NW Insurance Council

NAMIC
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES
SHAPING OUR MUTUAL FUTURE®

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 3243

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

We write to share opposition to proposed Oregon **HB 3243**, 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 3243** because:

- **HB 3243 will establish a duplicative and/or conflicting regulatory framework under two separate state agencies for insurers – arguably already Oregon's most comprehensively, continuously regulated and monitored industries.**

- **HB 3243 ignores the rights and protections that Oregon consumers have in law today.**

- **HB 3243 will establish in Oregon statutes the right for third party claimants to file multiple lawsuits for a single claim, needlessly increasing litigation and insurance costs.**

Oregon lawmakers have seen measures over the past decade to include insurers under the UTPA, but previous Legislatures have rejected those proposals. We urge committee members to reject this proposal again. Please consider:

Insurers today are uniquely, comprehensively and continuously regulated

While many industries and businesses are regulated under Oregon's Unfair Trade Practices Act (UTPA), insurance companies are not. Instead, insurers are comprehensively regulated by the Division of Financial Regulation (DFR), within the Department of Consumer & Business Services (DCBS).

Empowered by a broad grant of authority in ORS Chapter 731 (wherein the Legislature declared that "the Insurance Code is for the protection of the insurance-buying public") DCBS, DFR and Oregon's Insurance Commissioner comprehensively oversee and regulate insurance companies and insurance producers to protect Oregon consumers.

From reviewing all rate and form filings prior to use in the marketplace, to initiating market conduct examinations on-site, to investigating individual consumer complaints, to issuing bulletins and adopting regulations, DFR/DCBS oversight of insurers is arguably the most consistent and comprehensive of any regulatory agency in Oregon.

Today, 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.

Oregon consumers are protected by statutes, regulations and case law *today*

Further, Oregon insurance consumers have legal protections in the insurance code not afforded to consumers of other goods and services. For example, non-insurance businesses that fall under the UTPA generally have mandatory arbitration clauses in their contracts, which forces plaintiffs into mandatory arbitration to settle disputes. By contrast, insurers are *prohibited* from including mandatory arbitration clauses in their insurance policies. Such clauses have been ruled unconstitutional in Oregon, and have been prohibited in insurance policy language by DFR. (*See* DFR Bulletin 2020-1).

Meanwhile, thanks to statutes, regulations, DFR bulletins and case law, Oregon insurance consumers already have the right and opportunity to bring actions and seek recovery in court. 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.

HB 3243 brings a potential for duplicative or conflicting regulation of insurance

Under HB 3243, insurers would potentially be regulated and overseen by both the DFR/DCBS regulatory framework, but also by the Department of Justice and state Attorney General. Oregon's Attorney General is an independently-elected official, while the Director of DCBS and the Insurance Commissioner are positions appointed by the Governor. There exists a strong possibility that there will be times when regulations in place or considered for adoption by one agency or the other will be duplicative – or worse, in conflict.

Two lawsuits for a single claim

Today, if two people are involved in a motor vehicle accident, and the insured at-fault driver is sued by the not-at-fault driver, the at-fault driver's insurer steps in to defend and indemnify their policyholder against the suit filed by the not-at-fault driver. Under HB 3243, the not-at-fault party has the opportunity to file suit for the damages caused by the at-fault driver, then file a *second suit* against the at-fault driver's insurance company alleging violations of the Unfair Claims Settlement Practices Act stemming from the insurer's defense *of their own policyholder*.

This proposal incentivizes additional litigation. 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.

Please oppose HB 3243

Rather than improve access to recovery for insurance consumers, HB 3243 exposes insurers to multiple lawsuits on a single claim (potentially on virtually every claim), and adds the possibility of duplicative – or conflicting – regulations from two separate regulatory/enforcement agencies.

It is rare for a state to combine Unfair Trade Practices statutes, Unfair Claims Settlement Practices statutes AND include a private right of action. We believe combining these elements in Oregon will result in a dramatic rise in lawsuits, which in other states has caused significant insurance rate increases for consumers (as happened in California in the late 1980's, before the law was overturned and rates returned to previous levels).

More lawsuits over disputed insurance claims won't help Oregon insurance consumers. And no Oregon family or business wants to see higher insurance costs while record-high inflation is already eating away at paychecks and quality of life in Oregon.

We urge you to reject HB 3243.

Respectfully,

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