September 6, 2007

SUMMARY OF REFERENDUM MEASURE 67 TO THE PEOPLE

Concerning insurance fair conduct.

*This summary has been prepared in response to specific questions about the provisions and effects of R-67 and is provided for legislative purposes only; it is **not** provided as an expression for or against the ballot measure. Please remember that it is inappropriate to use public resources to support or oppose a ballot measure. Please refer to the 2007 Legislative Ethics Manual or contact Senate Counsel for further guidance on when and how comment on ballot measures is appropriate.*

During the 2007 session, the legislature passed Engrossed Substitute Senate Bill 5726, which established the insurance fair conduct act. The people have filed a sufficient referendum petition on this measure. If approved by the voters, ESSB 5726 becomes effective 30 days after the election at which it is approved.

BRIEF SUMMARY

If an insurance company unreasonably denies a first party claimant's coverage or violates certain regulations addressing unfair business practices, a court may award the claimant actual damages, and must award the claimant reasonable attorney's fees and litigation costs. A court may also award treble damages. Claimants must give 20 days notice to the insurance company and the Insurance Commissioner before filing suit. Health plans offered by health carriers are exempt from this act.

BACKGROUND

Insurance claims are governed by general principles of contract and tort law, state statute, and regulations promulgated by the Insurance Commissioner (Commissioner). If an insurer denies a valid claim, the insured may sue to enforce the insurance contract and, if successful, require the insurer to pay according to the policy.

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

State law authorizes the Commissioner to promulgate rules prohibiting the insurance industry from engaging in unfair and deceptive business practices. Under current insurance regulations an insurer must attempt, in good faith, to make a fair, prompt, and equitable settlement of a claim when liability is relatively clear and to generally observe standards of reasonableness in all aspects of its claim settlement practices. The Commissioner may fine an insurer for failure to comply with these regulations.

SUMMARY OF R-67

Insurers may not unreasonably deny insurance coverage or payment of benefits. First party claimants to an insurance policy may sue insurers for unreasonable denials of coverage or payments of benefits. A "first party claimant" is defined as an individual, corporation, association, partnership, or any other legal entity who asserts the right to payment as a covered person under the insurance policy at issue.

If the insurer unreasonably denies coverage or refuses to pay benefits, the first party claimant may be entitled to damages, attorneys fess, and litigation costs. A claimant may also recover damages upon a finding that the insurer violated one of five current administrative rules adopted by the Office of the Insurance Commissioner (OIC) and codified in chapter 284-30 of the Washington Administrative Code (WAC) or any additional rules that the OIC adopts to implement this act. The five existing administrative rules regulate insurers' actions in the following areas: (1) specific unfair claims practices; (2) misrepresentation of policy provisions; (3) failure to acknowledge pertinent communications; (4) standards for prompt investigation; and (5) standards for prompt, fair, and equitable settlements.

Upon a court finding that the insurer has unreasonably denied a claim for coverage, refused to pay benefits or violated one of the specified administrative rules, the court must award reasonable attorney's fees and actual and statutory litigation costs, including expert witness fees. The amount of damages awarded is a factual question to be decided by court. The court may also award treble damages to the claimant. A court's ability to make any other determination regarding unfair or deceptive practices or to provide any other available remedy is not limited.

Health plans offered by health carriers are exempt from the coverage of the act.

A claimant must provide 20 days written notice to both the insurer and the OIC before filing suit under this act. The notice must state the legal basis of the lawsuit. If the insurer does not resolve the claim during that 20-day period, the claimant may then sue the insurer without any further notice to the insurer.

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This summary should not be considered legislative history for purposes of interpreting R-67.