

March 3, 2023

Rep. Paul Holvey, Chair  
Rep. Nathan Sosa, Vice Chair  
Rep. Lucetta Elmer, Vice Chair  
Members of the Oregon House Business & Labor Committee

**Re: Please oppose HB 3242**

Dear Chair Holvey, Vice Chairs Sosa and Elmer, and Committee Members,

We write to share opposition to proposed Oregon HB 3242, on behalf of the **Northwest Insurance Council** and the **National Association of Mutual Insurance Companies**, whose members collectively write nearly half of all home and auto insurance policies in force in the state of Oregon today.

Our organizations and our members oppose HB 3242 because:

- **HB 3242 ignores the rights and protections that Oregon consumers have today.**
- **HB 3242 will increase litigation, delay the resolution of claims and increase insurance costs.**
- **HB 3242 is premature, given pending litigation in the Oregon State Supreme Court.**

It is the mission of every reputable insurance company to provide transparency, reliability and service under the policy contract between that insurer and their policyholder. In the vast majority of claims – moments of loss, frustration and tragedy for the insured – the insurance company “gets it right” and pays claims to policyholders in a timely, professional and reassuring manner, to the satisfaction of the policyholder.

Sometimes, however, disputes arise in the claims handling/settlement process. In those cases, claimants who dispute an offer of settlement, or who feel their claim has been mishandled or improperly delayed or denied by the insurer, have rights and options under existing Oregon statutes, rules and case law.

**Oregon consumers have legal rights *today***

These are allowable actions that can be brought by a policyholder against an insurance company under Oregon statutes and case law today:

- ✓ Breach of contract for policy benefits.
- ✓ Consequential damages for breach of contract.
- ✓ Emotional distress damages for breaches of contract that directly cause physical injury.
- ✓ Damages in excess of the stated policy limit for failing to adequately defend the insured.
- ✓ Unrestricted damages for the tort of intentional infliction of emotional distress.
- ✓ Unrestricted damages for the tort of intentional interference with contractual relations.
- ✓ Unrestricted damages for the tort of fraudulent reductions or denials of benefits.
- ✓ Punitive damages if misconduct has been deliberate, intentional, wanton and willful.
- ✓ Assignability of claims against insurers.
- ✓ Attorney’s fees for actions on the policy.
- ✓ Actions against the insurer to recover policy proceeds following entry of a judgment.

## **Consumer rights are protected by the enforcement power of the state of Oregon**

Policyholders also have access – at no cost – to the assistance of the Oregon Division of Financial Regulation and the Department of Consumer & Business Services. This is no small benefit. Under Oregon law, DCBS/DFR is empowered to:

- ✓ Review all insurance policy forms and proposed rates before they can be used in the market.
- ✓ Deny excessive rates or unfair policies filed by insurers.
- ✓ Investigate and intervene in individual claims complaints filed by policyholders.
- ✓ Comprehensively examine insurers' claims-handling procedures and levy fines for improper actions.
- ✓ Order an insurer to pay restitution to a policyholder above the amount of the original claim if the insurer has violated Oregon statutes or regulations.
- ✓ Levy fines against insurers for violations of the Unfair Claims Settlement Practices Act.
- ✓ Revoke an insurers' license to do business in Oregon in the most extreme cases.

The authority of the state is a powerful tool for consumers. In 2021 alone, DCBS opened 2,236 cases based on complaints against insurers, confirming the complaint in 302 cases (13.5%). It also ordered **\$7,555,131 in recoveries and \$3,483,252 civil penalties** across all consumer complaints received.

HB 3242 goes beyond those existing remedies for policyholders, to allow claimants not only to sue their own insurance company for breach of contract, or to seek the imposition of fines or restitution by the Department of Consumer & Business Services, but to also file a *separate lawsuit* alleging that the insurance company committed a violation of Oregon's Unfair Claims Settlement Practices Act (UCSPA). Under the bill, a successful claimant can then be awarded *actual damages* (the original claim for property loss and/or personal injuries) plus their attorneys' fees and court costs. On top of that, a court can award up to *three times* the amount of damages, fees and costs to the claimant.

## **More litigation, higher settlements could lead to premium increases**

Clearly, enabling a second cause of action for any claim will increase litigation in Oregon, delaying ultimate settlement and recovery for claimants. And, whether an insurance company chooses to defend against a lawsuit, or settle in order to avoid litigation, the cost of each disputed claim is likely to go up – leading higher claims costs for insurers, which are a major contributor to the cost of insurance for consumers.

**Washington State** enacted a law similar to HB 3242 in 2007. Within just two years, insurers' claims costs were estimated to be \$190 million higher than they would have been without the law. And according to Bankrate.com, the average premium for homeowners insurance (based on a \$250,000 policy) is more than \$200 higher in Washington than in Oregon today.

## **HB 3242 includes undefined terms that could lead to more disputes, even higher costs**

The Unfair Claims Settlement Practices Act was designed as a national model by the nation's insurance regulators, and grants broad and flexible regulatory and enforcement powers that are intended for use by the state's Insurance Commissioner.

HB 3242 allows a private right of action (lawsuit) for violations of provisions of law that were never intended to be enforced by private citizens, but are written broadly so that a regulator has flexibility to address wrongdoing on either an individual or systemic basis.

In addition, HB 3242 includes references that are overbroad or undefined. For example:

- On Page 1 Line 9, HB 3242 would allow filing suit for “Failing to acknowledge and act promptly upon communications relating to claims;”. Does promptly mean the same day? The next day? The next week? The term is undefined.
- On Page 2 Lines 26-29 of the bill, it states: “A court may triple an award of actual damages in an action under subsection (3) (the UCSPA) of this section if the court finds that the defendant in the action acted unreasonably. This is a mere negligence/mistake standard – “unreasonably” is undefined.
- Page 2 Lines 33-36, the bill provides for a private right of action not just for alleged violations of the UCSPA, but for ANY violation of the insurance code OR ANY OTHER LAW: “The unfair claim settlement practices described in this section are not exclusive or comprehensive and the director or a court may deem an act or practice a violation of a provision of the Insurance Code or other law.”

### **“Bad Faith” lawsuits may already be allowed, without HB 3242**

Litigation is currently pending before the Oregon State Supreme Court that could change or affirm case law regarding whether an insurer can be sued not only for wrongful denial of a claim, but also for bad faith actions. In fact, since the Court of Appeals ruling in the *Moody* case that an insured has a right to sue for bad faith - and even while the case is under appeal at the Oregon Supreme Court - insurers have already seen an increase in lawsuits claiming damages alleging “bad faith.”

In our view, it would be premature for the Legislature to enact changes that affect “bad faith” causes of action against insurers before the state Supreme Court has ruled on the current state of the law in Oregon. HB 3242 may be made unnecessary by the Court, or it may be in conflict with the Court’s ultimate ruling.

### **Please oppose HB 3242**

This proposed law does not bring about better protection for consumers, it brings about more lawsuits. Defending those additional lawsuits will increase the cost of settling and paying claims. And ultimately, higher claims costs typically lead to higher insurance rates, which we believe will be of great frustration and concern to Oregon consumers. We urge you to reject HB 3242.

Respectfully,

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