

SSB 6234 - H COMM AMD

By Committee on Financial Institutions & Insurance

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

14 (1) "Insurance fraud" means an act or omission committed by a  
15 person who, knowingly, and with intent to defraud, commits, or conceals  
16 any material information concerning, one or more of the following:

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

21 (i) An application for the issuance or renewal of an insurance  
22 policy;

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

24 (iii) A claim for payment or benefit pursuant to an insurance  
25 policy;

26 (iv) Premiums paid on an insurance policy;

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

29 (vi) The reinstatement of an insurance policy;

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

4 (c) Attempting to commit, aiding or abetting in the commission of,  
5 or conspiracy to commit the acts or omissions specified in this  
6 subsection.

7 The definition of insurance fraud is for illustrative purposes only  
8 under this chapter to describe the nature of the behavior to be  
9 reported and investigated, and is not intended in any manner to create  
10 or modify the definition of any existing criminal acts nor to create or  
11 modify the burdens of proof in any criminal prosecution brought as a  
12 result of an investigation under this chapter.

13 (2) "Insurer" means an insurance company authorized under chapter  
14 48.05 RCW, a health care service contractor registered under chapter  
15 48.44 RCW, and a health care maintenance organization registered under  
16 chapter 48.46 RCW.

17 NEW SECTION. **Sec. 3.** (1) There is established an insurance fraud  
18 program within the office of the insurance commissioner. The  
19 commissioner may employ supervisory, legal, and investigative personnel  
20 for the program, who must be qualified by training and experience in  
21 the areas of detection, investigation, or prosecution of fraud in which  
22 the insurance industry is a victim. The chief of the fraud program is  
23 a full-time position that is appointed by the commissioner. The chief  
24 serves at the pleasure of the commissioner. The commissioner shall  
25 provide office space, equipment, supplies, investigators, clerical  
26 staff, and other staff that are necessary for the program to carry out  
27 its duties and responsibilities under this chapter.

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

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

35 (4) The commissioner may make grants to or reimburse local  
36 prosecuting attorneys to assist in the prosecution of insurance fraud.  
37 The grants must be paid out of the budget of the insurance fraud

1 program. The commissioner may investigate and seek prosecution of  
2 crimes involving insurance fraud upon the request of or with the  
3 concurrence of the county prosecuting attorney of the jurisdiction in  
4 which the offense has occurred. Before such a prosecution, the  
5 commissioner and the county in which the offense occurred shall reach  
6 an agreement regarding the payment of all costs, including expert  
7 witness fees, and defense attorneys' fees associated with any such  
8 prosecution.

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

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

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

15 (a) Employ and train personnel to achieve the purposes of this  
16 chapter and to employ legal counsel, investigators, auditors, and  
17 clerical support personnel and other personnel as the commissioner  
18 determines necessary from time to time to accomplish the purposes of  
19 this chapter;

20 (b) Initiate inquiries and conduct investigations when the  
21 commissioner has cause to believe that insurance fraud has been, is  
22 being, or is about to be committed;

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

24 (d) Review notices, reports, or complaints of suspected insurance  
25 fraud activities from federal, state, and local law enforcement and  
26 regulatory agencies, persons engaged in the business of insurance, and  
27 any other person to determine whether the reports require further  
28 investigation;

29 (e) Share records and evidence with federal, state, or local law  
30 enforcement or regulatory agencies, and enter into interagency  
31 agreements;

32 (f) Conduct investigations outside this state. If the information  
33 the commissioner seeks to obtain is located outside this state, the  
34 person from whom the information is sought may make the information  
35 available to the commissioner to examine at the place where the  
36 information is located. The commissioner may designate

1 representatives, including officials of the state in which the matter  
2 is located, to inspect the information on behalf of the commissioner,  
3 and the commissioner may respond to similar requests from officials of  
4 other states;

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

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

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

17 (j) Undertake independent studies to determine the extent of  
18 fraudulent insurance acts.

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

22 NEW SECTION. **Sec. 6.** (1) Any insurer or licensee of the  
23 commissioner that has reasonable belief that an act of insurance fraud  
24 which is or may be a crime under Washington law has been, is being, or  
25 is about to be committed shall furnish and disclose the knowledge and  
26 information to the commissioner or the national insurance crime bureau,  
27 the national association of insurance commissioners, or similar  
28 organization, who shall disclose the information to the commissioner,  
29 and cooperate fully with any investigation conducted by the  
30 commissioner.

31 (2) Any person that has a reasonable belief that an act of  
32 insurance fraud which is or may be a crime under Washington law has  
33 been, is being, or is about to be committed; or any person who  
34 collects, reviews, or analyzes information concerning insurance fraud  
35 which is or may be a crime under Washington law may furnish and  
36 disclose any information in its possession concerning such an act to

1 the commissioner or to an authorized representative of an insurer that  
2 requests the information for the purpose of detecting, prosecuting, or  
3 preventing insurance fraud.

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

11 (2) The commissioner:

12 (a) May share documents, materials, or other information, including  
13 the documents, materials, or information subject to subsection (1) of  
14 this section, with (i) the national association of insurance  
15 commissioners and its affiliates and subsidiaries, (ii) regulatory and  
16 law enforcement officials of other states and nations, the federal  
17 government, and international authorities, (iii) the national insurance  
18 crime bureau, and (iv) an insurer with respect to whom the suspected  
19 fraudulent claim may be perpetrated;

20 (b) May receive documents, materials, or information from (i) the  
21 national association of insurance commissioners and its affiliates and  
22 subsidiaries, (ii) regulatory and law enforcement officials of other  
23 states and nations, the federal government, and international  
24 authorities, (iii) the national insurance crime bureau, and (iv) an  
25 insurer with respect to whom the suspected fraudulent claim may be  
26 perpetrated and any such documents, materials, or information as  
27 described in subsection (3), (4), or both of this section are exempt  
28 from public inspection and copying; and

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

31 (3) Specific intelligence information and specific investigative  
32 records compiled by investigative, law enforcement, and penology  
33 agencies, the fraud program of the office of the insurance  
34 commissioner, and state agencies vested with the responsibility to  
35 discipline members of any profession, the nondisclosure of which is  
36 essential to effective law enforcement or for the protection of any

1 person's right to privacy, are exempt under subsection (1) of this  
2 section.

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

11 (5) No waiver of an existing privilege or claim of confidentiality  
12 in the documents, materials, or information may occur as a result of  
13 disclosure to the commissioner under this section or as a result of  
14 sharing documents, materials, or information as authorized in  
15 subsection (2) of this section.

16 (6) Documents, materials, or other information that is in the  
17 possession of persons other than the commissioner that would otherwise  
18 not be confidential by law or privileged do not become confidential by  
19 law or privileged by providing the documents, materials, or other  
20 information to the commissioner.

21 NEW SECTION. **Sec. 8.** In a criminal prosecution for any crime  
22 under Washington law in which the insurance company is a victim, the  
23 insurance company is entitled to be considered as a victim in any  
24 restitution ordered by the court under RCW 9.94A.753, as part of the  
25 criminal penalty imposed against the defendant convicted for such a  
26 violation.

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

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

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

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

1        NEW SECTION.    **Sec. 10.** No later than six months after the  
2 effective date of this section, or when the insurer has used all its  
3 existing paper application and claim forms which were in its possession  
4 on the effective date of this section, whichever is later, all  
5 applications for insurance, and all claim forms regardless of the form  
6 of transmission provided and required by an insurer or required by law  
7 as condition of payment of a claim, must contain a statement,  
8 permanently affixed to the application or claim form, that clearly  
9 states in substance the following:

10        "It is a crime to knowingly provide false, incomplete, or  
11 misleading information to an insurance company for the purpose of  
12 defrauding the company. Penalties include imprisonment, fines, and  
13 denial of insurance benefits."

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

16        NEW SECTION.    **Sec. 11.** The commissioner shall appoint an insurance  
17 fraud advisory board. The board shall consist of ten members. Five  
18 members shall be representatives from the insurance industry doing  
19 business in this state, at least one of which shall be from a  
20 Washington domestic insurer, two members shall represent consumers, one  
21 member shall represent the national insurance crime bureau or successor  
22 organization, one member shall represent prosecutors, and one member  
23 shall represent other law enforcement agencies. The members of the  
24 board serve four-year terms and until their successors are appointed  
25 and qualified. Three of the original members must be appointed to  
26 serve an initial term of four years, three must be appointed to serve  
27 an initial term of three years, two must be appointed to serve an  
28 initial term of two years, and two must be appointed to serve an  
29 initial term of one year. The members of the board receive no  
30 compensation. The board shall advise the commissioner and the  
31 legislature with respect to the effectiveness, resources allocated to  
32 the fraud program, the source of the funding for the program, and  
33 before June 30, 2010, if the staffing level restriction in section 3(5)  
34 of this act should be renewed.

35        NEW SECTION.    **Sec. 12.** The commissioner shall prepare an annual  
36 report of the activities of the fraud program. The report shall be

1 submitted to the legislature no later than March 1st for the prior  
2 calendar year. The report shall, at a minimum, include information as  
3 to the number of cases reported to the commissioner, the number of  
4 cases referred for prosecution, the number of convictions obtained, the  
5 amount of money recovered, and any recommendations of the insurance  
6 advisory board.

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

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

11 Any licensed insurance agent, any licensed insurance broker, or any  
12 insurer or person acting in the insurer's behalf, health maintenance  
13 organization or person acting in behalf of the health maintenance  
14 organization, health care service contractor or person acting in behalf  
15 of the health care service contractor, or any authorized agency which  
16 releases information, whether oral or written, to the commissioner, the  
17 national insurance crime bureau, the national association of insurance  
18 commissioners, other law enforcement agent or agency, or another  
19 insurer under RCW 48.50.030, 48.50.040, 48.50.050, (~~or~~) 48.50.055, or  
20 section 6 of this act is immune from liability in any civil or criminal  
21 action, suit, or prosecution arising from the release of the  
22 information, unless actual malice on the part of the agent, broker,  
23 insurer, health care maintenance organization, health care service  
24 contractor, or authorized agency against the insured is shown.

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

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



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

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

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

10 (1) "General authority Washington law enforcement agency" means any  
11 agency, department, or division of a municipal corporation, political  
12 subdivision, or other unit of local government of this state, and any  
13 agency, department, or division of state government, having as its  
14 primary function the detection and apprehension of persons committing  
15 infractions or violating the traffic or criminal laws in general, as  
16 distinguished from a limited authority Washington law enforcement  
17 agency, and any other unit of government expressly designated by  
18 statute as a general authority Washington law enforcement agency. The  
19 Washington state patrol and the department of fish and wildlife are  
20 general authority Washington law enforcement agencies.

21 (2) "Limited authority Washington law enforcement agency" means any  
22 agency, political subdivision, or unit of local government of this  
23 state, and any agency, department, or division of state government,  
24 having as one of its functions the apprehension or detection of persons  
25 committing infractions or violating the traffic or criminal laws  
26 relating to limited subject areas, including but not limited to, the  
27 state departments of natural resources and social and health services,  
28 the state gambling commission, the state lottery commission, the state  
29 parks and recreation commission, the state utilities and transportation  
30 commission, the state liquor control board, the office of the insurance  
31 commissioner, and the state department of corrections.

32 (3) "General authority Washington peace officer" means any full-  
33 time, fully compensated and elected, appointed, or employed officer of  
34 a general authority Washington law enforcement agency who is  
35 commissioned to enforce the criminal laws of the state of Washington  
36 generally.

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

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

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

27 (7) "Agency with primary territorial jurisdiction" means a city or  
28 town police agency which has responsibility for police activity within  
29 its boundaries; or a county police or sheriff's department which has  
30 responsibility with regard to police activity in the unincorporated  
31 areas within the county boundaries; or a statutorily authorized port  
32 district police agency or four-year state college or university police  
33 agency which has responsibility for police activity within the  
34 statutorily authorized enforcement boundaries of the port district,  
35 state college, or university.

36 (8) "Primary commissioning agency" means (a) the employing agency  
37 in the case of a general authority Washington peace officer, a limited  
38 authority Washington peace officer, an Indian tribal peace officer, or

1 a federal peace officer, and (b) the commissioning agency in the case  
2 of a specially commissioned Washington peace officer (i) who is  
3 performing functions within the course and scope of the special  
4 commission and (ii) who is not also a general authority Washington  
5 peace officer, a limited authority Washington peace officer, an Indian  
6 tribal peace officer, or a federal peace officer.

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

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

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

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

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

20 (2) Information obtained and exempted or withheld from public  
21 inspection by the health care authority under RCW 41.05.026, whether  
22 retained by the authority, transferred to another state purchased  
23 health care program by the authority, or transferred by the authority  
24 to a technical review committee created to facilitate the development,  
25 acquisition, or implementation of state purchased health care under  
26 chapter 41.05 RCW;

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

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

30 (5) Information provided under RCW 48.05.510 through 48.05.535,  
31 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600  
32 through 48.46.625;

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

35 (7) Examination reports and information obtained by the department  
36 of financial institutions from banks under RCW 30.04.075, from savings  
37 banks under RCW 32.04.220, from savings and loan associations under RCW

1 33.04.110, from credit unions under RCW 31.12.565, from check cashers  
2 and sellers under RCW 31.45.030(3), and from securities brokers and  
3 investment advisers under RCW 21.20.100, all of which is confidential  
4 and privileged information;

5 (8) Information provided to the insurance commissioner under RCW  
6 48.110.040(3);

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

10 (10) Confidential proprietary and trade secret information provided  
11 to the commissioner under RCW 48.31C.020 through 48.31C.050 and  
12 48.31C.070; and

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

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

17 Documents, materials, or information obtained by the insurance  
18 commissioner under section 7 of this act are exempt from disclosure  
19 under this chapter.

20 NEW SECTION. Sec. 19. If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

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

26 NEW SECTION. Sec. 21. This act takes effect July 1, 2006."

27 Correct the title.

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