

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6234

59th Legislature
2006 Regular Session

Passed by the Senate March 4, 2006
YEAS 29 NAYS 18

President of the Senate

Passed by the House March 2, 2006
YEAS 98 NAYS 0

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 **SUBSTITUTE SENATE BILL 6234** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6234

AS AMENDED BY THE HOUSE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

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

READ FIRST TIME 02/02/06.

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 intelligence information and specific investigative
10 records compiled by investigative, law enforcement, and penology
11 agencies, the fraud program of the office of the insurance
12 commissioner, and state agencies vested with the responsibility to
13 discipline members of any profession, the nondisclosure of which is
14 essential to effective law enforcement or for the protection of any
15 person's right to privacy, are exempt under subsection (1) of this
16 section.

17 (4) Information revealing the identity of persons who are witnesses
18 to or victims of crime or who file complaints with investigative, law
19 enforcement, and penology agencies, or the fraud program of the office
20 of the insurance commissioner, if disclosure would endanger any
21 person's life, physical safety, or property, is exempt under subsection
22 (1) of this section. If at the time a complaint is filed the
23 complainant, victim, or witness indicates a desire for disclosure or
24 nondisclosure, such desire shall govern.

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

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

35 NEW SECTION. **Sec. 8.** In a criminal prosecution for any crime
36 under Washington law in which the insurance company is a victim, the
37 insurance company is entitled to be considered as a victim in any

1 restitution ordered by the court under RCW 9.94A.753, as part of the
2 criminal penalty imposed against the defendant convicted for such a
3 violation.

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 11.** The commissioner shall appoint an insurance
30 fraud advisory board. The board shall consist of ten members. Five
31 members shall be representatives from the insurance industry doing
32 business in this state, at least one of which shall be from a
33 Washington domestic insurer, two members shall represent consumers, one
34 member shall represent the national insurance crime bureau or successor
35 organization, one member shall represent prosecutors, and one member

1 shall represent other law enforcement agencies. The members of the
2 board serve four-year terms and until their successors are appointed
3 and qualified. Three of the original members must be appointed to
4 serve an initial term of four years, three must be appointed to serve
5 an initial term of three years, two must be appointed to serve an
6 initial term of two years, and two must be appointed to serve an
7 initial term of one year. The members of the board receive no
8 compensation. The board shall advise the commissioner and the
9 legislature with respect to the effectiveness, resources allocated to
10 the fraud program, the source of the funding for the program, and
11 before June 30, 2010, if the staffing level restriction in section 3(5)
12 of this act should be renewed.

13 NEW SECTION. **Sec. 12.** The commissioner shall prepare a periodic
14 report of the activities of the fraud program. The report shall, at a
15 minimum, include information as to the number of cases reported to the
16 commissioner, the number of cases referred for prosecution, the number
17 of convictions obtained, the amount of money recovered, and any
18 recommendations of the insurance advisory board.

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

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

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

1 insurer, health care maintenance organization, health care service
2 contractor, or authorized agency against the insured is shown.

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

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

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

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

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

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

33 (2) "Limited authority Washington law enforcement agency" means any
34 agency, political subdivision, or unit of local government of this
35 state, and any agency, department, or division of state government,
36 having as one of its functions the apprehension or detection of persons

1 committing infractions or violating the traffic or criminal laws
2 relating to limited subject areas, including but not limited to, the
3 state departments of natural resources and social and health services,
4 the state gambling commission, the state lottery commission, the state
5 parks and recreation commission, the state utilities and transportation
6 commission, the state liquor control board, the office of the insurance
7 commissioner, and the state department of corrections.

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

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

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

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

1 (7) "Agency with primary territorial jurisdiction" means a city or
2 town police agency which has responsibility for police activity within
3 its boundaries; or a county police or sheriff's department which has
4 responsibility with regard to police activity in the unincorporated
5 areas within the county boundaries; or a statutorily authorized port
6 district police agency or four-year state college or university police
7 agency which has responsibility for police activity within the
8 statutorily authorized enforcement boundaries of the port district,
9 state college, or university.

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

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

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

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

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

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

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

1 acquisition, or implementation of state purchased health care under
2 chapter 41.05 RCW;

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

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

6 (5) Information provided under RCW 48.05.510 through 48.05.535,
7 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
8 through 48.46.625;

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

11 (7) Examination reports and information obtained by the department
12 of financial institutions from banks under RCW 30.04.075, from savings
13 banks under RCW 32.04.220, from savings and loan associations under RCW
14 33.04.110, from credit unions under RCW 31.12.565, from check cashers
15 and sellers under RCW 31.45.030(3), and from securities brokers and
16 investment advisers under RCW 21.20.100, all of which is confidential
17 and privileged information;

18 (8) Information provided to the insurance commissioner under RCW
19 48.110.040(3);

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

23 (10) Confidential proprietary and trade secret information provided
24 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
25 48.31C.070; and

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

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

30 Documents, materials, or information obtained by the insurance
31 commissioner under section 7 of this act are exempt from disclosure
32 under this chapter.

33 NEW SECTION. Sec. 19. If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 20.** Sections 1 through 13 and 19 of this act
2 constitute a new chapter in Title 48 RCW.

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

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