

Ed Davis Testimony, HB 3171 and HB 3272

Chair Holvey, Vice Chairs Bonham & Grayber, and members of the Committee. My name is Ed Davis. I'm a Sr. Account Executive with Maps Insurance Services in Salem and serve as Past President and Director for the Independent Insurance Agents & Brokers of Oregon and as Oregon's State National Director for the Independent Insurance Agents & Brokers of America. I've been in insurance for 56 years and earned the designation Fellow, Society of Actuaries.

Insurance policies are a "unilateral" contract between the insurer and the insured party. The Insurance Division has already proven its willingness and ability to implement orders to protect consumers in the event of wide-spread catastrophe, e.g., by suspending non-pay cancellations or non-renewal of policies. Neither the Division nor the Legislature, however, has authority to reform existing contracts. Mandating additional coverage requirements for future policies in Oregon will result in 1) increased premiums, especially for those with homes & businesses located in wildfire-prone areas, 2) withdrawal by "admitted" insurers from market segments with significantly increased risk of loss, or 3) both.

You've heard testimony about the failure of insurers to pay COVID-related business interruption claims. I have many friends who've had to lay off employees and even close some or all of their business operations. Unfortunately, even the Insurance Division has pointed out publicly that the insuring agreements and exclusionary language of most property insurance policies are not likely to provide coverage for such claims either as "direct physical damage" or as a covered "cause of loss." In fact, nationwide estimates show that if coverage had been mandated for business interruption losses, they would have depleted the surplus of the entire insurance industry in 3-6 months. The Independent Insurance Agents & Brokers of America (IIABA) is currently working with Congressional representatives and other organizations to develop a program designed along the lines of the National Flood Insurance Program (NFIP) to provide an insurance option to address such losses in the future, but traditional insurance is not a viable option to address losses from government-mandated closures in a pandemic.

You also heard testimony where an insurer "insisted" that the insured use only their recommended body shop to receive payment under the policy. I believe that's a clear violation of Oregon insurance law, and a complaint to the Insurance Division would have resolved that issue very quickly. If anything, both the Division and the industry could probably be more proactive in educating insurance buyers to the options they already have to address complaints related to the handling of their claims.

Oregon already has a system of insurance regulation that provides strong protections for consumers against unfair claims settlement practices. The Insurance Division is empowered to investigate any claims where a policyholder feels they were treated unfairly. If they determine that the insurer acted in bad faith or improperly resolved the claim, they can order the insurer to pay claims, restitution, and/or fines. And if consumers are not satisfied by the state's investigation, they already have the right to file lawsuits against insurers for payment of the claims.

House Bills 3171 and 3272 would unnecessarily increase litigation and insurance costs for Oregon consumers at the very time that COVID restrictions have devastated many families and small businesses, especially some of the most vulnerable members of our communities. By creating new causes of action, these bills would encourage the filing of additional lawsuits not only for how claims are handled, but in some cases even on behalf of non-policyholders for how claims are resolved. Where adopted in other states, this “bad faith” legislation has resulted in significant increases in the cost of handling and resolving claims – and the inevitably resulting higher premiums. Over the decade after California allowed such lawsuits, litigation and costs rose markedly – increasing premiums by from 32 to 53%. Once the legislation allowing such lawsuits was repealed, the spikes in premiums declined dramatically. In Washington state, losses increased 20% for major property insurance lines after legislation authorized these lawsuits.

Another point to consider with these bills is that most Oregonians don’t want them. In a poll conducted by the Fighting Against Increased Insurance Rates (FAIIR) Coalition, 91 percent of Oregonians who have filed claims said their insurance company handled the claim fairly. When asked, 69 percent of Oregon voters indicated they feel adequately protected under current consumer protection laws and 75 percent said they would not want to pay higher insurance rates, even if it meant additional options to sue their insurance provider. Regardless of motive, the primary beneficiaries of this legislation will be the attorneys on both sides.

Now is also not the time to inject a new wave of litigation into our judicial system. Civil cases are already delayed by the reduced operations of our courts, meaning claimants would see even more delays before their cases were resolved. This proposal might even incent the filing of complaints with the Insurance Division, potentially shifting discovery costs to the taxpayers for subsequent trials. We shouldn’t add these burdens to already limited public resources.

You are faced with tough challenges in 2021: navigating recovery from the COVID-19 pandemic, protecting consumers, pursuing social equity, and balancing a tight state budget to name a few. Unsettling our insurance market with policies that have a proven poor track record in other states should not be among them.

The bottom line is that these bills would create a messy litigation environment in Oregon, with insurance consumers, taxpayers, and small businesses as the victims. Please consider the Oregon businesses and consumers who would bear the burden of increased costs, higher tax rates, and expanded litigation. Most consumers don’t want or need these bills and would bear the consequences of passing them at a time when they are already facing financial difficulties.

Please vote no on HB 3171 and HB 3272.

Thank you,

Edward E. Davis, FSA
Sr. Account Executive, Maps Insurance
State National Director, Independent Insurance Agents & Brokers of Oregon