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SPOKANE COUNTY SUPERIOR COURT CAUSE NO. 12-2-02190-7

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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ISIDORO PEREZ-CRISANTOS,

Appellant,

vs.

STATE FARM FIRE & CASUALTY COMPANY,

Respondent.

FILED  
AUG 23 2016  
WASHINGTON STATE  
SUPREME COURT

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**BRIEF OF AMICUS CURIAE THE  
AMERICAN INSURANCE ASSOCIATION**

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ORIGINAL

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## **I. IDENTITY AND INTERESTS OF AMICUS**

The American Insurance Association (AIA), founded in 1866 as the National Board of Fire Underwriters, is a leading national trade association representing approximately 325 major property and casualty insurance companies based in Washington and most other states. AIA members collectively underwrite more than \$127 billion in direct property and casualty premiums nationwide, including nearly \$2.4 billion in this state, and range in size from small companies to the largest insurers with global operations. These companies underwrite virtually all lines of property and casualty insurance, including nearly 15% of the automobile insurance market in Washington. AIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums nationwide. AIA also files amicus curiae briefs in significant cases before federal and state courts, including this Court, on issues of importance to the insurance industry and marketplace.

## **II. ISSUE ADDRESSED BY AIA**

Whether the Insurance Fair Conduct Act creates an express or implied independent cause of action for Washington Administrative Code violations that do not constitute unreasonable denial of either coverage or payment of benefits.

### III. ARGUMENT

#### A. Introduction

This case presents the issue of whether a violation of an insurance regulation can support a cause of action under the Insurance Fair Conduct Act (“IFCA”). The context is a dispute over the amount of benefits payable pursuant to underinsured motorist coverage, where the insurer has provided coverage and committed to pay the amount of benefits awarded by an independent fact finder.

In this case, Respondent and Appellant disagreed over the exact value of Appellant’s claim. An arbitrator made an award which was less than Appellant demanded, but more than Respondent offered. Respondent paid the award, and litigation of this extracontractual portion of the dispute followed. Appellant now argues that Respondent violated insurance regulations, and that those violations alone should support a cause of action under IFCA.

#### B. **The Plain Language of the Statute Reflects that an Unreasonable Denial of Coverage or Payment of Benefits Is a Necessary Element of an IFCA Claim**

When possible, Washington courts “derive legislative intent solely from the plain language enacted by the legislature.” *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724, 727 (2013). Plain language that is not ambiguous does not require construction. *Id.* Only if more than one

interpretation of the plain language is reasonable will the court engage in statutory construction or consider legislative history. *Id.*

As Respondent has ably pointed out, there is no ambiguity in the plain language of the statute. But Respondent's arguments are bolstered by consideration of the statute's structure and its notice and cure provision.

**1. IFCA's structure demonstrates that the only unfair practices at issue are unreasonable denials of coverage or benefits**

When IFCA was codified, its content was placed into two consecutive sections of RCW Chapter 48.30. The first part was added as a new subsection (7) to RCW 48.30.010, which is captioned "Unfair practices in general--Remedies and penalties." The subsection added by IFCA reads:

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. "First party claimant" has the same meaning as in RCW 48.30.015.

RCW 48.30.010(7). This subsection creates a specific prohibition against such unreasonable denials, but does not specify a civil action remedy for insureds. The remainder of IFCA was codified as a new section of chapter 48.30, RCW 48.30.015. The first of eight subsections reads:

(1) Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior

court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section.

The relationship between the two parts of IFCA shows that the overall intent was first, to define unreasonable denial of coverage or benefits as an unfair practice in the business of insurance and prohibit such denials; and second, to create a cause of action for that specific unfair practice. Yet the second part (section .015) lacks any reference to Washington Administrative Code ("WAC") violations in the subsection creating the remedy. Instead, this is found in a following subsection discussing the extent of the remedy.

WAC regulations concern claim handling administrative processes. Given the prohibition and remedy language of the two subsections described *supra*, it is not surprising that later subsections would limit the effect of WAC violations to governing fees, costs, and increased damages in cases already involving unreasonable denials of coverage or benefits.

**2. IFCA's 20-day notice provision makes no sense when applied to WAC violations**

This Court interprets statutes so that each section has effect and achieves a harmonious statutory scheme. *Am. Legion Post #149 v. Wash. State Dep't of Health*, 164 Wn. 2d 570, 585, 192 P.3d 306 (2008). IFCA's final section obligates a prospective plaintiff under the act to give the

insurer fair notice of the wrongful denial, and a 20-day opportunity to cure the problem. RCW 48.30.015(8). This procedural requirement is incongruent with the proposition that a WAC violation alone is actionable under IFCA.

RCW 48.30.015(8) imposes this notice and cure system, as follows:

(8)(a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. . . .

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

This section makes sense only if the insurer, within the twenty day period, is permitted to reverse a previous denial of coverage or benefits. *See Norgal Seattle P'ship v. Nat'l Sur. Corp.*, 2012 WL 1377762, at \*4 (W.D. Wash. Apr. 19, 2012) (“twenty-day window provides the insurer with an opportunity to cure any deficiencies or violations”).

Thus, the statute allows an insurer to resolve the basis for a claim it has denied by reversing its denial. But violations of many of the regulations listed in RCW 48.30.015(5) cannot be “undone.” RCW 48.30.015(5) lists five sections of WAC 284-30 (including the

section at issue here), which in turn include multiple subsections. Many of these WAC sections impose administrative requirements such as deadlines for responding to certain types of communications; violations of these types of requirement cannot be cured once done.

For example, assume an insurer violates WAC 284-30-360(1) by taking eleven working days (instead of ten) to acknowledge receipt of a claim. There is no obvious way to cure the basis for a claim predicated on this type of violation. The insurer cannot go back in time and acknowledge the claim a day sooner. A missed deadline cannot be cured any more than a bell can be unrung.

Moreover, the purpose of the notice-cure procedure — resolving disputes early — would be frustrated if technical WAC violations were actionable. Because the primary motivation for bringing an IFCA claim based solely on a WAC violation (if allowed) would be to recover the mandatory attorney fees and costs award under RCW 48.30.015(3), there would be no way to resolve or compromise such a claim short of an agreement to pre-pay a portion of those costs and fees before they are incurred. Such technical, fee-driven litigation was not the intent of either the legislature or the voters.

**C. A Cause of Action for WAC Violations Cannot be Implied**

Recent federal court decisions have focused on whether or not a cause of action under IFCA can be “implied” even though IFCA does not expressly so provide. The court in *Langley v. GEICO Gen. Ins. Co.*, 89 F. Supp. 3d 1083, 1086 (E.D. Wash. 2015), relying heavily on a single piece of legislative history, held that a cause of action may be implied. The court in *Workland & Witherspoon, PLLC v. Evanston Ins. Co.*, 141 F. Supp. 3d 1148, 1151 (E.D. Wash. 2015), disagreed, noting that “the legislature clearly, explicitly, and expressly created a cause of action against an insurer who unreasonably denied an insured coverage or the payment of benefits” and “[i]f the legislature truly intended to create a third IFCA cause of action arising out of subsection (5), they would have utilized the same or similar language as in subsection (1).”

The analysis in *Langley* is flawed — not only for the reasons pointed out by the *Workland* court, but also because the legislative history, on balance, does not support an implied cause of action. In addition, implying an additional cause of action in legislation that already creates express causes of action is inherently problematic as a plausible interpretation of legislative intent.

**1. This is not an appropriate statute for the application of the implied cause of action doctrine**

Where appropriate, a cause of action may be implied from a statutory provision when the legislature creates a right or obligation without a corresponding remedy. *Ducote v. State, Dep't of Soc. & Health Servs.*, 167 Wn.2d 697, 703, 222 P.3d 785 (2009). To determine whether implication is appropriate, courts consider a three-part test: “first, whether the plaintiff is within the class for whose ‘especial’ benefit the statute was enacted; second, whether legislative intent, explicitly or implicitly, supports creating or denying a remedy; and third, whether implying a remedy is consistent with the underlying purpose of the legislation.” *Ducote*, 167 Wn.2d at 703.

IFCA does not “create a right or obligation” to follow the administrative code. That obligation is created by the administrative code itself, and violations are already actionable by insureds under the Consumer Protection Act. *Indus. Indem. Co. of the NW v. Kallevig*, 114 Wn.2d 907, 925, 792 P.2d 520 (1990). In other words, there is already a remedy for violations of the WAC provisions. In *Kelsey Lane Homeowners Ass'n v. Kelsey Lane Co., Inc.*, 125 Wn. App. 227, 239, 103 P.3d 1256 (2005), the court rejected an implied cause of action against a condominium declarant under the Condominium Act for failure to disclose

construction defects in the public offering statements because the act already protected purchasers from construction defects through express and implied warranty provisions. *Kelsey Lane*, 125 Wn. App. at 241-242.

Further, because IFCA's sole purpose is to create and define a cause of action, it is implausible, as the *Workland* court pointed out, that the legislature intended to create a third basis for a cause of action when it expressly created two such causes in the same enactment.

This Court has implied a cause of action only when "a statute gives a new right and no specific remedy." *Bennett v. Hardy*, 113 Wn.2d 912, 920, 784 P.2d 1258 (1990) (quoting *State ex rel. Phillips v. State Liquor Control Bd.*, 59 Wn.2d 565, 570, 369 P.2d 844 (1962)). For example, in *Bennett*, where an employment discrimination statute was at issue, the court explained its rationale for implying a right of action as follows:

[B]ecause RCW 49.44.090 makes it an unfair employment practice to discriminate against an employee who is between the ages of 40 and 70 based upon her age, but provides no express method of redress against an employer who has engaged in such an unfair practice, there is an implied right of action for plaintiffs alleging violations of that statute.

*Bennett*, 113 Wn.2d 912, 921, 784 P.2d 1258 (1990); see also *Beggs v. State, Dep't of Soc. & Health Servs.*, 171 Wn.2d 69, 77, 247 P.3d 421 (2011) (implying a cause of action under mandatory child abuse reporting statute that did "not explicitly provide a civil remedy for a child who

suffers further injury against a mandatory reporter who failed to report suspected abuse.”). Here, by contrast, the legislature both identified a new “unfair practice” of “unreasonably denying a claim for coverage or payment of benefits” in RCW 48.30.010(7) and created a specific cause of action for it in RCW 48.30.015(1). The fact that the legislature also allowed increased damages if the new unfair practice is accompanied by other, preexisting unfair practices, does not support a conclusion that the legislature intended to also create a new cause of action for those existing unfair practices.

**2. Legislative history does not demonstrate an intent to create an implied cause of action**

On its face, the statute clearly fails to provide the cause of action, so resort to legislative history is unnecessary. *State Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 12, 43 P.3d 4, 10 (2002) (noting that “resort to legislative history is appropriate only if statute is susceptible to more than one reasonable meaning after plain meaning analysis”). But even if legislative history is considered, much of it refutes the view that WAC violations support an independent cause of action. Courts considering the legislative history of a referendum measure consider first the history in the legislature and second the information presented to the voters:

We shall first consider the history of chapter 209, Laws of 1941, taken as the act of the customary lawmaking branch of the state government, and then consider the history of referendum measure 22, regarded as the act of the people under their constitutionally reserved power.

*Lynch v. State*, 19 Wn.2d 802, 809–10, 145 P.2d 265 (1944). In the case of a referendum on an act passed by the legislature, as distinct from an initiative, it is arguably appropriate to give greater weight to the intent of the legislature that drafted the legislation than to the intent of the voters who faced only the choice to ratify or reject that legislation. Ethan J. Leib, *Interpreting Statutes Passed Through Referendums*, 7:1 Election L. J. 49 (2008).

**(a) History in the legislature**

Several specific legislative acts show that subsection (1) of the act was intended to define the elements of the claims, and that the regulations were relevant only to the issue of increased damages.

The first proposed amendment to the original bill,<sup>1</sup> among other changes, expressly added “delay” as a third basis for a cause of action.<sup>2</sup> Before the amendment was adopted, the reference to “delay” was stricken from amendment.<sup>3</sup> The explanatory statement noted “EFFECT: (1) The act no longer addresses unreasonable delays in payment of insurance

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<sup>1</sup> APPENDIX A

<sup>2</sup> Id.

<sup>3</sup> APPENDIX B

benefits.”<sup>4</sup> This amendment would make no sense if violating administrative standards for “prompt” investigation or settlement of claims was understood to be a separate and independent basis for a cause of action. If that were so, then the act would clearly still address delays in payment of benefits as a basis for a cause of action.

Another amendment created the current detailed version of section (5) of the act and explained the following understanding of the role of WAC violations: “EFFECT: The reference to insurance rules that can serve as a basis for treble damages or attorneys’ fees is narrowed.”<sup>5</sup> Again, this specific amendment shows that the legislature, in drafting the actual language of the statute, understood that WAC violations are simply a “basis for treble damages or attorneys’ fees” and not a distinct, independent cause of action for actual damages.

The bill digest for the enacted bill provides a description of the act that also limits the role of WAC violations to increased damages:

SB 5726-S.E - DIGEST

(DIGEST AS ENACTED)

Provides that an insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant.

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<sup>4</sup> Id.

<sup>5</sup> APPENDIX C

Provides that any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs.

Provides that the superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated rules under the Washington Administrative Code adopted by the commissioner under RCW 48.30.010(2), increase the total award of damages to an amount not to exceed three times the actual damages.<sup>[6]</sup>

These examples establish that the legislative intent is not uniformly supportive of a cause of action under IFCA based solely on WAC violations.

**(b) Referendum ballot materials**

The voters' guide materials,<sup>7</sup> on balance, do not show voter intent to create a separate cause of action for WAC violations. Preliminarily, it should be noted that the voters' guide included the full text of the statute, so a voter would not be entirely dependent on summaries or representations.<sup>8</sup> Apart from the text of the statute itself, the voters' guide contained four distinct parts relating to the act. First, it had the official ballot title:

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<sup>6</sup> APPENDIX D

<sup>7</sup> APPENDIX E

<sup>8</sup> Id.

Official Ballot Title:

The legislature passed Engrossed Substitute Senate Bill 5726 (ESSB 5726) concerning insurance fair conduct related to claims for coverage or benefits and voters have filed a sufficient referendum petition on this bill.

This bill would make it unlawful for insurers to unreasonably deny certain coverage claims, and permit treble damages plus attorney fees for that and other violations. Some health insurance carriers would be exempt.

Should this be: Approved [ ] Rejected [ ]

The above language supports the interpretation that the triggering event is an unreasonable denial, while “other violations” may support an award of treble damages and fees.

Second, the voters’ guide contained a fiscal impact statement that mentioned only that the bill would “prohibit insurers from unreasonably denying certain insurance claims” while “permitting recovery up to triple damages plus attorney fees and litigation costs.”<sup>9</sup>

Third, the voters’ guide contained an explanatory statement setting forth a description of “the law as it presently exists” and the “effect of the proposed measure, if approved.” The substance of the act is summarized in two paragraphs, which read:

ESSB 5726 would amend the laws concerning unfair or deceptive insurance practices by providing that an insurer

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<sup>9</sup> Id.

engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any “first party claimant.” The term “first party claimant” is defined in the bill to mean an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

ESSB 5726 would authorize any first party claimant to bring a lawsuit in superior court against an insurer for unreasonably denying a claim for coverage or payment of benefits, or violation of specified insurance commissioner unfair claims handling practices regulations, to recover damages and reasonable attorney fees, and litigation costs. A successful plaintiff could recover the actual damages sustained, together with reasonable attorney fees and litigation costs as determined by the court. The court could also increase the total award of damages to an amount not exceeding three times the actual damages, if the court finds that an insurer has acted unreasonably in denying a claim or has violated certain rules adopted by the insurance commissioner. The new law would not limit a court’s existing ability to provide other remedies available at law. The claimant would be required to give written notice to the insurer and to the insurance commissioner’s office at least twenty days before filing the lawsuit.<sup>10</sup>

Appellant and the *Langley* court point to the part of the second paragraph after the first comma starting with the word “or” as evidence that voters would have understood that a WAC violation by itself is enough to support an action under the statute. However, the arguments presented in favor of adoption strongly suggest a contrary understanding.

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<sup>10</sup> Id.

The fourth part of the voters' guide contained the statements for and against the measure. The "for" statement emphasized mistrust of insurance companies and fear of unjustified claim denials, while the "against" statement emphasized mistrust of opportunistic lawyers and the fear of rising premiums. Perhaps in light of these arguments, the "for" statement insisted that the Act's effects were limited to insurers that failed to pay "legitimate" or "valid" claims:

- "Referendum 67 simply requires the Insurance Industry to be fair and pay legitimate claims in a reasonable and timely manner."
- "R-67 would help make the Insurance Industry honor its commitments by making it against the law to unreasonably delay or deny legitimate claims."
- "When you pay your premiums on time, the Insurance Industry is supposed to pay your legitimate claims."
- "R-67 would have an impact only on those bad apples that unreasonably delay or deny valid insurance claims."

The proponents' insistence that the Act is limited to "valid" or "legitimate" claims is contrary to the interpretation now being advocated by Appellant. A WAC violation is not dependent on a claim being "valid" or "legitimate" and can occur even when the claim is clearly not covered by the policy. *St. Paul Fire & Marine Ins. Co. v. Orvia, Inc.*, 165 Wn.2d 122, 134, 196 P.3d 664 (2008) (policyholder may maintain CPA action based on WAC violations even though policy does not cover the claim).

An insurer may violate the WAC simply by failing to timely acknowledge a claim that is clearly not covered. WAC 284-30-330(2). An insurer may even violate the WAC if it promptly pays the proper amount to its insured if the claim payment is “not accompanied by a statement setting forth the coverage under which the payment is made.” WAC 284-30-330(9).<sup>11</sup> While there are good reasons for these rules, they are generally aimed at technical violations that do little or no harm to policyholders’ interests. Allowing a cause of action with mandatory attorney fees for such violations would be inconsistent with the arguments advanced by proponents of Referendum 67.

A full review of the history shows that Appellant and the *Langley* court cherry-picked from among the many contemporaneous summaries of the Act, and therefore did not fairly characterize legislative intent. The specific legislative actions related to both the grounds for a cause of action and the role of WAC provisions support Respondent’s position. In addition, it is clear that the proponents of the referendum were touting the Act as a means to punish “only those bad apples” that unreasonably fail to pay valid insurance claims and because “Washington is one of only 5

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<sup>11</sup> Both of these regulations are within the scope of RCW 48.30.015(5). That statute simply refers to five different sections of WAC chapter 284-30, without eliminating any subsections or qualifying their impact in the context of an IFCA claim. So, advocating an IFCA cause of action for a WAC violation equates serious and trivial unfair practices.

states with no penalty when the Insurance Industry intentionally denies a valid claim.”<sup>12</sup> Such statements cannot be reconciled with an “implied” intent to punish insurers for accepting and paying claims without a sufficient explanation for the payment, or for acknowledging a claim one day late.

**D. IFCA Liability for WAC Violations Would Have Absurd and Unintended Consequences**

If RCW 48.30.015(3) is read as creating an independent cause of action for WAC violations, then the statute would become what its proponents insisted it was not: a mechanism for attorney-fee-driven litigation based only on technical violations. Section (3) does not require that the plaintiff show it has “actual damages,” but states that the “superior court shall . . . after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys’ fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant of an insurance contract who is the prevailing party in such an action.” Thus, unless the Court implies an additional requirement that a plaintiff show actual damages flowing from the WAC violation, an insured that proves only a harmless WAC violation would still recover attorney fees and litigation costs.

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<sup>12</sup> APPENDIX E

For example, suppose a tree limb falls on an insured's garage, causing damage. The insured, in an abundance of caution, submits a claim not only to his homeowners' insurer, but also to his auto insurer. The homeowners' insurer immediately accepts and pays the claim. But the auto adjuster, confused by the submission, holds onto the claim for eleven days before responding that the claim does not appear to involve an automobile. Because the auto insurer took too long to acknowledge the claim, the insured would be entitled to sue the auto insurer and recover attorney fees and costs even though the insured suffer no actual harm or damages. Because the plain language of the rule is contrary to such an absurd result, there is no good reason to contort the statute to create a mechanism for fee-driven litigation. Moreover, it is the public policy of this state to discourage litigation for its own sake. *E.g., In re Chappell's Estate*, 127 Wash. 638, 641, 221 P. 336 (1923); *cf. Am. Safety Cas. Ins. Co. v. City of Olympia*, 162 Wn.2d 762, 772, 174 P.3d 54 (2007) (Washington law strongly favors the public policy of settlement over litigation).

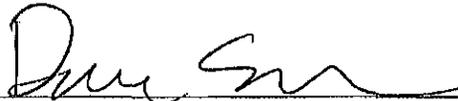
#### IV. CONCLUSION

The statutory language, legislative intent, and sound public policy all support the conclusion that an unreasonable denial of coverage or

payment of benefits is a necessary element of a claim under IFCA. The Court should rule in favor of Respondent.

RESPECTFULLY SUBMITTED this 19th day of August, 2016.

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## CERTIFICATE OF SERVICE

I, Valerie D. Marsh, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts Patterson & Mines, One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on August 19, 2016, I caused to be served upon counsel of record at the addresses and in the manner described below, the following documents:

- **Brief Of Amicus Curiae The American Insurance Association; and**
- **Certificate of Service.**

***Counsel for Plaintiff:***

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Craig Swapp & Associates  
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Spokane Valley, WA 99216-6031

- U.S. Mail
- Hand Delivery
- Facsimile
- Overnight
- E-mail

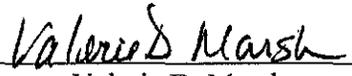
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 19th day of August, 2016.

  
Valerie D. Marsh

# **APPENDIX A**

SSB 5726 - S AMD 155

By Senator Weinstein

ADOPTED AS AMENDED 03/13/2007

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

3       "NEW SECTION. **Sec. 1.** This act may be known and cited as the  
4 insurance fair conduct act.

5       **Sec. 2.** RCW 48.30.010 and 1997 c 409 s 107 are each amended to  
6 read as follows:

7       (1) No person engaged in the business of insurance shall engage in  
8 unfair methods of competition or in unfair or deceptive acts or  
9 practices in the conduct of such business as such methods, acts, or  
10 practices are defined pursuant to subsection (2) of this section.

11       (2) In addition to such unfair methods and unfair or deceptive acts  
12 or practices as are expressly defined and prohibited by this code, the  
13 commissioner may from time to time by regulation promulgated pursuant  
14 to chapter 34.05 RCW, define other methods of competition and other  
15 acts and practices in the conduct of such business reasonably found by  
16 the commissioner to be unfair or deceptive after a review of all  
17 comments received during the notice and comment rule-making period.

18       (3) (a) In defining other methods of competition and other acts and  
19 practices in the conduct of such business to be unfair or deceptive,  
20 and after reviewing all comments and documents received during the  
21 notice and comment rule-making period, the commissioner shall identify  
22 his or her reasons for defining the method of competition or other act  
23 or practice in the conduct of insurance to be unfair or deceptive and  
24 shall include a statement outlining these reasons as part of the  
25 adopted rule.

26       (b) The commissioner shall include a detailed description of facts  
27 upon which he or she relied and of facts upon which he or she failed to  
28 rely, in defining the method of competition or other act or practice in

1 the conduct of insurance to be unfair or deceptive, in the concise  
2 explanatory statement prepared under RCW 34.05.325(6).

3 (c) Upon appeal the superior court shall review the findings of  
4 fact upon which the regulation is based de novo on the record.

5 (4) No such regulation shall be made effective prior to the  
6 expiration of thirty days after the date of the order by which it is  
7 promulgated.

8 (5) If the commissioner has cause to believe that any person is  
9 violating any such regulation, the commissioner may order such person  
10 to cease and desist therefrom. The commissioner shall deliver such  
11 order to such person direct or mail it to the person by registered mail  
12 with return receipt requested. If the person violates the order after  
13 expiration of ten days after the cease and desist order has been  
14 received by him or her, he or she may be fined by the commissioner a  
15 sum not to exceed two hundred and fifty dollars for each violation  
16 committed thereafter.

17 (6) If any such regulation is violated, the commissioner may take  
18 such other or additional action as is permitted under the insurance  
19 code for violation of a regulation.

20 (7) An insurer engaged in the business of insurance may not  
21 unreasonably deny or delay a claim for coverage or payment of benefits  
22 to any first party claimant. "First party claimant" has the same  
23 meaning as in section 3 of this act.

24 NEW SECTION. Sec. 3. A new section is added to chapter 48.30 RCW  
25 to read as follows:

26 (1) Any first party claimant to a policy of insurance who is  
27 unreasonably denied or delayed a claim for coverage or payment of  
28 benefits by an insurer may bring an action in the superior court of  
29 this state to recover the actual damages sustained, together with the  
30 costs of the action, including reasonable attorneys' fees and  
31 litigation costs, as set forth in subsection (3) of this section.

32 (2) The superior court may, after finding that an insurer has acted  
33 unreasonably in denying or delaying a claim for coverage or payment of  
34 benefits or has violated rules under the Washington Administrative Code  
35 adopted by the commissioner under RCW 48.30.010(2), increase the total  
36 award of damages to an amount not to exceed three times the actual  
37 damages.

1 (3) The superior court shall, after a finding of unreasonable  
2 denial or delay of a claim for coverage or payment of benefits, or  
3 after a finding of a violation of rules under the Washington  
4 Administrative Code adopted by the commissioner under RCW 48.30.010(2),  
5 award reasonable attorneys' fees and actual and statutory litigation  
6 costs, including expert witness fees, to the first party claimant of an  
7 insurance contract who is the prevailing party in such an action.

8 (4) The remedies set forth in this chapter are separate from the  
9 remedies prescribed by RCW 19.86.090 of the consumer protection act.

10 (5) "First party claimant" means an individual, corporation,  
11 association, partnership, or other legal entity asserting a right to  
12 payment under an insurance policy or insurance contract arising out of  
13 the occurrence of the contingency or loss covered by such a policy or  
14 contract."

**SSB 5726** - S AMD  
By Senator Weinstein

**ADOPTED AS AMENDED 03/13/2007**

15 On page 1, line 1 of the title, after "act;" strike the remainder  
16 of the title and insert "amending RCW 48.30.010; adding a new section  
17 to chapter 48.30 RCW; creating a new section; and prescribing  
18 penalties."

--- END ---

## **APPENDIX B**

SSB 5726 - S AMD TO S AMD (S-2651.1/07) 257  
By Senators Berkey, Weinstein

ADOPTED 03/13/2007

1 On page 2, line 21 of the amendment, after "deny" strike "or delay"

2 On page 2, line 27 of the amendment, after "denied" strike "or  
3 delayed"

4 On page 2, line 33 of the amendment, after "denying" strike "or  
5 delaying"

6 On page 3, line 2 of the amendment, after "denial" strike "or  
7 delay"

8 On page 3, line 12 of the amendment, after "payment" insert "as a  
9 covered person"

EFFECT: (1) The act no longer addresses unreasonable delays in  
payment of insurance benefits.

(2) Only a claimant who is a covered person under the relevant  
insurance policy may seek redress under this act.

--- END ---

## **APPENDIX C**

ESSB 5726 - H COMM AMD

By Committee on Insurance, Financial Services & Consumer Protection

ADOPTED AS AMENDED 04/05/2007

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

3 "NEW SECTION. Sec. 1. This act may be known and cited as the  
4 insurance fair conduct act.

5 Sec. 2. RCW 48.30.010 and 1997 c 409 s 107 are each amended to  
6 read as follows:

7 (1) No person engaged in the business of insurance shall engage in  
8 unfair methods of competition or in unfair or deceptive acts or  
9 practices in the conduct of such business as such methods, acts, or  
10 practices are defined pursuant to subsection (2) of this section.

11 (2) In addition to such unfair methods and unfair or deceptive acts  
12 or practices as are expressly defined and prohibited by this code, the  
13 commissioner may from time to time by regulation promulgated pursuant  
14 to chapter 34.05 RCW, define other methods of competition and other  
15 acts and practices in the conduct of such business reasonably found by  
16 the commissioner to be unfair or deceptive after a review of all  
17 comments received during the notice and comment rule-making period.

18 (3) (a) In defining other methods of competition and other acts and  
19 practices in the conduct of such business to be unfair or deceptive,  
20 and after reviewing all comments and documents received during the  
21 notice and comment rule-making period, the commissioner shall identify  
22 his or her reasons for defining the method of competition or other act  
23 or practice in the conduct of insurance to be unfair or deceptive and  
24 shall include a statement outlining these reasons as part of the  
25 adopted rule.

26 (b) The commissioner shall include a detailed description of facts  
27 upon which he or she relied and of facts upon which he or she failed to  
28 rely, in defining the method of competition or other act or practice in

1 the conduct of insurance to be unfair or deceptive, in the concise  
2 explanatory statement prepared under RCW 34.05.325(6).

3 (c) Upon appeal the superior court shall review the findings of  
4 fact upon which the regulation is based de novo on the record.

5 (4) No such regulation shall be made effective prior to the  
6 expiration of thirty days after the date of the order by which it is  
7 promulgated.

8 (5) If the commissioner has cause to believe that any person is  
9 violating any such regulation, the commissioner may order such person  
10 to cease and desist therefrom. The commissioner shall deliver such  
11 order to such person direct or mail it to the person by registered mail  
12 with return receipt requested. If the person violates the order after  
13 expiration of ten days after the cease and desist order has been  
14 received by him or her, he or she may be fined by the commissioner a  
15 sum not to exceed two hundred and fifty dollars for each violation  
16 committed thereafter.

17 (6) If any such regulation is violated, the commissioner may take  
18 such other or additional action as is permitted under the insurance  
19 code for violation of a regulation.

20 (7) An insurer engaged in the business of insurance may not  
21 unreasonably deny a claim for coverage or payment of benefits to any  
22 first party claimant. "First party claimant" has the same meaning as  
23 in section 3 of this act.

24 NEW SECTION. Sec. 3. A new section is added to chapter 48.30 RCW  
25 to read as follows:

26 (1) Any first party claimant to a policy of insurance who is  
27 unreasonably denied a claim for coverage or payment of benefits by an  
28 insurer may bring an action in the superior court of this state to  
29 recover the actual damages sustained, together with the costs of the  
30 action, including reasonable attorneys' fees and litigation costs, as  
31 set forth in subsection (3) of this section.

32 (2) The superior court may, after finding that an insurer has acted  
33 unreasonably in denying a claim for coverage or payment of benefits or  
34 has violated a rule in subsection (5) of this section, increase the  
35 total award of damages to an amount not to exceed three times the  
36 actual damages.

1 (3) The superior court shall, after a finding of unreasonable  
2 denial of a claim for coverage or payment of benefits, or after a  
3 finding of a violation of a rule in subsection (5) of this section,  
4 award reasonable attorneys' fees and actual and statutory litigation  
5 costs, including expert witness fees, to the first party claimant of an  
6 insurance contract who is the prevailing party in such an action.

7 (4) "First party claimant" means an individual, corporation,  
8 association, partnership, or other legal entity asserting a right to  
9 payment as a covered person under an insurance policy or insurance  
10 contract arising out of the occurrence of the contingency or loss  
11 covered by such a policy or contract.

12 (5) A violation of any of the following is a violation for the  
13 purposes of subsections (2) and (3) of this section:

14 (a) WAC 284-30-330, captioned "specific unfair claims settlement  
15 practices defined";

16 (b) WAC 284-30-350, captioned "misrepresentation of policy  
17 provisions";

18 (c) WAC 284-30-360, captioned "failure to acknowledge pertinent  
19 communications";

20 (d) WAC 284-30-370, captioned "standards for prompt investigation  
21 of claims";

22 (e) WAC 284-30-380, captioned "standards for prompt, fair and  
23 equitable settlements applicable to all insurers"; or

24 (f) An unfair claims settlement practice rule adopted under RCW  
25 48.30.010 by the insurance commissioner intending to implement this  
26 section. The rule must be codified in chapter 284-30 of the Washington  
27 Administrative Code.

28 (6) This section does not limit a court's existing ability to make  
29 any other determination regarding an action for an unfair or deceptive  
30 practice of an insurer or provide for any other remedy that is  
31 available at law."

EFFECT: The reference to insurance rules that can serve as a  
basis for treble damages or attorneys' fees is narrowed. The  
substitute bill referred to any rule adopted under the authority of RCW

48.30.010. The amendment includes five existing rules and any rules adopted as unfair claims settlement practice rules by the Insurance Commissioner that are intended to implement this act. The five existing rules address the following areas: Specific unfair claims settlement practices; misrepresentation of policy provisions; failure to acknowledge pertinent communications; standards for prompt investigation; standards for prompt, fair and equitable settlements applicable to all insurers. The provision that states that the remedies in the bill are separate from any remedies prescribed in RCW 19.86.090 of the Consumer Protection Act is removed. A court's existing ability to make any other determination regarding an unfair practice by an insurer or provide for any other remedy that is available at law is not limited by the bill.

--- END ---

# **APPENDIX D**

SB 5726-S.E - DIGEST

(DIGEST AS ENACTED)

Provides that an insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant.

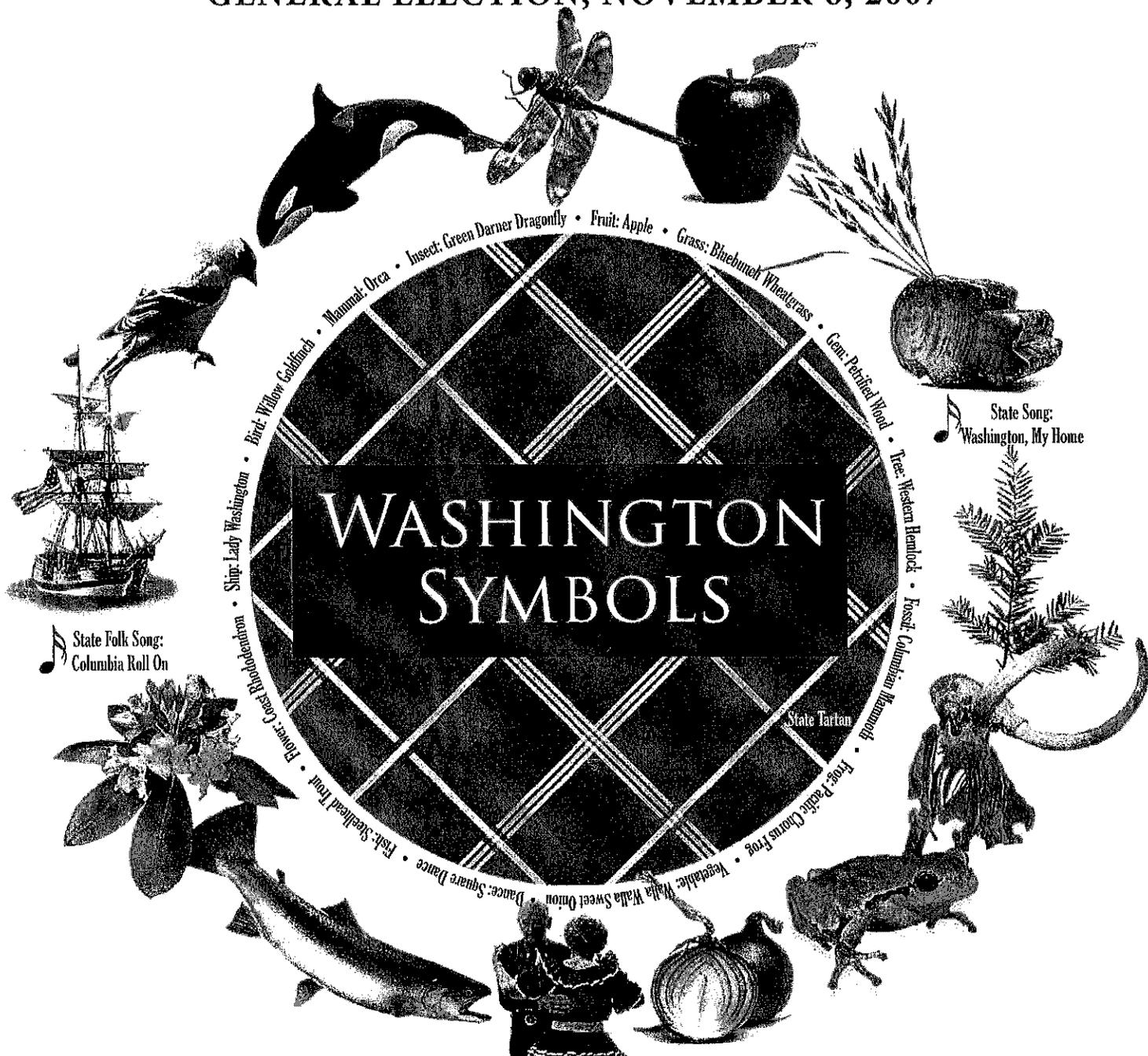
Provides that any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs.

Provides that the superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated rules under the Washington Administrative Code adopted by the commissioner under RCW 48.30.010(2), increase the total award of damages to an amount not to exceed three times the actual damages.

# **APPENDIX E**

# STATE OF WASHINGTON VOTERS' PAMPHLET

GENERAL ELECTION, NOVEMBER 6, 2007



WASHINGTON  
SYMBOLS

Mammal: Orca • Insect: Green Darner Dragonfly • Fruit: Apple • Grass: Bluebunch Wheatgrass • Gen: Petrified Wood • Tree: Western Hemlock • Fossil: Columbian Mammoth • State Tartan  
 Bird: Willow Goldfinch • Ship: Lady Washington • Frog: Pacific Chorus Frog • Vegetable: Walla Walla Sweet Onion • Dance: Square Dance  
 Ship: Coast Blockadeiron • Flower: Coast Redcedar • Fish: Steelhead Trout • River: Puget Sound

State Song:  
Washington, My Home

State Folk Song:  
Columbia Roll On

EDITION 1



PUBLISHED BY THE OFFICE OF THE SECRETARY OF STATE

## Statement For Initiative Measure 960

### I-960 CLOSES LOOPHOLES THE LEGISLATURE PUT IN TAXPAYER PROTECTION INITIATIVE 601, VOTER-APPROVED IN 1993

I-601 put reasonable limits on state government's fiscal policies. But over the years, Olympia has put loophole after loophole into it to circumvent the law. I-960 closes those loopholes.

In 2005, the Court ruled the Legislature broke the law by shifting funds to spend the same money twice. Justice Owens called it "a shell game." Incredibly, Olympia defended itself saying I-601 DIDN'T SPECIFICALLY PROHIBIT THEM FROM SPENDING THE SAME MONEY TWICE! I-960 says shifted money isn't new revenue and can only be spent once.

For 13 years, the law has required two-thirds legislative approval for tax increases. The Legislature re-enacted this two-thirds requirement in 1998 and 2005. But to circumvent the law, Olympia takes tax increases off-budget. I-960 says Olympia must follow the law whether the tax increase is off-budget or on-budget.

No one is above the law, not even the Legislature.

### TO CIRCUMVENT OUR CONSTITUTION AND REPEAL OUR RIGHTS,

#### OLYMPIA DECLARES A BILL AN "EMERGENCY"

I-960 alerts voters anytime Olympia imposes an "emergency" tax increase with two-pages in the general election voters pamphlet listing the costs, how legislators voted, and provides voter feedback with an advisory vote. We can't stop politicians from repealing our constitutionally-guaranteed rights, but we're entitled to know which politicians are doing it.

I-960 helps Olympia follow the law and respect our Constitution.

### I-960 REQUIRES THE GOVERNMENT TO PUBLICLY DISCLOSE COSTS AND LEGISLATORS' SPONSORSHIP AND VOTING RECORDS ON ...

... any tax increase bill. I-960 guarantees email updates get sent to the press and the people anytime a tax increase bill "moves." The people have the right to know what Olympia is doing.

### WASHINGTON'S THE 9<sup>TH</sup> HIGHEST TAXED STATE IN THE NATION - I-960 KEEPS US FROM HITTING #1

I-960 reminds politicians that taxpayers don't have bottomless wallets. Vote Yes.

For more information, call (425) 493-8707 or visit [www.TheTaxpayerProtectionInitiative.com](http://www.TheTaxpayerProtectionInitiative.com).

## Rebuttal of Statement Against

Opponents' threats, lies, and scare tactics are hilarious (terrorist attacks? recession? flu?).

Washington has 13 years of positive experience with I-601 (Colorado's totally different).

I-960's protections affect tax increases, not fund transfers.

Government collects over \$50 BILLION EVERY YEAR. Even without tax hikes, revenue grows. If prioritized, that's more than enough.

Send politicians a message: stop declaring "emergencies" - they short-circuit our rights. Stop breaking the law.

Approve I-960 because politicians can't control themselves. Vote Yes.

### Voters' Pamphlet Argument Prepared by:

ERMA TURNER, beauty shop owner, gathered 3,455 signatures, Cle Elum; STEVEN BENCZE, retired warehouseman, fisherman/hunter, gathered 2,461 signatures, Othello; ERIC PHILLIPS, hiker, label company owner, gathered 2,348 signatures, Everett; KAREN CURRY, housewife, husband Lee (plumber), gathered 2,172 signatures, Yakima; ANDRE GARIN, retired postal worker, bowler, gathered 1,989 signatures, Vancouver; MIKE DUNMIRE, husband, community leader, retired businessman, initiative volunteer, Woodinville.

## Statement Against Initiative Measure 960

All of us want greater accountability and openness from government. Initiative 960 pretends to do that, but will only make things worse.

### I-960 WILL LEAD TO ENDLESS, EXPENSIVE ELECTIONS.

I-960 would require a public vote on countless budget items, no matter how small. The result? Less efficient government, long and confusing ballots, and millions of dollars wasted on endless elections.

### I-960 WILL MAKE GOVERNMENT LESS EFFICIENT.

Routine fund transfers to address basic needs, such as road and bridge repairs, children's health care, or prescription drug assistance for seniors would require a two-thirds legislative vote *and* a public vote. This could cripple state government.

When a similar measure was enacted in Colorado, nonpartisan analysis revealed education funding dropped from 35<sup>th</sup> in the nation to 49<sup>th</sup>, child immunization rates fell to dead last among the 50 states, and prenatal care fell from 23<sup>rd</sup> to 48<sup>th</sup>. This must not happen in Washington State.

### I-960 WILL NOT CUT TAXES, BUT IT WILL WASTE YOUR MONEY.

More elections and longer ballots are expensive to administer and process. Sorting out the many legal issues created by I-960's confusing and poorly written language will tie up the courts, costing taxpayers time and money.

### I-960 WILL SLOW GOVERNMENT'S RESPONSE, EVEN IN A CRISIS.

The initiative would leave us vulnerable in times of crisis. I-960 says the legislature can suspend supermajority legislative and public votes only during a natural disaster. Authorities would be handcuffed from responding quickly during an economic recession, pandemic flu, or even terrorist attacks.

I-960 is too risky and too expensive. Join police, firefighters, teachers, nurses, Children's Alliance, Washington Association of Churches, Washington Conservation Voters, Washington State Labor Council, business and citizens across Washington in voting *No on 960*.

For more information, call (206) 501-4342 or visit [www.no960.com](http://www.no960.com).

## Rebuttal of Statement For

I-960 mandates wasteful, costly elections and would create mass confusion—not transparency and accountability. Dozens of complicated votes would only get 13-word descriptions. (Sec. 8)

I-960 is so complex even sponsor Tim Eyman admitted: "You asked for a short description of 960, I just can't give it to you." (Crosscut 8/13/07)

I-960 cannot be suspended due to a terrorist attack or economic crisis - only for a "natural disaster." (Sec. 5.3(a))

Vote NO on I-960.

### Voters' Pamphlet Argument Prepared by:

RANDY REVELLE, Senior Vice President, Washington State Hospital Association; DOUG SHADEL, Director, AARP of Washington; JUDY HUNTINGTON, RN, Executive Director, Washington State Nurses Association; MIKE RAGAN, Kennewick High School teacher, WEA Vice President; MICHELLE MOULTON, M+M Painting, small business owner, Sammamish; KELLY FOX, President, Washington State Council of Firefighters.



# REFERENDUM MEASURE 67

Passed by the Legislature and Ordered Referred by Petition

## Official Ballot Title:

The legislature passed Engrossed Substitute Senate Bill 5726 (ESSB 5726) concerning insurance fair conduct related to claims for coverage or benefits and voters have filed a sufficient referendum petition on this bill.

This bill would make it unlawful for insurers to unreasonably deny certain coverage claims, and permit treble damages plus attorney fees for that and other violations. Some health insurance carriers would be exempt.

Should this bill be:

Approved [ ] Rejected [ ]

### Votes cast by the 2007 Legislature on final passage:

Senate: Yeas, 31; Nays, 18; Absent, 0; Excused, 0.

House: Yeas, 59; Nays, 38; Absent, 0; Excused, 1.

Note: The Official Ballot Title was written by the court. The Explanatory Statement was written by the Attorney General as required by law and revised by the court. The Fiscal Impact Statement was written by the Office of Financial Management. For more in-depth fiscal analysis, visit [www.ofm.wa.gov/initiatives](http://www.ofm.wa.gov/initiatives). The complete text of Referendum Measure 67 begins on page 29.



## Fiscal Impact Statement

### Fiscal Impact Statement for Referendum 67

Referendum 67 is a referendum on ESSB 5726, a bill that would prohibit insurers from unreasonably denying certain insurance claims, permitting recovery up to triple damages plus attorney fees and litigation costs. This may increase frequency and amounts of insurance claims recovered by state and local government, the number of insurance-related suits filed in state courts, and increase state and local government insurance-premiums. Research offers no clear guidance for estimating the magnitude of these potential increases. Notice of insurance-related suits must be provided to the Office of the Insurance Commissioner prior to court filing, costing an estimated \$50,000 per year.

### Assumptions for Fiscal Analysis of R-67

- There would likely be an increase in the number of cases filed in Superior Court related to the denial of insurance claims, but there is no data available to provide an accurate estimate of that fiscal impact. It is assumed that the impact to the operations of Washington courts would be greater than \$50,000 per year.
- Premiums for state and local governments that purchase auto, property, liability or other insurance may increase due to a potential increase in insurance companies' litigation costs and the amounts awarded to claimants.
- When the state or local government is a claimant, the referendum could increase the likelihood of recovering on the claim, and the amount recovered.
- Various studies have been conducted to determine how changes in law affecting insurance can affect costs for courts, insurance premiums, and claimant recovery. However, individual study results vary widely. Due to the conflicting research, there is no clear guidance for estimating the magnitude of the fiscal impact of potential increases in court costs, insurance premiums, or recovered claims.
- It is estimated that 300 notices per year of insurance-related lawsuits would be filed with the Office of the Insurance Commissioner, resulting in a minimum cost of less than \$50,000 per year increased cost to the agency.





## REFERENDUM MEASURE 67

### *Explanatory Statement*

#### **The law as it presently exists:**

The state insurance code prohibits any person engaged in the insurance business from engaging in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of their business. Some of these practices are set forth in state statute. The insurance commissioner has the authority to adopt rules defining unfair practices beyond those specified in statute. The commissioner has the authority to order any violators to cease and desist from their unfair practices, and to take action under the insurance code against violators for violation of statutes and regulations. Depending on the facts, the insurance commissioner could impose fines, seek injunctive relief, or take action to revoke an insurer's authority to conduct insurance business in this state.

Under existing law, an unfair denial of a claim against an insurance policy could give the claimant a legal action against the insurance company under one or more of several legal theories. These could include violation of the insurance code, violation of the consumer protection laws, personal injuries or property losses caused by the insurer's acts, or breach of contract. Depending on the facts and the legal basis for recovery, a claimant could recover money damages for the losses shown to have been caused by the defendant's behavior. Additional remedies might be available, depending on the legal basis for the claim.

Plaintiffs in Washington are not generally entitled to recover their attorney fees or litigation costs (except for small amounts set by state law) unless there is a specific statute, a contract provision, or recognized ground in case law providing for such recovery. Disputes over insurance coverage have been recognized in case law as permitting awards of attorney fees and costs. Likewise, plaintiffs in Washington are not generally entitled to collect punitive damages or damages in excess of their actual loss (such as double or triple the amount of actual loss), unless a statute or contract specifically provides for such payment.

#### **The effect of the proposed measure, if approved:**

This measure is a referral to the people of a bill (ESSB 5726) passed by the 2007 session of the legislature. The term "this bill" refers here to the bill as passed by the legislature. **A vote to "approve" this bill is a vote to approve ESSB 5726 as passed by the legislature. A vote to "reject" this bill is a vote to reject ESSB 5726 as passed by the legislature.**

ESSB 5726 would amend the laws concerning unfair or deceptive insurance practices by providing that an insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any "first party claimant." The term "first party claimant" is defined in the bill to mean an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

ESSB 5726 would authorize any first party claimant to bring a lawsuit in superior court against an insurer for unreasonably denying a claim for coverage or payment of benefits, or violation of specified insurance commissioner unfair claims handling practices regulations, to recover damages and reasonable attorney fees, and litigation costs. A successful plaintiff could recover the actual damages sustained, together with reasonable attorney fees and litigation costs as determined by the court. The court could also increase the total award of damages to an amount not exceeding three times the actual damages, if the court finds that an insurer has acted unreasonably in denying a claim or has violated certain rules adopted by the insurance commissioner. The new law would not limit a court's existing ability to provide other remedies available at law. The claimant would be required to give written notice to the insurer and to the insurance commissioner's office at least twenty days before filing the lawsuit.

ESSB 5726 would not apply to a health plan offered by a health carrier as defined in the insurance code. The term "health carrier" includes a disability insurer, a health care service contractor, or a health maintenance organization as those terms are defined in the insurance code. The term "health plan" means any policy, contract, or agreement offered by a health carrier to provide or pay for health care services, with certain exceptions set forth in the insurance code. These exceptions include, among other things, certain supplemental coverage, disability income, workers' compensation coverage, "accident only" coverage, "dental only" and "vision only" coverage, and plans which have a short-term limited purpose or duration. Because these types of coverage fall outside the definition of "health plan," ESSB 5726's provision would apply to these exceptions to "health plans."



## **Statement For Referendum Measure 67**

### **APPROVE 67 – MAKE THE INSURANCE INDUSTRY TREAT ALL CONSUMERS FAIRLY.**

Referendum 67 simply requires the Insurance Industry to be fair and pay legitimate claims in a reasonable and timely manner. Without R-67, there is no penalty when insurers delay or deny valid claims. R-67 would help make the Insurance Industry honor its commitments by making it against the law to unreasonably delay or deny legitimate claims.

### **APPROVE 67 – RIGHT NOW, THERE IS NO PENALTY FOR DELAYING OR DENYING YOUR VALID CLAIM.**

R-67 encourages the Insurance Industry to treat legitimate insurance claims fairly. R-67 allows the court to assess penalties if an insurance company illegally delays or denies payment of a legitimate claim.

### **APPROVE 67 – YOU PAY FOR INSURANCE. THEY SHOULD KEEP THEIR PROMISES.**

When you pay your premiums on time, the Insurance Industry is supposed to pay your legitimate claims. Unfortunately, the Insurance Industry sometimes puts profits ahead of people and intentionally delays or denies valid claims. R-67 makes the Insurance Industry keep its promises and pay legitimate claims on time. That is why the Insurance Industry is spending millions of dollars to defeat it.

### **APPROVE 67 – JOIN BIPARTISAN OFFICIALS AND CONSUMER GROUPS SUPPORTING FAIR TREATMENT BY THE INSURANCE INDUSTRY.**

Insurance Commissioner Mike Kriedler, former Insurance Commissioners, seniors, workers, and consumer groups urge you to approve R-67. Supporters include the Puget Sound Alliance of Senior Citizens, former Republican Party State Chair Dale Foreman, the Labor Council, and the Fraternal Order of Police.

### **APPROVE 67 – R-67 SIMPLY MAKES SURE CLAIMS ARE HANDLED FAIRLY.**

If the Insurance Industry honors its commitments, R-67 does not impose any new requirements – other than making sure all claims are handled fairly. R-67 would have an impact only on those bad apples that unreasonably delay or deny valid insurance claims.

For more information, visit [www.approve67.org](http://www.approve67.org).

### **Rebuttal of Statement Against**

Washington is one of only 5 states with no penalty when the Insurance Industry intentionally denies a valid claim. That is why the Insurance Industry is spending millions to defeat R67. Referendum 67 is only on the ballot because the Insurance Industry used its special-interest influence to block it from becoming law. Now you can vote to *approve* R67 to make fair treatment by the Insurance Industry the law. Approve R67 for Insurance Fairness.

#### **Voters' Pamphlet Argument Prepared by:**

STEVE KIRBY, Chair, House Insurance, Financial Services, Consumer Protection Committee; TOM CAMPBELL, Chair, House Environmental Health Committee; DIANE SOSNE, RN, President SEIU 1199; SKIP DREPS, Government Relations Director Northwest Paralyzed Veterans; KELLY FOX, President, Washington State Council of Firefighters; STEVE DZIELAK, Director, Alliance for Retired Americans.

## **Statement Against Referendum Measure 67**

### **REJECT FRIVOLOUS LAWSUITS. REJECT HIGHER INSURANCE RATES. REJECT R-67.**

As if there weren't enough frivolous lawsuits jacking up insurance rates, Washington's trial lawyers have invented yet another way to file more lawsuits to fatten their pocketbooks. They wrote and pushed a law through the Legislature that permits trial lawyers to threaten insurance companies with *triple damages* to force unreasonable settlements that will *increase insurance rates for all consumers*. The trial lawyers also included a provision that *guarantees payment of attorneys' fees*, sweetening the incentive to file frivolous lawsuits. There's no limit on the fees they can charge. What does this mean for consumers? You guessed it: *higher insurance rates*.

### **TRIAL LAWYERS WIN. CONSUMERS LOSE.**

R-67 is a *windfall for trial lawyers* at the expense of consumers. Trial lawyers backed a similar law in California, but the resulting explosion of fraudulent claims and frivolous lawsuits caused auto insurance prices to increase 48% more than the national average (according to a national actuarial study) and *it was later repealed*.

### **CURRENT LAW PROTECTS CONSUMERS.**

Insurance companies have a legal responsibility to treat people fairly, and *consumers can sue insurance companies under current law* if they believe their claim was handled improperly. The Insurance Commissioner can—and does—levy stiff fines, or even ban an insurance company from the state, if the company mistreats consumers.

### **R-67 IS BAD NEWS FOR CONSUMERS. REJECT R-67.**

Not only does R-67 raise auto and homeowners insurance rates, it applies to small businesses and doctors as well. That means *higher medical bills and higher prices for goods and services*.

Laws should reduce frivolous lawsuits, not create more. Reject R-67!

See for yourself. Visit [www.REJECT67.org](http://www.REJECT67.org).

### **Rebuttal of Statement For**

Don't be fooled.

Trial lawyers didn't push this law through the legislature to protect *your* rights. They want this law because it gives them new opportunities to file *frivolous lawsuits* and collect *fat lawyers' fees*.

Trial lawyers don't care if frivolous lawsuits jack up our insurance rates. *Consumers, doctors and small businesses will pay more* so trial lawyers can file more lawsuits and collect larger fees.

Reject frivolous lawsuits and excessive lawyers' fees. Reject 67.

#### **Voters' Pamphlet Argument Prepared by:**

W. HUGH MALONEY, M.D., President, Washington State Medical Association; DON BRUNELL, President, Association of Washington Business; RICHARD BIGGS, President, Professional Insurance Agents of Washington; DANA CHILDERS, Executive Director, Liability Reform Coalition; TROY NICHOLS, Washington State Director, National Federation of Independent Business; BILL GARRITY, President, Washington Construction Industry Council.

Complete Text of



**INITIATIVE MEASURE NO. 960**

(continued)

to, and answer questions from, the public. For the purposes of this subsection, "names of legislators, and their contact information" includes each legislator's position (Senator or Representative), first name, last name, party affiliation (for example, Democrat or Republican), city or town they live in, office phone number, and office email address.

**PROTECTING TAXPAYERS BY REQUIRING FEE INCREASES TO BE VOTED ON BY ELECTED REPRESENTATIVES, RATHER THAN IMPOSED BY UNELECTED OFFICIALS AT STATE AGENCIES**

Sec. 14. RCW 43.135.055 and 2001 c 314 s 19 are each amended to read as follows:

(1) No fee may be imposed or increased in any fiscal year ((by a percentage in excess of the fiscal growth factor for that fiscal year)) without prior legislative approval and must be subject to the accountability procedures required by section 2 of this act.

(2) This section does not apply to an assessment made by an

Complete Text of



**REFERENDUM MEASURE NO. 67**

AN ACT Relating to creating the insurance fair conduct act; amending RCW 48.30.010; adding a new section to chapter 48.30 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. This act may be known and cited as the insurance fair conduct act.

Sec. 2. RCW 48.30.010 and 1997 c 409 s 107 are each amended to read as follows:

(1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

agricultural commodity commission or board created by state statute or created under a marketing agreement or order under chapter 15.65 or 15.66 RCW, or to the forest products commission, if the assessment is approved by referendum in accordance with the provisions of the statutes creating the commission or board or chapter 15.65 or 15.66 RCW for approving such assessments.

**CONSTRUCTION CLAUSE**

NEW SECTION. Sec. 15. The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

**SEVERABILITY CLAUSE**

NEW SECTION. Sec. 16. 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.

**MISCELLANEOUS**

NEW SECTION. Sec. 17. Subheadings and part headings used in this act are not part of the law.

NEW SECTION. Sec. 18. This act shall be known and cited as the Taxpayer Protection Act of 2007.

NEW SECTION. Sec. 19. This act takes effect December 6, 2007.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may



take such other or additional action as is permitted under the insurance code for violation of a regulation.

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. "First party claimant" has the same meaning as in section 3 of this act.

**NEW SECTION. Sec. 3.** A new section is added to chapter 48.30 RCW to read as follows:

(1) Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section.

(2) The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule in subsection (5) of this section, increase the total award of damages to an amount not to exceed three times the actual damages.

(3) The superior court shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant of an insurance contract who is the prevailing party in such an action.

(4) "First party claimant" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

(5) A violation of any of the following is a violation for the purposes of subsections (2) and (3) of this section:

(a) WAC 284-30-330, captioned "specific unfair claims settlement practices defined";

(b) WAC 284-30-350, captioned "misrepresentation of policy provisions";

(c) WAC 284-30-360, captioned "failure to acknowledge pertinent communications";

(d) WAC 284-30-370, captioned "standards for prompt investigation of claims";

(e) WAC 284-30-380, captioned "standards for prompt, fair and equitable settlements applicable to all insurers"; or

(f) An unfair claims settlement practice rule adopted under RCW 48.30.010 by the insurance commissioner intending to implement this section. The rule must be codified in chapter 284-30 of the Washington Administrative Code.

(6) This section does not limit a court's existing ability to make any other determination regarding an action for an unfair or deceptive practice of an insurer or provide for any other remedy that is available at law.

(7) This section does not apply to a health plan offered by a health carrier. "Health plan" has the same meaning as in RCW 48.43.005. "Health carrier" has the same meaning as in RCW 48.43.005.

(8)(a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed.

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

(d) If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty-day period of time in (a) of this subsection.



Your personalized voter information is coming soon with *MyVote*, a new website offered by the Office of the

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- ✓ Your voting history;
- ✓ Your name and address online;
- ✓ Your nearest ballot drop box; and
- ✓ Your ballot status.

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, August 19, 2016 2:34 PM  
**To:** 'Diane Marsh'  
**Cc:** Dan Syhre  
**Subject:** RE: Washington Supreme Court No. 92267-5 - Isodoro Perez-Crisantos v. State Farm Fire & Cas. Co.

Received 8/19/16.

Supreme Court Clerk's Office

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**From:** Diane Marsh [mailto:dmars@bpmlaw.com]  
**Sent:** Friday, August 19, 2016 2:29 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Cc:** Dan Syhre <dsyhre@bpmlaw.com>  
**Subject:** Washington Supreme Court No. 92267-5 - Isodoro Perez-Crisantos v. State Farm Fire & Cas. Co.

Good afternoon.

Attached for filing with the Washington State Supreme Court is The American Insurance Association's Motion for Leave to File an Amicus Brief, and Brief Of Amicus Curiae The American Insurance Association, including appendices, in the above matter.

If I may be of further assistance, please give me a call.

**Diane Marsh**  
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