

**Oppose HB 3242 and HB 3243 – Unfair Claims Settlement Practices Act
Inherently Inconsistent with a Private Cause of Action**

HB 3243 and HB 3242 both take the statutory provisions from the Unfair Claims Settlement Practices Act which is a broad regulatory statute meant to provide the Insurance Commissioner with the ability to investigate and remedy issues related to insurance claims and subject those provisions to a private right of action in two separate statutory schemes. The Unfair Claims Settlement Practices Act is a model act established by the National Association of Insurance Commissioners that was very clearly not meant to be used as a way to sue insurers for claims handling.

Below are comments included in the NAIC model act that clearly state the act is ***inherently inconsistent with a private right of action and should be separate and distinct from the Unfair Trade Practices Act.***

Prefatory Note: By adopting this model act in June 1990, the NAIC separated issues regarding unfair claims settlement practices into a free-standing act apart from the NAIC Model Unfair Trade Practices Act. **This change focuses more attention on unfair claims as a function of market conduct surveillance separate and apart from general unfair trade practices.** By doing so, the NAIC is not recommending that states repeal their existing acts, but states may modify them for the purpose of capturing the substantive changes. However, for those states wishing to completely rewrite their comprehensive approach to unfair claims practices, this separation of unfair claims from unfair trade practices is recommended.

Drafting Note: A jurisdiction choosing to provide for a private cause of action should consider a different statutory scheme. **This Act is inherently inconsistent with a private cause of action.** This is merely a clarification of original intent and not indicative of any change of position. The NAIC has promulgated the Unfair Property/Casualty Claims Settlement Practices and the Unfair Life, Accident and Health Claims Settlement Practices Model Regulations pursuant to this Act.

Ask yourself – Do you think the following list of regulatory and administrative issues related to claims handling should be the subject of not only lawsuits but class action lawsuits?

746.230 Unfair claim settlement practices. (1) An insurer or other person may not commit or perform any of the following unfair claim settlement practices:

- (a) Misrepresenting facts or policy provisions in settling claims;
- (b) **Failing to acknowledge and act promptly** upon communications relating to claims;
- (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;
- (d) Refusing to pay claims without **conducting a reasonable investigation** based on **all available information**;
- (e) Failing to affirm or deny coverage of claims within a **reasonable time** after completed proof of loss statements have been submitted;
- (f) Not attempting, in good faith, to **promptly and equitably settle claims** in which liability has become **reasonably clear**;
- (g) Compelling claimants to initiate litigation to recover amounts due by offering **substantially less** than amounts ultimately recovered in actions brought by such claimants;
- (h) Attempting to settle claims for less than the amount to which a **reasonable person would believe a reasonable person** was entitled after referring to written or printed advertising material accompanying or made part of an application;
- (i) Attempting to settle claims on the basis of an application altered without notice to or consent of the applicant;
- (j) Failing, after payment of a claim, to **inform insureds or beneficiaries**, upon request by them, of the coverage under which payment has been made;
- (k) **Delaying investigation or payment of claims** by requiring a claimant or the claimant's physician, naturopathic physician, physician assistant or nurse practitioner to submit a preliminary claim report and then requiring subsequent submission of loss forms when both require **essentially** the same information;
- (L) Failing to **promptly settle claims** under one coverage of a policy where liability has become **reasonably clear** in order to influence settlements under other coverages of the policy;

Shelly Boshart Davis

**From the Desk of
Representative
Shelly Boshart Davis**

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