

HB 3242 B STAFF MEASURE SUMMARY

Carrier: Rep. Sosa

Conference Committee on HB 3242

Action Date: 06/24/23

Action: Recommending the House concur in Senate amendments dated 05-22 and bill be further amended and repassed.

House Vote

Yeas: 2 - Holvey, Sosa

Nays: 1 - Mannix

Senate Vote

Yeas: 2 - Campos, Prozanski

Nays: 1 - Bonham

Fiscal: Has minimal fiscal impact

Revenue: Has minimal revenue impact

Prepared By: Erin Seiler, LPRO Analyst

Meeting Dates: 6/24

WHAT THE MEASURE DOES:

Establishes a private right of action for insured to recover actual damages, attorney fees, and litigation costs, resulting from insurer and any other person acting on behalf of insurer in settling or adjusting claims' unfair claims settlement practice. Permits an insured to bring an individual action in circuit court for medical malpractice claim.

ISSUES DISCUSSED:

- Impact on medical malpractice insurance or providers if included or excluded from Unfair Claims Settlement Practice Act
- Circumstances when plaintiff may pursue an action for an excess verdict in medical malpractice case
- Ability to assign first party rights to plaintiff in medical malpractice case
- Risk of exposure to physician
- Incentive for insurance provider to engage in settlement
- Current law regarding medical malpractice claims
- Frequency of that medical malpractice verdicts exceeding insured policy

EFFECT OF AMENDMENT:

Permits an insured to bring an individual action in circuit court for medical malpractice claim.

BACKGROUND:

ORS 746.230 prohibits insurers from engaging in unfair claim settlement practices. Unfair claim settlement practices under the statute include misrepresenting policy provisions, failing to act promptly upon communications relating to claims, and refusing to pay claims without conducting a reasonable investigation, among other things.

House Bill 3242 B* allows an insured to bring a civil action against an insurer for unfair claim settlement practices, including practices that are not described in current law but that are deemed unfair by the Director of the Department of Consumer and Business Services (DCBS) or a court. If the insured prevailed, they would be entitled to up to three times actual damages as well as attorney fees. Before bringing the action, the insured must give written notice to the insurer and DCBS not less than 45 days before commencing an action, and may only proceed to bring the action if the insurer does not resolve the claim within 45 days of providing written notice. An action must be brought within two years of the date of the violation or the date on which the violation is or should have been discovered. The measure authorizes treble damages, allowing a court to triple an award of actual damages

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with the finding the defendant acted unreasonably. An insured may not bring an action under the measure for a practice related to settling a workers' compensation claim. An insured also may not bring an action against an attorney in the attorney's individual capacity for an act undertaken on behalf of an insurer, insured, beneficiary or other person in advising, presenting or negotiating an insurance claim.