the office of the insurance  
4 commissioner, and the state department of corrections.

5 (3) "General authority Washington peace officer" means any full-  
6 time, fully compensated and elected, appointed, or employed officer of  
7 a general authority Washington law enforcement agency who is  
8 commissioned to enforce the criminal laws of the state of Washington  
9 generally.

10 (4) "Limited authority Washington peace officer" means any full-  
11 time, fully compensated officer of a limited authority Washington law  
12 enforcement agency empowered by that agency to detect or apprehend  
13 violators of the laws in some or all of the limited subject areas for  
14 which that agency is responsible. A limited authority Washington peace  
15 officer may be a specially commissioned Washington peace officer if  
16 otherwise qualified for such status under this chapter.

17 (5) "Specially commissioned Washington peace officer", for the  
18 purposes of this chapter, means any officer, whether part-time or full-  
19 time, compensated or not, commissioned by a general authority  
20 Washington law enforcement agency to enforce some or all of the  
21 criminal laws of the state of Washington, who does not qualify under  
22 this chapter as a general authority Washington peace officer for that  
23 commissioning agency, specifically including reserve peace officers,  
24 and specially commissioned full-time, fully compensated peace officers  
25 duly commissioned by the states of Oregon or Idaho or any such peace  
26 officer commissioned by a unit of local government of Oregon or Idaho.  
27 A reserve peace officer is an individual who is an officer of a  
28 Washington law enforcement agency who does not serve such agency on a  
29 full-time basis but who, when called by the agency into active service,  
30 is fully commissioned on the same basis as full-time peace officers to  
31 enforce the criminal laws of the state.

32 (6) "Federal peace officer" means any employee or agent of the  
33 United States government who has the authority to carry firearms and  
34 make warrantless arrests and whose duties involve the enforcement of  
35 criminal laws of the United States.

36 (7) "Agency with primary territorial jurisdiction" means a city or  
37 town police agency which has responsibility for police activity within  
38 its boundaries; or a county police or sheriff's department which has

1 responsibility with regard to police activity in the unincorporated  
2 areas within the county boundaries; or a statutorily authorized port  
3 district police agency or four-year state college or university police  
4 agency which has responsibility for police activity within the  
5 statutorily authorized enforcement boundaries of the port district,  
6 state college, or university.

7 (8) "Primary commissioning agency" means (a) the employing agency  
8 in the case of a general authority Washington peace officer, a limited  
9 authority Washington peace officer, an Indian tribal peace officer, or  
10 a federal peace officer, and (b) the commissioning agency in the case  
11 of a specially commissioned Washington peace officer (i) who is  
12 performing functions within the course and scope of the special  
13 commission and (ii) who is not also a general authority Washington  
14 peace officer, a limited authority Washington peace officer, an Indian  
15 tribal peace officer, or a federal peace officer.

16 (9) "Primary function of an agency" means that function to which  
17 greater than fifty percent of the agency's resources are allocated.

18 (10) "Mutual law enforcement assistance" includes, but is not  
19 limited to, one or more law enforcement agencies aiding or assisting  
20 one or more other such agencies through loans or exchanges of personnel  
21 or of material resources, for law enforcement purposes.

22 **Sec. 17.** RCW 42.56.400 and 2005 c 274 s 420 are each amended to  
23 read as follows:

24 The following information relating to insurance and financial  
25 institutions is exempt from disclosure under this chapter:

26 (1) Records maintained by the board of industrial insurance appeals  
27 that are related to appeals of crime victims' compensation claims filed  
28 with the board under RCW 7.68.110;

29 (2) Information obtained and exempted or withheld from public  
30 inspection by the health care authority under RCW 41.05.026, whether  
31 retained by the authority, transferred to another state purchased  
32 health care program by the authority, or transferred by the authority  
33 to a technical review committee created to facilitate the development,  
34 acquisition, or implementation of state purchased health care under  
35 chapter 41.05 RCW;

36 (3) The names and individual identification data of all viators  
37 regulated by the insurance commissioner under chapter 48.102 RCW;

1 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

2 (5) Information provided under RCW 48.05.510 through 48.05.535,  
3 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
4 through 48.46.625;

5 (6) Information gathered under chapter 19.85 RCW or RCW 34.05.328  
6 that can be identified to a particular business;

7 (7) Examination reports and information obtained by the department  
8 of financial institutions from banks under RCW 30.04.075, from savings  
9 banks under RCW 32.04.220, from savings and loan associations under RCW  
10 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
11 and sellers under RCW 31.45.030(3), and from securities brokers and  
12 investment advisers under RCW 21.20.100, all of which is confidential  
13 and privileged information;

14 (8) Information provided to the insurance commissioner under RCW  
15 48.110.040(3);

16 (9) Documents, materials, or information obtained by the insurance  
17 commissioner under RCW 48.02.065, all of which are confidential and  
18 privileged; (~~and~~)

19 (10) Confidential proprietary and trade secret information provided  
20 to the commissioner under RCW 48.31C.020 through 48.31C.050 and  
21 48.31C.070; and

22 (11) Documents, materials, or information obtained by the insurance  
23 commissioner under section 7 of this act.

24 NEW SECTION. Sec. 18. A new section is added to chapter 42.17 RCW  
25 to read as follows:

26 Documents, materials, or information obtained by the insurance  
27 commissioner under section 7 of this act are exempt from disclosure  
28 under this chapter.

29 NEW SECTION. Sec. 19. If any provision of this act or its  
30 application to any person or circumstance is held invalid, the  
31 remainder of the act or the application of the provision to other  
32 persons or circumstances is not affected.

33 NEW SECTION. Sec. 20. Sections 1 through 13 and 19 of this act

1 constitute a new chapter in Title 48 RCW.

2 NEW SECTION. **Sec. 21.** This act takes effect July 1, 2006.

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