

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6234**

Chapter 284, Laws of 2006

(partial veto)

59th Legislature  
2006 Regular Session

INSURANCE FRAUD PROGRAM

EFFECTIVE DATE: 7/1/06

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

CERTIFICATE

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

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

FRANK CHOPP

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**Speaker of the House of Representatives**

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.

THOMAS HOEMANN

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**Secretary**

Approved March 28, 2006, with the exception of section 18, which is vetoed.

FILED  
March 28, 2006 - 3:02 p.m.

CHRISTINE GREGOIRE

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**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6234**  
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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.

AN ACT Relating to insurance fraud; amending RCW 48.50.070, 48.50.075, 10.93.020, and 42.56.400; adding a new section to chapter 42.17 RCW; adding a new chapter to Title 48 RCW; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

- (1) "Insurance fraud" means an act or omission committed by a person who, knowingly, and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:
- (a) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, broker, or its agent, false information as part of, in support of, or concerning a fact material to one or more of the following:
    - (i) An application for the issuance or renewal of an insurance policy;
    - (ii) The rating of an insurance policy or contract;
    - (iii) A claim for payment or benefit pursuant to an insurance policy;
    - (iv) Premiums paid on an insurance policy;
    - (v) Payments made in accordance with the terms of an insurance policy; or
    - (vi) The reinstatement of an insurance policy;
  - (b) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance; or
  - (c) Attempting to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

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

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

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

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

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

(4) The commissioner may make grants to or reimburse local prosecuting attorneys to assist in the prosecution of insurance fraud. The grants must be paid out of the budget of the insurance fraud program. The commissioner may investigate and seek prosecution of crimes involving insurance fraud upon the request of or with the concurrence of the county prosecuting attorney of the jurisdiction in which the offense has occurred. Before such a prosecution, the commissioner and the county in which the offense occurred shall reach an agreement regarding the payment of all costs, including expert witness fees, and defense attorneys' fees associated with any such prosecution.

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

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

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

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

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

(c) Conduct independent examinations of alleged insurance fraud;

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

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

(f) Conduct investigations outside this state. If the information the commissioner seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the commissioner to examine at the place where the information is located. The commissioner may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the commissioner, and the commissioner may respond to similar requests from officials of other states;

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

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

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

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

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

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

(2) Any person that has a reasonable belief that an act of insurance fraud which is or may be a crime under Washington law has been, is being, or is about to be committed; or any person who collects, reviews, or analyzes information concerning insurance fraud which is or may be a crime under Washington law may furnish and disclose any information in its possession concerning such an act to the commissioner or to an authorized representative of an insurer that requests the information for the purpose of detecting, prosecuting, or preventing insurance fraud.

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

(2) The commissioner:

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

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

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

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

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

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

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

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

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

- (1) Preempt the authority or relieve the duty of any other general authority law enforcement agencies to investigate, examine, and prosecute suspected violations of law;
- (2) Prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency other than the commissioner; or
- (3) Limit any of the powers granted elsewhere in this title to the commissioner to investigate and examine possible violations of the law and to take appropriate action.

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

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

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

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

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

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

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

Any licensed insurance agent, any licensed insurance broker, or any insurer or person acting in the insurer's behalf, health maintenance organization or person acting in behalf of the health maintenance organization, health care service contractor or person acting in behalf of the health care service contractor, or any authorized agency which releases information, whether oral or written, to the commissioner, the national insurance crime

bureau, the national association of insurance commissioners, other law enforcement agent or agency, or another insurer under RCW 48.50.030, 48.50.040, 48.50.050, ((or)) 48.50.055, or section 6 of this act is immune from liability in any civil or criminal action, suit, or prosecution arising from the release of the information, unless actual malice on the part of the agent, broker, insurer, health care maintenance organization, health care service contractor, or authorized agency against the insured is shown.

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

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

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

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

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

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

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

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

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

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

laws of the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***\*NEW SECTION. Sec. 18** A new section is added to chapter 42.17 RCW to read as follows:  
Documents, materials, or information obtained by the insurance commissioner under section 7 of this act are exempt from disclosure under this chapter.  
\*Sec. 18 was vetoed. See message at end of chapter.*

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

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

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

Passed by the Senate March 4, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 28, 2006, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 28, 2006.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Section 18, Substitute Senate Bill No. **6234** entitled:

"AN ACT Relating to insurance fraud."

Part of SSB **6234** creates a new exemption for certain documents under the Public Disclosure Act. Section 17 adds the exemption to the new public disclosure act section, RCW 42.56.400. Chapter 42.56 RCW takes effect July 1, 2006.

Section 18 also adds the same exemption as a new section to Chapter 42.17 RCW. Chapter 42.17 RCW, however, expires on July 1, 2006. Consequently, we should not add a new statutory exemption to that Chapter. Pursuant to Section 17 of SSB **6234**, the new exemption will be in the proper Chapter. Therefore, to avoid duplication and the inadvertent creation of a technical problem, Section 18 must be vetoed.

For these reasons, I have vetoed Section 18 of Substitute Senate Bill No. **6234**.

With the exception of Section 18, Substitute Senate Bill No. **6234** is approved."