

HOUSE BILL REPORT

SSB 6234

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to insurance fraud.

Brief Description: Creating the insurance fraud program.

Sponsors: Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Fairley, Keiser, Spanel and Esser; by request of Insurance Commissioner).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/21/06 [DPA].

Brief Summary of Substitute Bill (As Amended by House Committee)

- Creates an insurance fraud program within the Office of the Insurance Commissioner (OIC).
- Funds the program out of the Insurance Commissioner's Regulatory Account.
- Allows the OIC to investigate and aid in the prosecution of insurance fraud.
- Exempts specific information from public disclosure.
- Provides rule-making authority.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass as amended. Signed by 11 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, O'Brien, Santos, Serben, Simpson, Strow and Williams.

Staff: Jon Hedegard (786-7127).

Background:

Fraud against insurers is a crime. Acts of alleged fraud may be investigated by state and local law enforcement. Acts of alleged fraud may be prosecuted by county prosecutors or the Attorney General.

Insurers may investigate suspicious claims. Generally, property and casualty insurers must file an insurance anti-fraud plan with the Insurance Commissioner (Commissioner) that establishes specific procedures to:

- prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud;
- review claims in order to detect evidence of possible insurance fraud and to investigate claims where fraud is suspected;
- report fraud to appropriate law enforcement agencies and cooperate with those agencies in their prosecution of fraud cases;
- undertake civil actions against persons who have engaged in fraudulent activities; and
- train company employees and agents in the detection and prevention of fraud.

The Commissioner must notify an insurer if a plan is not approved. The Commissioner may audit an insurer to determine if the insurer is in compliance with the plan. An insurer may be fined if they are not in compliance. Annually, insurers must submit a summary report on actions taken under its anti-fraud plan to prevent and combat insurance fraud.

An anti-fraud plan and the summary of the insurer's anti-fraud activities are not public records and are exempt from public disclosure. The plans and summary are not discoverable or admissible in civil litigation.

Summary of Amended Bill:

The bill adds definitions of "insurance fraud" and "insurer."

The bill creates an insurance fraud program within the Office of the Insurance Commissioner (OIC). The fraud program is funded from the Insurance Commissioner's Regulatory Account.

Staffing.

The Chief of the Fraud Program is a full-time position appointed by the Commissioner. The Commissioner may employ staff in the insurance fraud program. Staff levels for this program shall not exceed eight full-time equivalents until June 30, 2010. The Commissioner may also use funds in the insurance fraud program budget to:

- fund one or more State Patrol officers to work with the insurance fraud program;
- fund one or more assistant attorney generals to work with the insurance fraud program;
- fund support staff for the assistant attorney generals; and
- make grants to or reimburse local prosecuting attorneys.

Authority under the program.

The Commissioner may:

- initiate inquiries and conduct investigations;
- conduct independent examinations;
- review notices, reports, and complaints of suspected insurance fraud filed with federal, state, or local law enforcement to determine if further investigation is needed;
- share records and evidence with federal, state, and local law enforcement agencies and enter into interagency agreements;
- conduct investigations outside of Washington;
- designate officials outside of Washington to inspect information outside of the state;
- administer oaths, subpoena witnesses, and require the production of materials;
- report incidents of alleged insurance fraud to the appropriate prosecutorial authority and to any other appropriate law enforcement, administrative, regulatory, or licensing agency; and
- assemble evidence, prepare charges and work with any prosecutorial authority that has the jurisdiction to prosecute insurance fraud.

Requirement to disclose - licensees.

When a licensee of the Commissioner has a reasonable belief that an act of insurance fraud will be, is being, or has been committed, the licensee must disclose the information to the Commissioner, the National Insurance Crime Bureau (NICB), or the National Association of Insurance Commissioners (NAIC).

Ability to disclose - any person.

Any person who has a reasonable belief that an act of insurance fraud will be, is being, or has been committed, may disclose information to the Commissioner or to the representative of an insurer that requests the information for the purpose of detecting, prosecuting, or preventing insurance fraud.

Immunity.

A licensee or any other person who discloses information to the Commissioner, the NICB, the NAIC, or law enforcement agency is immune from liability in any civil or criminal action suit, or prosecution unless actual malice on the part of the licensee or other person can be shown.

Confidentiality.

There are categories of information that are exempt from public disclosure including:

- specific records where nondisclosure is essential to effective law enforcement;
- specific records where nondisclosure is essential for protection of a person's right of privacy; and
- information that would endanger the life, physical safety, or property of a witness or victim if disclosed.

The Commissioner may share the documents, materials and other information with:

- other state, federal and international insurance regulatory agencies;
- the NICB;
- the NAIC; and
- other law enforcement agencies.

Penalties.

In a criminal prosecution where the insurance company is a victim, a court may consider the insurer a victim for the purpose of ordering restitution as part of a criminal penalty.

Insurance application and claim form disclosure.

Within six months of the effective date of the section, all application for insurance and all claims forms must include a notice that includes a statement that it is a crime to provide false, incomplete, or misleading information to an insurer for the purposes of defrauding the insurer.

The lack of the notice is not a defense to any criminal or civil action.

Insurance Fraud Advisory Board.

The Commissioner must appoint an Insurance Fraud Advisory Board (Board) to advise the Commissioner upon the effectiveness and the resources allocated to the program. The Board members serve staggered terms and receive no compensation. The Board consists of 10 members and is composed as follows:

- five members must represent insurers doing business in Washington (one must be a domestic insurer);
- two must represent consumers;
- one must represent the National Insurance Crime Bureau;
- one must represent law enforcement; and
- one must represent other law enforcement agencies.

Report.

The Commissioner must report annually on the activities of the fraud program. The report must be submitted to the Legislature by March 1 of each year. The report must include at least the number of cases reported to the Commissioner, number of cases referred for prosecution, the number of convictions, and the amount of money recovered

Rules.

The Commissioner may adopt rules to implement and administer the act.

The OIC is named as a limited authority Washington law enforcement agency.

Fraud program investigators who are certified as peace officers under RCW 43.101.095 have the powers and status of a limited Washington peace officer.

Amended Bill Compared to Substitute Bill:

An additional insurer member is added to the advisory board. The confidentiality provisions are amended to track the existing law enforcement exemptions to disclosure. The application of the confidentiality provisions is limited to the fraud program within the Office of the Insurance Commissioner.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on July 1, 2006.

Testimony For: (In support) Forty-one states have dedicated fraud units. The overwhelming majority of those are located in the insurance department of each state. Insurance fraud is complex area, and the insurance regulator has the necessary expertise to address the subject. It keeps the focus of the program on insurance fraud and also provides more accountability since the program is funded out of the Insurance Regulatory Account. The OIC started working with industry on this issue about six months ago. At this time, we think we have some useful amendments that will alleviate the concerns of some parties. There is an amendment on confidentiality that parallels existing confidentiality provisions for law enforcement agencies. There is another amendment that adds an additional insurer member to the advisory board which addresses insurer concerns about board composition. There are additional factors that address the subject of accountability. An annual report is required. There will be a major review of the program in 2010. The program is designed to start small and be built over time. This new program will send a message that Washington is serious about combating insurance fraud. Generally, we need more cops and enforcement, not more laws. This bill moves toward that goal. Please pass the bill. If there are some adjustments that are needed, the bill has ample oversight, and there will be opportunities to make minor adjustments in the future.

(In support with amendment) Industry supports the bill if amendments are adopted. Industry certainly supports the idea of a fraud bureau. One of the amendments addresses confidentiality. That is a very important subject for the industry. The proposed language closely tracks existing Public Disclosure Act language regarding law enforcement. We believe that is a very appropriate standard. Industry supports the change to the advisory board. If those amendments are adopted, industry supports the bill. We support the bill but have an issue that is easily resolved. It did not come to our attention until now, and we apologize for the late notice. On page 2, line 4 of the bill there is language that refers to false information presented to or by an insurer, broker, or agent. We think "or by" is mistakenly included. It may conflict with other language in the bill. It could put a carrier into jeopardy if someone is inadvertently rated incorrectly. The sentence stands-alone without the "or by" language. Please consider removing those words as we go forward. The confidentiality amendment is very important. Industry has discussed whether the NAIC language in the original bill was preferable to the current language. We now agree that the law enforcement model that exists in Washington today is the best way to go. We support the bill. There are numerous proposed amendments, and we are still working through those suggested changes. We appreciate the hard work on the confidentiality language. We do think a clarifying amendment may be useful. The language seems to include the entire OIC. It might be more appropriate to limit it to the fraud program within the OIC. You can contemplate that as we go forward. An additional issue in the underlying bill is the possible need for language to allow a person to testify about matters. We support the bill if the confidentiality amendment is included. We suggest to change the organization of the bill so that the public records exemption is not listed out. Consider the OIC a law enforcement agency for the purposes of the bill. That may be a cleaner way to address the same subject.

Testimony Against: None.

Persons Testifying: (In support) Mike Kreidler, Office of the Insurance Commissioner; and Bill Hanson, Washington Council of Police and Sheriffs.

(In support with amendment) Mel Sorenson, Allstate and Property and Casualty Insurers; Jean Leonard, State Farm and Washington Insurers; Carrie Tellefson, Progressive Insurers; Larry Shannon, Washington State Trial Lawyers; Rowland Thompson, Allied Daily Newspapers; and Cliff Webster, American Insurance Association.

Persons Signed In To Testify But Not Testifying: None.