

March 1, 2023

The Honorable Paul Holvey
Representative, State of Oregon
900 Court Street NE
Salem, OR 97301

Sent via electronic submission

Re: HB 3243, Relating to violations of the Insurance Code as unlawful trade practices. - Opposition

Dear Representative Holvey,

The American Property Casualty Insurance Association (APCIA)¹ must respectfully **oppose HB 3243**, which would add insurance to the Unlawful Trade Practices Act.

The stated intent of HB 3243 is to “merely” add insurance to the definition of businesses covered by the unlawful trade practices act. This completely ignores the fact that insurance is currently heavily regulated and held accountable under rigorous oversight by the Oregon Department of Consumer and Business Services (DCBS). In fact, current Oregon law allows DCBS to seek restitution for any damages a consumer suffers if an insurer violates the state insurance code. This is a fast, fair, and affordable way to protect consumers.

This bill creates an “second” lawsuit for a claim that already falls under the jurisdiction of DCBS. HB 3243 would also increase the UTPA mandate (for insurers only) beyond its current scope, which addresses “goods or services” concerning “personal, family or household purposes” and would create UTPA claims related to any type of insurance. In other words, the bill would authorize lawsuits involving commercial disputes (currently not allowed by the UTPA) and would drastically change the existing landscape of Oregon insurance law.

Only 10 states have combined their Unfair Claims Settlement Practices (UCSP) statute into their Unlawful Trade Practices Acts (UTPA). Five of those states do not allow private rights of action. And the UTPA statutes of only 2 states, (FL, MA), allow both first *and* third parties to sue insurers for alleged UCSP violations. But HB 3243 is even more extreme than remedies in those high-cost insurance states, providing unrestrained first- and third-party private rights of action, with no required notice to allow cure, while imposing punitive damages, one-way attorney fees and class actions, and allowing individuals to act as “private regulators” of insurers.

The impact of bills like HB 3243 can be seen in the negative impacts in other states. In California, “third party bad faith” became the law of the land due to a state Supreme Court ruling - and, when another

¹ APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

court repealed it a decade later, court cases involving personal disputes had doubled, and insurance premiums had risen by 30% or more. In Washington State, "first party bad faith" became law in late 2007 - and each year, more than 1,000 notices are filed under the law informing the state Insurance Commissioner that a bad faith lawsuit may be filed. Very few lawsuits go forward, however - which suggests that insurers, who predicted that the law would be used not to correct consumer grievances, but to leverage higher settlements - were correct.

Five of the states where similar legislation passed saw increases in insurance premiums. According to independent studies, Florida saw bodily injury (BI) auto liability insurance costs increase between 30% and 70%. Washington state currently allows this type of lawsuit and losses have increased 20 percent for all major lines of insurance, adjusted for inflation, since this type of lawsuit was permitted.

A recent study of the impacts of similar legislation in New Jersey points out the potential impacts of this extremely costly legislation. The study said that if it passed, the New Jersey legislation could result in increased insurance premiums of 12% for New Jersey residents and homeowners. One must wonder, what is the need for this legislation? Oregon residents and businesses are already protected by the DCBS. In addition, Oregon consumers have spoken:

- 91% of Oregonians who have filed claims have said that their insurance company handled the claim fairly.
- 69% of Oregon voters feel adequately protected under current consumer protection laws.
- 75% of Oregon voters are UNWILLING to pay ANY increase in their insurance rates for additional ways to sue their insurance provider.

This concept of expanding the UTPA to include insurance companies is not new. It has been repeatedly introduced in the Oregon Legislature and has never been accepted. HB 3243 is virtually identical to a version of this bill from every long session in Oregon for the last ten years.

HB 3243 raises several very specific concerns including the following:

- HB 3243 would be very costly for premium payers and taxpayers. It will create higher costs of doing business for insurers that will necessarily be reflected in higher premiums, and will burden an already taxed regulatory and court system.
- The definition of "person" is so broad and ambiguous that, as noted above, even counsel for the insured or a claimant against the insured could be sued under the new language. In other words, a claim or lawsuit for punitive damages can be filed against anyone based on a perceived wrong opinion or "representation." Oregon law already has statutory and common law remedies against insurance companies, including attorney fees for a prevailing plaintiff.
- Minor violations or delays in insurance adjusting are treated the same as serious violations and are subject to punitive damages. HB 3243 makes all insurance issues that are subject to regulation subject to a lawsuit and punitive damages without regard to whether they have caused any damage to anyone.
- HB 3243's amendments to the UTPA would create confusion because the provisions conflict with the existing regulatory framework and Oregon insurance coverage common law as thoughtfully developed by the courts over decades. HB 3243 would impose a new framework that would create uncertainty in insurance markets, among insureds and in the courts, merely to benefit a small group of trial lawyers regarding a problem that does not exist – no one has

produced systematic evidence to document the supposed problem or how HB 3243 would fix it without causing greater problems and greater expense.

Insurers are already regulated by one of the toughest consumer protection laws in the country – the Oregon Unfair Claims Settlement Practices law. Under current law the DCBS has the authority to:

- Deny excessive rates or unfair policies proposed by insurers
- Investigate claims if consumers believe a claim was handled improperly
- Demand that insurers pay claims fairly
- Order an insurance company to pay restitution to a policyholder in addition to the amount of the original claim
- Levy fines against insurance companies for acts of bad faith
- Revoke an insurance company's license to do business in Oregon in the most extreme case

Policyholders can already file a lawsuit against their insurance company if they believe their insurance company has mishandled or undervalued their claim. Instead, HB 3243 threatens to add cost for families and small businesses in Oregon with little to no increased protection.

Accordingly, for all of the abovementioned reasons, **we must respectfully oppose HB 3243**. We appreciate your consideration of our comments and look forward to continued discussions on this issue. Should you have any questions, please contact me at 209.968.9107 or denneile.ritter@apci.org.

Sincerely,

A handwritten signature in black ink that reads "Denni Ritter". The signature is written in a cursive, flowing style.

Denni Ritter

Vice President, State Government Relations
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