SENATE BILL REPORT
SB 5331

As Reported by Senate Committee On:
Business, Financial Services & Trade, February 19, 2025

Title: An act relating to strengthening consumer protection through increased insurer accountability for violations of the insurance code.

Brief Description: Strengthening consumer protection through increased insurer accountability for violations of the insurance code.

Sponsors: Senators Cortes, Frame, Hasegawa, Kauffman, Lovelett, Lovick, Nobles, Orwall, Stanford, Trudeau and Wilson, C.; by request of Insurance Commissioner.

Brief History:

Committee Activity: Business, Financial Services & Trade: 1/30/25, 2/19/25 [DPS, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Authorizes the Office of the Insurance Commissioner to order the payment of restitution in enforcement actions.
- Authorizes the Office of the Insurance Commissioner to levy fines against authorized insurers of up to $10,000 per violation, rather than $10,000 total.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Majority Report: That Substitute Senate Bill No. 5331 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kauffman, Chair; Cortes, Vice Chair; Hasegawa, Lovick and Stanford.

Minority Report: Do not pass.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Fortunato and McCune.

Minority Report: That it be referred without recommendation.
Signed by Senators Dozier, Ranking Member; Wilson, J..

Staff: John Kim (786-7453)

Background: The Office of the Insurance Commissioner (OIC) administers the Washington Insurance Code (code) and oversees insurance companies and insurance professionals conducting business in the state. As part of its enforcement authority, the OIC may prosecute an action in any court of competent jurisdiction to enforce an order by the commissioner pursuant to any provision of the code. If the OIC has cause to believe that any person is violating or is about to violate any provision of the code or any regulation or order of the commissioner, the OIC may issue a cease and desist order or bring an action to enjoin the person from continuing the violation or doing any action in furtherance thereof.

An authorized insurer is an insurer transacting insurance in the state through a certificate of authority issued by the OIC. In imposing disciplinary actions against an authorized insurer, the OIC is authorized to levy a fine in addition to or in lieu of suspending, revoking, or refusing to review the insurer's certificate of authority. The amount of the fine may not be less than $250 and may not be more than $10,000.

Summary of Bill (First Substitute): Authority to Order Restitution. In addition to its authority to issue cease and desist orders and bring actions for injunctive relief, the OIC may also order the payment of restitution after a hearing under the Administrative Procedure Act or with the consent of the person owing an obligation.
Restitution is limited to only demonstated economic damages due to another person, excluding a provider. A provider is defined as any entity providing a service to the person entitled to restitution, including, but not limited to, a health care provider, a restoration or mitigation contractor, or an auto body repair shop.

Restitution must be paid with 8 percent simple interest from the date the obligation arose. It must be paid to the person to whom it is due within 30 days of the date of the order.

The bill defines the date the obligation arose as:
- for obligations related to the payment of an insurance claim, 30 days from the date the insurer received all information necessary to determine liability and payment under the policy, unless such investigation cannot reasonably be completed within 30 days;
- for obligations related to the payment of premium, the date the premium was charged to the person entitled to restitution; and
- for all other obligations, the date the obligation was required to be performed under statute, rule, or contract, or the date the obligated person was first provided written notice of noncompliance.

The bill provides that the restitution provisions do not interfere with the dispute resolution process under the Balance Billing Protection Act.

Authorized Insurer Fines. The OIC may levy fines against authorized insurers of up to $10,000 per violation, rather than $10,000 total.

EFFECT OF CHANGES MADE BY BUSINESS, FINANCIAL SERVICES & TRADE COMMITTEE (First Substitute):

- Limits restitution to demonstrated economic damages only.
- Excludes certain providers from eligibility for restitution. A provider is defined as an entity providing a service to the person entitled to restitution, including, but not limited to, a health care provider, a restoration or mitigation contractor, or an auto body repair shop.
- Specifies that the OIC may order restitution after an administrative hearing or with consent of the person owing the obligation.
- Removes reference to the specific forms of restitution that may be ordered.
- Specifies when an obligation arises for the purpose of calculating the 8 percent interest that attaches to restitution.
- Provides that the restitution provisions do not affect the dispute resolution process under the Balance Billing Protection Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: It is critical that we have pathways for consumers to receive restitution if they have been harmed by an insurer rather than going through the court system. This bill strengthens consumer protections by giving the state Office of the Insurance Commissioner additional enforcement tools if an insurance company is violating the law. This bill is designed to address bad actors only. Most insurers and producers do the right thing by their policyholders and cooperate with the OIC when a mistake is made, but not every one of them does. When OIC imposes a fine, it incentivizes the insurer or individual to come back into compliance and helps deter them from harming future consumers. But the fine goes to the General Fund and not to the policyholders, and that is why we need the authority to institute restitution. The fine schedule for property and casualty insurers has not been updated since 1980. Every other insurer in our state and producer is held to a per-violation standard except for property and casualty insurers. It's time to put them on parity with the rest of the insurers in the state. We have worked with the industry on an amendment to address all concerns but one, that is a cap imposed on fines. The Independent Insurance Agents and Brokers of Washington supports the bill to go after bad actors, such as an agent who takes a premium but fails to remit it to the insurer or an agent who fails to remit a refund from an insurer to the customer.

OTHER: We appreciate the target of the bill is toward bad actors, but the good actors are covered by this bill, and so we want to make sure that the definitions are tight as referenced around restitution and who this applies to. Under the current consent order process, property and casualty insurers routinely pay fines well in excess of $10,000 and pay restitution in the form of refunding premiums or taking other actions to reimburse policyholders who can show they have been harmed. The problem comes in when an insurer challenges the OIC before an administrative law judge (ALJ). This bill goes beyond that because it doesn't just address fines in the ALJ process. A per-violation standard for fines is a hammer. It provides opportunity for the insurance regulator to apply more pressure on insurers in the consent order process as well as issue fines it can't issue in the ALJ process. We are working with the OIC in tightening the language. Of the 35 or so states that have per-violation standards, it's very common to have one or more of aggregate caps, distinctions, or tiered impositions based on intent, willfulness, or inadvertence. The overarching concern with the penalties provision is the risk of unfair treatment of good actors.

Persons Testifying: PRO: Senator Adrian Cortes, Prime Sponsor; Patty Kuderer, Office of the Insurance Commissioner; Bryon Welch, Office of the Insurance Commissioner; Rory Paine-Donovan, Office of the Insurance Commissioner; Bill Stauffacher, Independent Insurers and Brokers of Washington.

OTHER: Christine Brewer, Premera Blue Cross; Kenton Brine, NW Insurance Council; Kris Tefft, American Property Casualty Insurance Association.

Persons Signed In To Testify But Not Testifying: No one.