

June 3, 2019

From: Paul Terdal, Resident, NW Portland (HD36)
To: House Committee on Business and Labor
Re: Supplemental Testimony in support of HB2956: Transcripts from SB414 (2013)

Dear Chair Barker and members of the House Committee on Business and Labor,

I look forward to testifying today in support of HB2956, which would require Oregon's Insurance Commissioner to:

- Establish and publish a process for investigating consumer complaints about violations of the Insurance Code
- Make recommendations to the legislature about improvements to the Insurance Code regarding investigation and enforcement of consumer complaints about violations of the Insurance Code
- Allow consumers to designate a representative (such as a family member, health care provider, or advocate) that can communicate with the Insurance Commissioner on their behalf about a complaint.

My primary testimony will be by PowerPoint presentation, submitted in a separate file.

HB2956 is largely about implementation of SB414 (2013) – a bill that I wrote with Sen. Shields, which granted the Insurance Commissioner the authority to seek restitution on behalf of consumers. SB414 passed with a broad bipartisan majority, and the endorsement of the Insurance Industry.

<https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB414>

In order to more fully understand the legislature's intent in passing SB414 in 2013, I have attached transcripts from each of the hearings on SB414.

Sincerely,

/s/

Paul Terdal
Resident, NW Portland (HD 36)
Volunteer Consumer Advocate

SB414: Oregon Senate Committee On General Government, Consumer and Small Business Protection; Hearing of 4/12/2013

Bill Information: <https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB414>

Hearing Information: <https://olis.leg.state.or.us/liz/2013R1/Committees/SGGCP/2013-04-12-08-00/SB414/Details>

Transcript:

Sen. Shields:	00:01	... And open a work session on Senate Bill 414, Channa.
Channa Newell:	00:09	Just a moment please, Senate Bill 414. We scheduled for a public hearing back in February but ended up canceling that public hearing as it wasn't prepared yet. So we actually do need to open the public hearing before we go to work session.
Sen. Shields:	00:23	Okay, thank you. I will open the public hearing on Senate Bill 414. Could you please key that for us?
Channa Newell:	00:28	I certainly will. Senate Bill 414 requires the Director of the Department of Consumer and Business Services acknowledge receipt of complaint against an insurer and to timely investigate the complaint and notify the person submitting the complaint of the investigation. It also allows the Director to seek restitution on behalf of the consumer for actual damages suffered as a result of the insurer's violation of the insurance code or breached contract.
Channa Newell:	00:52	The proposed statute on amendment deletes the requirement that the Director of the Department of Consumer and Business Services acknowledge receipt of complaint against an insurer within ten days of receiving the complaint. And it deletes the requirement that they investigate. It retains the ability of the Director to seek restitution on behalf of the consumer.
Channa Newell:	01:11	Just this morning we received the Dash 2 Amendments from Senator George's office. Excuse me. Which add a clarification that the ability to seek restitution on behalf of the consumer is at the Director's authority and except as otherwise, provided it does not create a cause of action for any other person... limited to the Director.
Sen. Shields:	01:44	Alright, thank you. Those were from Senator George.
Channa Newell:	01:49	Let me get the sign-in sheet.
Sen. Shields:	02:14	Yes. Do we have Paul Terdal in the room or Shane Jackson?

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Shane Jackson:	02:20	Chair Shields, Mr. Terdal is indisposed right now until about nine o'clock. If we could hold it off 'til nine o'clock that'd be a great benefit, but we could go ahead if we need to.
Sen. Shields:	02:29	Yeah, I wouldn't mind if you could just do the best you can Shane, while representing him?
Shane Jackson:	02:45	Sure, okay thanks. For the record, my name is Shane Jackson, I'm the lobbyist for Autism Speaks. I'm here today to represent our opinion on Senate Bill 414. We look at the Dash 1 and Dash 2 amendments as friendly amendments and agree that they should be adopted under the Bill. Just real quickly, Senate Bill 414 came as a process that we did with our constituents and stakeholders and supporters of the Autism Speaks, and a few other organizations over the last year or so. We came across several issues that our people were having as they were trying to seek restitution. As they were trying to seek finality to their issues. We just thought this was a great little bill to come up with and help our people out. We do hope you will pass it today.
Sen. Shields:	03:40	Thank you very much, appreciate your testimony, Shane. Could we please bring up Justin Delaney and John Powell?
John Powell:	03:58	Mr. Chair, members of the committee, my name is John Powell representing The Standard. I wanted to explain the lateness of the amendment. We received an email from Mr. Delaney a couple days ago, and I think it started with "Oh crap, I just found out something about the Senate Bill 414, that we need"-
Sen. Shields:	04:16	Is that a legal term?
John Powell:	04:17	That's a legal term. So I grabbed the first person in the hall I could find and it was Senator George and he signed for the Dash 2 Amendments. Mr. Delaney is here to briefly explain to you the amendment. We know of no opposition to it.
Justin Delaney:	04:38	Thank you Mr. Chair, members of the Committee, I am Justin Delaney, Vice-President at The Standard. I can neither confirm nor deny that my email started with "Oh crap." I do think there is a small quirk to this legislation, and that's why we had the Dash 2 drafted. First, I'd like to say, I think this is the right direction to go in. This type of restitution authority vested in the Commissioner fits with Oregon statutory framework for insurance regulation and its also consistent with the NAIC. That's the National Association of Insurance Commissioners Model Act, on which Oregon law is based which leaves the authority with the insurance division.

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Justin Delaney:	05:23	The Dash 2 Amendment that you now have, clarifies that a private right of action does not originate from this bill. There's been precedent in Oregon and other states where courts have interpreted similar statutes where powers vested in a regulatory agency, if the agency chooses not to take action or some other circumstance occurs, and a plaintiff files suit on several occasions the courts have inferred a private right of action. We would oppose that kind of bill, but with the Dash 2 amendments we can support this bill and appreciate your consideration of it.
Sen. Shields:	06:04	Alright, thank you very much gentlemen.
Justin Delaney:	06:05	Thank you.
Sen. Shields:	06:06	So colleagues, my intention today is to keep this bill alive, move it to Rules. We can do that, we can adopt the Dash 1 and move it to Rules, but we don't have the fiscal for the Dash 2, since we just received it. Senator Baertschiger is on the way, I don't have any problems with moving the Dash 1's and the Dash 2's when Senator Baertschiger gets here momentarily. We can suspend the Rules, adopt both Amendments and send it on to Rules.
Sen Prozanski:	06:38	Chair, I forgot, why would we need the paperwork to move it to another committee?
Sen. Shields:	06:44	That's-
Channa Newell:	06:45	General Rule, if the Senator presents.... To Chair Shields, the General Rule is to have all of the paperwork before we move it along. If you would like to move it out in order to send it to Rules without the fiscal. I understand-
Sen Prozanski:	06:54	-Rule Suspension
Channa Newell:	06:54	-that the Rule would need to be suspended and we need one more member in-
Sen Prozanski:	06:57	We need to work on the Rules.
Channa Newell:	06:57	-order to do that.
Sen. Shields:	07:00	It does seem a little silly.
Sen. Shields:	07:03	Yes Senator Baertschiger is on the way, but may be a little while? Is that correct? Okay. I'll just leave the word. We're-
Channa Newell:	07:12	-We're in Public Hearing
Sen. Shields:	07:12	-in Public Hearing, right? So I will close Public Hearing on Senate Bill 414 and open a work session on Senate Bill 414
Sn Baertschiger:	07:22	Many apologies.
Sen. Shields:	07:26	Just in time though, I appreciate it. Senator Monnes Anderson, can you start with the Dash 1's?
Sen. Anderson:	07:32	We don't have it. Okay, yes. Senator Shields, I move that we adopt the Dash 1 amendment in the Senate Bill 414.
Sen. Shields:	07:40	Senator Monnes Anderson, moves the Dash 1 amendments into Senate Bill 414. Is there any discussion? Any objection? So moved. Then you need to make motion to suspend the rules to adopt the Dash 2's.

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Sen. Anderson:	07:52	Senator Shields, I move to suspend the Rules in order that the Committee could adopt the Dash 2 Amendments.
Sen. Shields:	08:04	Senator Monnes Anderson has moved to suspend the Rules so that the Committee can adopt the Dash 2 Amendments and let the record reflect that Senator Baertschiger has joined the Committee. We have Senator Baertschiger, Senator Monnes Anderson, myself, and Senator Prozanski present. Is there any discussion about the motion to suspend the Rules, to adopt the Dash 2? Is there any objection? So moved. Then we need to actually adopt the Dash 2.
Sen. Anderson:	08:34	To bring you up to date. You want to be brought up to date?
Sn Baertschiger:	08:38	Yes
Sen. Anderson:	08:42	We had a testimony.
Sn Baertschiger:	08:42	Okay.
Sen. Shields:	08:42	My intention is to move this bill to Rules, keep it alive. We have the fiscal paperwork on the Dash 1 but not the Dash 2. So we will need two-thirds vote, in order to suspend the rules, to adapt Dash 2, and move it on to Rules, if you're comfortable with that.
Sen. Anderson:	08:56	The Dash 2's came from Larry George and had positive feedback from-
Sn Baertschiger:	09:08	-Okay. I guess I have no problem. Let's get on with this.
Sen. Shields:	09:13	Alright.
Sen. Anderson:	09:13	Yeah.
Sn Baertschiger:	09:13	(laughs)
Sen. Anderson:	09:19	Chair, I move to adopt the Dash 2 amendments into Senate Bill 414.
Sen. Shields:	09:23	Senator Monnes Anderson has moved the Dash 2 Amendments into Senate Bill 414. Is there any discussion? Is there any objection? So none, so moved. Can you make a motion to...
Sen. Anderson:	09:38	Do we have to suspend rules? Move without a fiscal?
Channa Newell:	09:44	Sure. Rules are suspended.
Sen. Anderson:	09:44	-Oh so good. Okay, I'm not sure my wording will be right. I move Senate Bill 414, as amended with the Dash 1's and Dash 2's...
Sen Prozanski:	09:56	-With a due pass Committee on Rules.
Sen. Anderson:	09:58	-With a due pass recommendation to the Committee of Rules.
Sen Prozanski:	10:02	Actually, wouldn't it be to the floor, and then subsequent referral-
Sen. Anderson:	10:05	That's what I said, yeah. Okay, I-
Channa Newell:	10:07	-Attention sir.
Sen. Shields:	10:08	Yeah.
Sen. Anderson:	10:08	Yeah. I move Senate Bill 414 as amended with the Dash 1's, Dash 2's to the floor with a due pass recommendation with a referral or subsequent referral to the Committee on Rules.

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Sen. Shields:	10:21	Senator Monnes Anderson has moved Senate bill 414 with the Dash 1 and Dash 2 amendments to the floor with a subsequent referral to the Committee on Rules. Is there any discussion? Jenny Craig please call the role.
Jenny Craig:	10:39	Senator Baertschiger?
Sn Baertschiger:	10:39	Yes.
Jenny Craig:	10:39	Senator Monnes Anderson?
Sen. Anderson:	10:39	Aye.
Jenny Craig:	10:39	Senator Prozanski?
Sen Prozanski:	10:44	Aye.
Jenny Craig:	10:44	Vice-Chair George
Sen. Shields:	10:45	Excused.
Jenny Craig:	10:47	Chair Shields
Sen. Shields:	10:48	Chair votes. Aye, the bill is on the way to the Rules Committee. I will close the work session on Senate Bill 414 and

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Bill Information: <https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB414>

Hearing Information: <https://olis.leg.state.or.us/liz/2013R1/Committees/SRULES/2013-06-12-15-00/SB414/Details>

Transcript:

Sen. Rosenbaum:	00:00	Senators in the room, I know that [inaudible] is here on House Bill 3294, but I also was handed a note that we have a witness who has to leave in five minutes on another bill. So I think that to accommodate somebody who's not usually in the building, we will open a public hearing for the purposes of ... and if that's okay with this senator, and you can bear with us for a moment, I'll open a public hearing on Senate Bill 414A. Lori, could you briefly tell us what this bill is?
Lori Brocker:	00:36	I'd be happy to, madam Chair, Members of the Committee, Senate Bill 414A allows the director of the Department of Consumer and Business Services to seek restitution and other equitable relief on behalf of the consumer for actual damages the consumer suffers as a result of insurer's violation of insurance code, breach of contract or policy, or violation of applicable federal law. It clarifies the action by the director is not a right of action for any other person, it declares emergency, it's effective on passage. There's no revenue impact, no fiscal impact on the measure.
Sen. Rosenbaum:	01:02	Okay, and thank you Lori, and we do only have two people signed up testify on this bill, so I'll call them both and they are Paul Terdal and Lou Savage. If you'd both like to come forward.
Sen. Rosenbaum:	01:13	Thank you for waiting so patiently.

<p>Paul Terdal:</p>	<p>01:26</p>	<p>Madam Chair, members of the committee my name is Paul Terdal and I'm a resident of North West Portland and Senator Burdick's district, so good to be here and thank you for accommodating my schedule. I'm a volunteer advocate working primarily with individuals with autism. But also the people how have been having concerns with processing insurance claims and over the last two years, I have worked with nearly 100 families, purely as a volunteer helping them either fill out insurance claims or fill out appeal related claims. And in many of those cases we had been extremely successful. I have used the external review process for instance, about two dozen times and have succeeded in almost every instance, resulting in hundreds of thousands of dollars, probably close to a million dollars in benefits paid to consumers, which has been great.</p>
<p>Paul Terdal:</p>	<p>02:25</p>	<p>What we ran into though, and there were obviously, in appeals and the interactions with the insurance companies, there were obviously case where you don't agree with the insurance company, and in many of those we have worked with the consumer complaints process with the insurance division. And as we got into that as novices, as consumers, we found that there were some cases where, you know we would file a complaint, the insurance company would agree and say "You know what you're right, we made a mistake we'll take care of it." And those obviously got resolved very quickly.</p>
<p>Paul Terdal:</p>	<p>02:57</p>	<p>And then we've had other cases where, we kind of hear feedback from the insurance division that thought we were right, that maybe the contract terms had been violated or that the insurance company wasn't following the law correctly, but we weren't really getting anything done. We would sort of hear feedback saying "Yeah, we think you're onto something." But we didn't really get anything. And at first we were frustrated, and we had an initial draft that was basically aimed at transparency in the consumer complaints process, but the more we got into it, and talked to people in the insurance division and listened to some public testimony we realized that, there's actually a fundamental issue, and that is that the insurance division doesn't appear to have the authority currently to actually require restitution to a consumer. As we understand it, the insurance division can issue a civil penalty, it could revoke an insurer's license to practice, it can reach an agreement with an insurance company, but actually requiring restitution, compelling something, doesn't appear to be an authority that it had.</p>

Paul Terdal:	04:00	And so, we put in Senate Bill 414 to basically help the insurance division help us as consumers resolve these things, and what ... I was very happy to see in some of the testimonies on House Bill 3160, which I will give a quick plug for, I think it's a great bill and I would love to see it go forward, that's the unfair trade practices bill. But many of the insurance companies who complained about that Bill were actually putting forward Senate Bill 414 as an alternative they liked. I think we just passed out some notes from the Standard and State Farm and so forth, regarding that. And so we think it is something that we would really encourage you to take action on move in this session.
Paul Terdal:	04:42	Thank you.
Sen. Rosenbaum:	04:43	Thank you for your testimony.
Sen. Rosenbaum:	04:46	Good afternoon.
Lou Savage:	04:47	Madam Chair, members of the committee. Lou Savage, Oregon insurance commissioner.
Lou Savage:	04:52	This is not our Bill as Mr Terdal pointed out, but it certainly would be an additional tool in our tool box to help consumers. As Mr Terdal pointed out, we do have authority, fairly robust authority under an anti-fraud provision in the insurance code, as well as the Unfair Claims Settlement Practices Act.
Lou Savage:	05:14	What we don't have is the authority to order restitution, which is in our view, one of the most important things we could do, which is to actually put the dollars back into consumers' pockets quickly without the need for a consumer to go to court to do that. The insurer or the producer would certainly have the right to ask for an administrative hearing so that there would be due process, but that process is certainly a lot quicker and a lot more expedient than court which I think was a frustration that Mr Terdal certainly expressed to us in the past.
Lou Savage:	05:54	So what we have the authority to issue civil penalties, we actually don't have the authority right now to put dollars back into consumers' pockets.
Sen. Rosenbaum:	06:05	Okay. Thank you for your testimony. Are there any questions?
Sen. Rosenbaum:	06:08	Yes, Senator Ferrioli and then Senator Beyer.
Sen. Ferrioli:	06:12	Thanks very much, Madam Chair.
Sen. Ferrioli:	06:14	So I'm going to assume that there is no cost to consumers for this service? Is that correct, commissioner?
Lou Savage:	06:20	Chair Rosenbaum. Senator Ferrioli, absolutely not.
Sen. Ferrioli:	06:23	Thank you. And Madam Chair, may I continue?
Sen. Rosenbaum:	06:26	Yep. Follow up.
Sen. Ferrioli:	06:27	Two. Is it complaint driven? Does the consumer have to contact DCBS? Or can DCBS initiate a complaint without the permission of the consumer?

Lou Savage:	06:36	No. In the case of restitution, I can't imagine a situation where we would do it on our own, because we actually wouldn't know who the consumer was or would've been harmed.
Sen. Ferrioli:	06:47	And Madam Chair, does the consumer have the right to litigate further if they are not satisfied with their remedy that the DCBS negotiates or settles for or compels?
Sen. Ferrioli:	07:02	In other words, is there an estoppel against the consumer, if you go out and take the agency to action and compel a solution, but the consumer's not satisfied with it?
Lou Savage:	07:12	Chair Rosenbaum. Senator Ferrioli. With respect to the restitution order itself, we would certainly get the permission of the consumer to issue that order and enter into any kind of settlement. I would say that there may be circumstances where there may be damages above and beyond the restitution that we order. But my experience in court, former litigator, is that a court would look at whatever damages, we ordered and recovered on behalf of the consumer, to be offset against any other claim that a consumer may have.
Sen. Ferrioli:	07:56	Madam Chair. That is the crux of the question. Wouldn't the court regard this settlement as liquidated damages?
Lou Savage:	08:05	Well, I'm not going to give you legal advice. But that would be certainly the actual damages. Not liquidated damages because that's really more of a contract theory. But the actual ... Whatever actual damages that were recovered as a result of the order of restitution would certainly be offset.
Sen. Ferrioli:	08:25	And Madam Chair, I see that the consumer would not have any recourse against the agency.
Lou Savage:	08:36	Madam Chair. Senator Ferrioli. No more or no less than they have now.
Sen. Ferrioli:	08:41	So there's no ... There would be no private right to action to any other individual? I just assumed that meant the agency as well.
Sen. Rosenbaum:	08:51	And Senator Ferrioli. I apologize for interrupting the witness, but I'm just, you know, always as a last resort read the actual language of the Bill. And I'm looking on page two of the Bill, lines one through three, which say an action of proceeding that they're the director institutes, under subsection one of this section is an exercise of the director's regulatory authority and accept as otherwise provided in section three, does not create a cause of action for any other person. So it does sound like that they may not fully address what Senator Ferrioli was asking you, but it sounds like this is not creating litigation that wouldn't exist notwithstanding the language of the Bill. So....
Lou Savage:	09:34	Madam Chair. That's how I read the language.

Sen. Ferrioli:	09:39	So I guess I'm going to assume Madam Chair that means the consumer unsatisfied with the solution can sue the agency?
Lou Savage:	09:48	Madam Chair. Senator Ferrioli. I think ... The question would be the other person wherever that would include the agency itself.
Sen. Ferrioli:	09:57	That is the question. We agree on the question, Madam Chair. Thank you.
Sen. Rosenbaum:	10:03	Okay. I don't see any more questions. So thank you both for your testimony and we don't have anybody else signed up to testify. Is there anyone else here to testify on Senate Bill 414?
Roger Beyer:	10:18	Thank you, Madam Chair, members of the Committee. I'm Roger Beyer, representing Independent Agents of Oregon and National Associations of Insurance and Financial Advisors.
Roger Beyer:	10:26	And I didn't sign up to testify, but there was a phrase that the commissioner just used that gave me some pause or concerns so I'd like to have him to come and clarify. He said insurers or producers, actions against insurers or producers and I don't find producers anywhere in this Bill. And so I just wanted to make sure or to have him clarify possibly, where he would find the authority in this Bill to take action against a producer. And in Oregon law, producers are agents. So with that, I'll put on the record if he'd be so good as to come back up and point towards where that authority would be, I'd be very thrilled.
Roger Beyer:	11:08	Thank you, Madam Chair.
Sen. Rosenbaum:	11:15	Welcome back.
Lou Savage:	11:17	Chair Rosenbaum. I sit corrected. It is ... This Bill deals directly with insurers.
Roger Beyer:	11:24	Thank you, Madam Chair.
Sen. Rosenbaum:	11:25	Great. Glad we could clear that up.
Sen. Burdick:	11:28	Madam Chair. Senator Burdick.
Sen. Burdick:	11:30	To former Senator Beyer, we miss your attention to detail in the process. (laughing)
Sen. Rosenbaum:	11:38	Okay. So we ... I think we're only in a public hearing right now, but we don't have anyone else signed up to testify. And we probably could move through this pretty quickly. So I'll close the public hearing, open a work session on Senate Bill 414A.
Sen. Rosenbaum:	11:52	And Senator Beyer-
Sen. Beyer:	11:56	Madam Chair, I move Senate Bill 414A to the floor with a Do Pass recommendation.
Sen. Rosenbaum:	12:02	Thank you. Senator Beyer has moved Senate Bill 414A to the floor with a Do Pass recommendation. Any discussion on the motion? Any objection to the motion?
Sen. Rosenbaum:	12:12	Senator Ferrioli?
Sen. Ferrioli:	12:13	No.
Sen. Rosenbaum:	12:15	Okay. And Mike, could you please call the roll on the motion?
Mike Reiley:	12:18	Senator Beyer?

Sen. Beyer:	12:18	Yes.
Mike Reiley:	12:19	Senator Burdick?
Sen. Burdick:	12:29	Aye.
Mike Reiley:	12:30	Senator Starr.
Sen. Rosenbaum:	12:30	He's excused.
Mike Reiley:	12:30	Senator Ferrioli?
Sen. Ferrioli:	12:30	No.
Mike Reiley:	12:30	Chair Rosenbaum?
Sen. Rosenbaum:	12:31	Aye. And the motion carries.
Sen. Rosenbaum:	12:33	And I see that Senator Shields is the chief sponsor of this Bill. So we'll ask him to carry it and I'll close the work session on Senate Bill 414A.

SB414: Oregon House Committee On Rules; Hearing of 6/24/2013

Bill Information: <https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB414>

Hearing Information: <https://olis.leg.state.or.us/liz/2013R1/Committees/HRULES/2013-06-24-15-00/SB414/Details>

Transcript:

Rep. Garrett:	00:01	I'm now going to open a public hearing on Senate Bill 414.
Paul Terdal:	00:08	Hello, this is Paul.
Erin Seiler:	00:21	Hi, Paul. This is Erin Seiler calling from the House Committee on Rules. We are just going to start the public hearing on Senate Bill 414 if you want to hang on for one second.
Paul Terdal:	00:33	Thank you. I'm ready.
Erin Seiler:	00:33	Mr. Chairman, members of the Committee, Senate Bill 414 allows Director of Department of Consumer and Business Services to seek restitution and other equitable relief on behalf of consumer for actual damages consumer suffers as a result of insurer's violation of insurance code, breach of contract or policy, or violation of applicable federal law. Clarifies action by Director is regulatory and does not create cause of action for any other person. There is an emergency clause on this measure. There's no revenue, no fiscal impact. It comes to you from the Senate floor with 19 aye votes, 10 noes, and one member was excused.
Rep. Garrett:	01:07	We have Mr. Terdal on the phone, and Lou Savage will be testifying. Paul, why don't we have you go ahead.
Paul Terdal:	01:18	Thank you, Chair Garrett, members of the committee. My name is Paul Terdal, and I'm a resident of Northwest Portland in House District 36. I am speaking today as a consumer of the insurance industry and as a volunteer advocate. Over the last couple of years, I have helped close to a hundred families with insurance-related issues and appeals, primarily related to health insurance for treatment of autism. In working either directly through insurance industry appeals processes and with the insurance division, in many cases we've been extremely successful. We have won more than 20 external review appeals overturning denials of medically-necessary evidence-based care for autism. It's really been extremely helpful when we have been able to get the process to work.

Paul Terdal:	02:17	What we have found though is that when we really have tough issues where we simply have a disagreement with an insurer over contract or over administrative, the application of the insurance code, that we really haven't had a good way of resolving that. When we work with the insurance division, what we have found is they can be very helpful. Sometimes they'll even tell us, "You know what? I think they're violating your contract here," or, "I think that you may want to hire a lawyer to take a look at this one." We've basically found that the insurance division, they're helpful. But, ultimately, when it comes to actually compelling an insurer to pay a claim, if they feel that it's justified, they simply don't have that authority right now.
Paul Terdal:	03:09	The purpose behind Senate Bill 414 is basically to strengthen the existing processes that we already have so that if we have a case where an insurance company is non-compliant with a contract or is not following the insurance code and the insurance division is supporting the consumer on that, this would allow the insurance division to help out the consumer and basically go and press the insurance company to actually pay that claim. I would not look at this as a substitute for a private right of action, you know, like House Bill 3160 would do. It's a separate process that I think is also very important to basically strengthen the existing administrative processes and hopefully resolve a lot of these cases without ever any need to seek a judicial solution. I think this would really help a lot of the cases that I have worked with, a lot of the families that I have worked with. I would really encourage you to support this bill. Thank you. Do you have any questions?
Rep. Garrett:	04:14	Thank you. We'll hear from Mr. Savage and then take questions at the end.
Paul Terdal:	04:20	Thanks.
Lou Savage:	04:20	Thank you, Chair Garrett, Vice Chair Hoyle and Hicks. Lou Savage from the insurance division. Senate Bill 414 is not our bill, but we do think that it would add a great tool to the insurance division toolbox. We have a strong insurance code. It prohibits misrepresentation of facts on the policy language. It prohibits false and deceptive and misleading statements. It contains prohibitions under the Unfair Claims Settlement Practices Act. We have some tools. We have the authority to assess civil penalties. We can examine records. We have the authority to approve policy forms and review insurance rates for health insurance.

Lou Savage:	05:06	<p>What we don't have is the authority to order restitution. And the reason that that can be important for consumers is that it actually is the authority to put cash back into a consumer's pocket who has been damaged by an insurance company. For that reason, we think it's an important tool in the toolbox. The way the bill is written, it gives the division the authority to order restitution, but it is couched in the "may" language. It's discretionary on the part of as this language is the Director of the Department of Consumer and Business Services, which the insurance division is part of.</p>
Lou Savage:	05:50	<p>It is, again, it's discretionary. It would be an important tool particularly for claims which are small enough that a consumer has really been damaged but possibly not large enough for an attorney to take the case. It would be relatively quick. There is a due process element for the insurer. They could ask for a hearing if the division decides to assess a penalty. It would be resolved, again, in certainly a much shorter period of time than litigation would be, if that was the only alternative. I'd be happy to answer any questions.</p>
Rep. Hicks:	06:35	<p>Representative Hicks. Thank you. Thank you. On page two, lines one through three, particularly line three, this does not create a cause of action for any other person. In the event that a consumer is dissatisfied with the department's handling of or lack of handling of their perceived restitution claim, is there a recourse, remedy? What happens then if the department does not seek restitution on behalf of a consumer who happens to disagree and feel that restitution is warranted in the case? For either witness.</p>
Lou Savage:	07:14	<p>Chair, Paul, I'll take a shot at it, and you can jump in too.</p>
Paul Terdal:	07:19	<p>Please go ahead, take it.</p>

<p>Lou Savage:</p>	<p>07:21</p>	<p>Chair Garrett, Vice Chair Hicks, I don't think this language takes away any remedy that a consumer has now. For example, we often get calls from a consumer who has had a claim denied. Health insurance, for example. They call our consumer advocates. They believe that the claim is covered under their policy, we do an analysis. If we believe that in fact the consumer is entitled to have that claim covered, we contact the company and we urge them to cover the claim. Often, it happens. There are circumstances under which we look at the policy, we hear what the consumer has to say, and we tell the consumer, "I'm sorry, we just don't think that claim is covered under your policy." Currently, they would have the right to sue us. I believe it's a discretionary act on our part, on the part of the division. There's that law, that discretionary act concept. In addition to that, just practically, in the 10 years that I've worked with the department, we have never had a consumer who's been dissatisfied with our decision suing the department.</p>
<p>Rep. Garrett:</p>	<p>08:47</p>	<p>Follow up?</p>
<p>Rep. Hicks:</p>	<p>08:50</p>	<p>I guess. I mean, indeed, this is going to statutorily, I think, prohibit a cause of action based upon dissatisfaction of this particular decision by the department.</p>
<p>Lou Savage:</p>	<p>09:03</p>	<p>Chair Garrett, Vice Chair Hicks, we can have a lawyer's argument here. I think the language says it does not create a cause of action. I don't think that means it takes away any existing cause of action. I believe what this language was for, and I think was an amendment actually, was to address the issue of whether this creates an additional, private right of action over and above what currently exists in the law. The bill that created an additional right under the Unlawful Trade Practices Act, which I know was debated both in the House and in the Senate, there was some concern that giving the division the authority to order restitution somehow would ... a private party would be able to strap a cause of action just because of the order, the authority to order restitution. I think this language just says you don't get anything more than what you already have. I don't think it prohibits anything that would exist under current law.</p>
<p>Rep. Garrett:</p>	<p>10:15</p>	<p>Representative Holvey?</p>
<p>Rep. Holvey:</p>	<p>10:15</p>	<p>Thank you, Mr. Chair. In this restitution that could be ordered under this bill by DCBS, do the actual damages include attorney fees for the consumer?</p>

Lou Savage:	10:37	Chair Garrett, Representative Holvey, the division would be acting on its own. We would not ask for attorney's fees. If the insurer asks for a hearing under the Administrative Procedures Act and we had to involve the Department of Justice, it would be a contested case hearing, and we had to involve the Department of Justice, then I think the Department of Justice could ask for attorney fees, but it would be under very limited circumstances. The consumer would not need to hire a private attorney to be able to seek restitution. They would work with the division to get that remedy.
Rep. Garrett:	11:25	Follow up?
Rep. Holvey:	11:25	Follow up. Just listening to the testimony and some experience I've had with consumers around insurance policies, it seems like they usually do need to go to an attorney to figure out where their legal status is. And so that's why I was asking. If a consumer comes to you, or an attorney on behalf of a consumer comes to you to try to seek restitution, those attorney fees, if a consumer uses an attorney, then wouldn't be paid for through your restitution is I think what I'm hearing you say.
Lou Savage:	12:00	Chair Garrett, Representative Holvey, I think the reason this bill is before you right now, and Paul Terdal can speak to this, is that consumers are frustrated that they have to hire a lawyer in order to get this kind of restitution. I think our history is that when we are given the authority that we need, we are actually very effective in getting the remedy the consumers need. A consumer could avoid coming to the department, just like they can today. If they decided that they wanted to hire a lawyer on their own and not go through the department, they could certainly do that. But they wouldn't need to if they came to the division.
Rep. Garrett:	12:51	Follow up?
Rep. Holvey:	12:51	No follow up.
Paul Terdal:	12:52	Chair Holvey, I'm sorry, Chair Garrett, if I may follow up on that?
Rep. Garrett:	12:56	Please, go ahead.

Paul Terdal:	12:59	As Commissioner Savage mentioned, a lot of my own idea for this would be to resolve at least some of the simple cases without any need for an attorney. I personally do not see this as a substitute for a private right of action bill, such as House Bill 3160. I look at it as the complement, and I think there's a role for both of those kinds of things. The kind of things that brought this one up were cases where we filed a consumer complaint with the insurance division, we heard feedback from the insurance division that they thought that we were probably right, and yet they do not have any ability to actually get a claim. In one of those cases, the consumer got a letter back politely suggesting they seek legal counsel. In another case, the dollar value wasn't high enough to warrant that, and it basically just got dropped. The goal here really is for those cases that you just want to get that are relatively clear-cut where the consumer has the insurance division's support and just giving the insurance division the power to act, but not taking away from or substituting for a much more complicated case where you really would need an attorney to pursue a major case.
Rep. Garrett:	14:34	Follow-up question?
Rep. Holvey:	14:36	Follow up to that. I appreciate your comments, but I'm assuming that you're an attorney, or not, but you're talking about bringing these claims forward for people. So, who's paying you to do that?
Paul Terdal:	14:52	Chair Garrett, members of the committee, I'm actually not an attorney. I'm just an ordinary consumer who has been working with his own family's claims, and just through friends and networking just purely as a volunteer helping other people through the process. It is definitely a hard process. I've been doing everything purely as a volunteer just for the sake of helping people. I'm thrilled by the amount of progress that we have been able to make. I'm very much focused on getting results for consumers.
Rep. Garrett:	15:29	Follow-up question?
Rep. Holvey:	15:31	Follow up maybe on a different line. I appreciate that this is so complex they need help from people to get through it, but not an attorney. The next question I have is really around what's currently available to the consumer when you say that this doesn't create a cause of action. They have any cause of action they currently have under law, which I believe they can sue for breach of contract. How do the attorney fees work in that part of law where a consumer would find that the restitution wasn't ample, or did not agree with the DCBS determination under this and decided that they wanted to sue under the breach of contract with the insurer? How do the attorney fees work in that situation?

Paul Terdal:	16:25	Chair Garrett, Representative Holvey, members of the committee, I am probably the perfect example of that question. I have an individual plan for my family. That means that I don't have protection from federal law like ERISA, as somebody who gets their insurance through an employer would. My own contract with my insurer has a clause in it stating that there is no possible recovery of attorney's fees. In one of these cases, I did actually consult with an attorney about possibly pursuing litigation. The net net was for what would have amounted to about \$20,000 in recovery, which is certainly a significant amount, I could have been looking at \$50,000 to \$70,000 in attorney's fees that would never have been recovered, even if I had been successful.
Paul Terdal:	17:17	As a practical matter, that's a theoretical private right of action. But it's not a practical one, and that's why I'm hoping that we can get something like House Bill 3160 separately so that there is a meaningful private right of action where you can get a reasonable recovery of attorney's fees. Senate Bill 414 is different. This is really focused on purely administrative processes to basically strengthen the ability of the insurance division to take action. I would not look at it as a substitute for the private right of action. Whether we do it in this session or another session, I'm certainly hoping we can do something to strengthen the right of the consumers to take action on their own where that's necessary.
Rep. Garrett:	18:02	Representative Berger.
Rep. Berger:	18:07	Thank you. Lou, here's my question. Under the provisions of this, if someone should come and say, "We seek restitution from you against our insurance company." Maybe a de minimis amount. Nothing is de minimis to somebody, okay? The Director of DCBS then would go to a hearings process? What would be the next step? Would he investigate personally? What would be the next thing that would happen under that?
Lou Savage:	18:40	Chair Garrett, Representative Berger, we would handle it as we do other enforcement cases. It probably would come in through the consumer advocacy hotline that we have. It would be assigned to an investigator, and then we have an enforcement officer who works with the investigator. We would ultimately make a decision as to whether to pursue it. Likely, we would have already made contact with the insurer and insurance company even before we got that far. What happens now is we get a phone call, the consumer advocate takes the information, makes a decision based on the facts, and then contacts the insurance company to get their side of the story, yeah.

Rep. Berger:	19:31	Can I pursue this? This all happens outside of the language of this bill already?
Lou Savage:	19:40	Yes.
Rep. Berger:	19:41	That bill, this bill doesn't change any of that process?
Lou Savage:	19:43	No.
Rep. Berger:	19:44	Okay.
Lou Savage:	19:44	No.
Rep. Berger:	19:47	What does this bill change?
Lou Savage:	19:48	This bill changes the ability of the insurance division to actually say to the insurer, I'll give you an example, to say to the insurer, "There is money that you have that belongs to the consumer. Pay it back to them."
Rep. Berger:	20:03	Okay. Here's my question.
Rep. Garrett:	20:06	Follow up.
Rep. Berger:	20:07	Thank you. If you determine that you don't really think restitution is owed, or you think it's a thousand dollars and the consumer thinks it's \$2,000, does that consumer, can then they sue you for not getting as much restitution as they wanted? That's the critical question I was trying to get at in our brief conversation.
Lou Savage:	20:37	Chair Garrett, Representative Berger, when I was having this discussion with Representative Hicks, it's really the same issue that we have today. That is that we every day tell consumers that the claim that you think you have actually does not exist. Now, this is an additional remedy that the consumers have. Theoretically, a consumer could sue us today for a decision that we make not to go forward on a complaint that they have.
Rep. Berger:	21:13	This language, Mr. Chair, does not change that. I guess that's what I was looking-
Lou Savage:	21:17	Right.
Rep. Berger:	21:17	... to absolutely establish what other thing-
Lou Savage:	21:20	Right, right.
Rep. Berger:	21:21	We're not causing any kind of an added-
Lou Savage:	21:28	Added exposure.
Rep. Berger:	21:28	Added exposure, thank you.
Rep. Garrett:	21:32	Further questions? Representative Hicks.
Rep. Kennemer:	21:35	Kennemer.
Rep. Garrett:	21:35	Oh, I'm sorry. Representative Kennemer. Go ahead.
Rep. Kennemer:	21:37	Maybe more comment. It just seems to me this is a pretty quick and simple potential remedy for families that are usually typically stressed out and not in a very good position to negotiate with someone. I really like the bill.
Rep. Garrett:	21:55	Thank you. Representative Hicks.
Rep. Hicks:	21:57	There is no expenditure impact. Who does pay for this? Who does pay for your action?

<p>Lou Savage:</p>	<p>22:05</p>	<p>Vice Chair Hicks, we currently have an enforcement unit. We have the capacity to handle more cases, because we will just prioritize the most important cases. We will eventually get to all of them as we have done. There is an existing unit that handles this. We assess penalties when required. We have on our website, we list the penalties that we assess against both carriers and producers. The structure and the function exists today. The only thing we're really doing is adding an additional remedy for consumers. I will tell you that on Friday we got a call from one of the members of this body. One of their constituents had been with an insurance company, one insurance company, and it was an automatic withdrawal from her account. She changed companies and notified the first carrier that she was changing companies. The carrier continued to withdraw funds. According to the consumer, we haven't checked this out yet, according to the consumer the carrier is refusing to refund the money. That's a really good example of a place where we could just order restitution. The constituent wouldn't have to go to court. If the carrier disputed our findings, our proposed order, they could ask for a contested case hearing and it would be over relatively quickly.</p>
<p>Rep. Garrett:</p>	<p>23:51</p>	<p>Further discussion? Mr. Terdal, thank you very much for joining us.</p>
<p>Paul Terdal:</p>	<p>23:58</p>	<p>Thank you.</p>
<p>Rep. Garrett:</p>	<p>23:58</p>	<p>Mr. Savage, thank you. I'm going to close the public hearing on Senate Bill 414. This one we will be carrying over in the work session until at least tomorrow. No further business. Committee is adjourned. Thank you.</p>

SB414: Oregon House Committee On Rules; Hearing of 6/26/2013

Bill Information: <https://olis.leg.state.or.us/liz/2013R1/Measures/Overview/SB414>

Hearing Information: <https://olis.leg.state.or.us/liz/2013R1/Committees/HRULES/2013-06-26-14-00/Agenda>

Transcript:

Erin Seiler:	00:01	... 414.
Rep. Garrett:	00:01	Open a work session on Senate Bill 414.
Erin Seiler:	00:14	Mr. Chairman, members of the committee. Senate Bill 414 A was originally heard on June 24th. The measure allows director of Department of Consumer and Business Services to seek restitution and other equitable relief on behalf of consumer for actual damages consumer suffers as a result of insurer's violation of insurance code, breach of contract or policy, or violation of applicable federal law. Clarifies action by director is regulatory and does not create cause of action for any other person, declares emergency effective upon passage. There is no revenue, no fiscal impact, and no amendments before you today.
Rep. Garrett:	00:49	All right. We're in work session.
Rep. Hoyle:	00:51	Mr. Chair, I move Senate Bill 414 A to the floor with a do pass recommendation.
Rep. Garrett:	00:56	Representative Hoyle moves Senate Bill 414 A to floor with a do pass recommendation. Is there any discussion?
Rep. Garrett:	01:04	Any objection? Hearing none, motion carries.
Rep. Garrett:	01:07	Representative Holvey, do you want to carry the bill?
Rep. Holvey:	01:21	Sure, Mr. Chair, I'd be happy to.
Rep. Garrett:	01:23	It's a unanimous committee vote.
Rep. Garrett:	01:24	Okay. Close the work session on Senate Bill 414.