

# SENATE BILL REPORT

## SB 5726

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As Reported By Senate Committee On:  
Consumer Protection & Housing, February 15, 2007

**Title:** An act relating to creating the insurance fair conduct act.

**Brief Description:** Creating the insurance fair conduct act.

**Sponsors:** Senators Weinstein, Kline and Franklin.

**Brief History:**

**Committee Activity:** Consumer Protection & Housing: 2/08/07, 2/15/07 [DPS, DNP].

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### SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

**Majority Report:** That Substitute Senate Bill No. 5726 be substituted therefor, and the substitute bill do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Haugen, Kilmer and Tom.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Ranking Minority Member and Delvin.

**Staff:** Vanessa Firnhaber-Baker (786-7471)

**Background:** Insurance claims are governed by general principles of contract and tort law, statute, and regulations promulgated by the Insurance Commissioner. If an insurer denies a valid claim, the insured may sue to enforce the insurance contract and force the insurer to pay according to the policy.

An insured may also bring an action against an insurer for acting in bad faith. To succeed on a claim of bad faith, the insured must demonstrate that the insurer's denial of the claim was unreasonable, frivolous, or unfounded. Additionally, an insured may bring a claim under the Consumer Protection Act if the insurer's denial of a claim amounts to an unfair or deceptive trade practice.

By statute, the Insurance Commissioner has the authority to promulgate rules prohibiting unfair and deceptive business practices by the insurance industry. Current insurance regulations require an insurer to attempt in good faith to make a fair, prompt, and equitable settlement of a claim when liability is relatively clear and to generally observe standards of reasonableness in all aspects of its claim settlement practices. The Commissioner may fine an insurer for failure to comply with these regulations.

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*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.*

**Summary of Bill:** Insurers may not unreasonably or negligently deny insurance coverage or payment of benefits. Insureds or beneficiaries under an insurance policy may sue insurers for unreasonable or negligent denial of coverage or payment of benefits.

The court must award the following damages to insureds or beneficiaries upon a finding that the insurer unreasonably or negligently denied a claim or benefits or upon a finding that the insured violated the Washington Administrative Code: (1) actual damages sustained; (2) reasonable attorney's fees; and (3) actual and statutory litigation costs, including expert witness fees.

The court may also increase the total award of damages to an amount that does not exceed three times the actual damages suffered by the insured or beneficiary.

Insureds or beneficiaries are permitted to bring actions under both the Consumer Protection Act and this bill.

**EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Consumer Protection & Housing):** Only insureds and first party claimants may bring a cause of action against an insurer for unreasonable or negligent denial of coverage.

It is clarified that a violation of the Washington Administrative Code is not sufficient on its own to justify an award of treble damages; rather, the violation must also be negligent or unreasonable.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Washington law places a heavy burden on insureds when they make an insurance claim. They must cooperate and any false statement, regardless of intent, voids the policy. This bill brings parity to the law by requiring insurers to be careful and to act in good faith. If an insured cheats in the insurance claim process it is a felony, if the insurer cheats there are currently no consequences. This bill creates an incentive for insurers to treat claimants fairly. There is currently no practical way for insureds to sue insurers who deny valid claims because insureds do not have the resources to hire lawyers and usually attorneys' fees are not recoverable. Insurers have the financial ability to litigate and intimidate consumers who seek fair payment of claims. The Insurance Commissioner receives quite a few complaints from insureds regarding insurers not paying claims. There are insurers out there that are knowingly underpaying insurance claims.

CON: The bill should not apply to third-party claimants. The common law claim of bad faith already exists in Washington and is commonly used by insureds in litigation. Codifying the common law is dangerous because the courts will assume that the Legislature is intending to broaden the common law bad faith claim. Treble damages are disfavored in Washington. The bill is much too broad because a violation of the Washington Administrative Code includes many acts that are not indicative of bad faith. There is already an incentive for insureds to

litigate because plaintiffs who prevail under a bad faith claim are routinely awarded attorney's fees and court costs. This bill will encourage frivolous lawsuits. The increase in litigation will result in higher insurance rates and insurers abandoning Washington. A similar law was enacted in California and was repealed because it was so problematic.

**Persons Testifying:** PRO: Larry Shannon, Washington State Trial Lawyers Association; Rob Dietz, Insurance Consultant, expert witness; Karen Koehler, Attorney; Mary Mulcahy, citizen.

CON: Mel Sorensen, Property and Casualty Insurers; Sam Sorich, Association of California Insurance Companies; Gerrit Ayers, Washington Defense Trial Lawyers.

Signed In, Unable to Testify & Submitted Written Testimony: CON: Cliff Webster, American Insurance Association.