BEAVERTON AREA
Chamber of Commerce℠

Re: HB 3242, Relating to insurance claim settlement practices - Opposition

The Beaverton Area Chamber of Commerce respectfully **opposes HB 3242**, and its proposed new private right of action against insurers. It is unnecessarily vague, seeks to replace broad regulatory protections already in place for consumers and based on widely studied experience in other states will raise insurance rates for all Oregonians in an already hard insurance market.

Unprecedented Legislation

HB 3242 is unprecedented in Oregon. It would create a new private right of action against insurers for even the most nominal deviation from the Unfair Claims Settlement Practice Act (Act). Simply failing to promptly acknowledge a communication could result in damages and attorney fees, even as the term "promptly acknowledge" is undefined. Or an inadvertently misdirected piece of correspondence will produce exposure for insurers who want to do business in this state. These examples illustrate that the Unfair Claims Settlement Practice Act is drafted broadly, to ensure flexibility for the regulator. That same broadness and flexibility, while appropriate for a regulatory act, will result in unfettered litigation if the Act is imbued with a private right of action.

HB 3242 is worse still in that it would permit treble damages against an insurer that "acted unreasonably." Again, the term is completely undefined and unbounded, and could mean virtually anything given that is it subjective. In addition, HB 3242 departs significantly from the nearly universal requirement that more than unreasonableness is necessary to obtain exemplary damages. Maliciousness, malice, ill will are normally required, not a mere disagreement over value, for example.

Oregon as an outlier that seeks to go against what other states have found to be bad for their Citizens.

HB 3242 would place Oregon amongst a distinct minority of states. Only twelve states have statutory first party private rights of action for violations of the claims practice law. And, most recently, Florida – one of the earliest states to adopt such a statutory right of action – has now taken steps to limit and end the practice. In a December 2022 Special Session, Florida changed its bad faith law to reduce its impact on first party property claims. During the current legislative session, Florida is expected to move even further to reduce bad faith claims with reform legislation, H.B 837. Florida is acting to limit its bad faith laws for good reason. According to the Florida Office of Insurance Regulation in July of 2022, Florida accounted for 79% of homeowners' insurance lawsuits nationwide while accounting for only 9% of the nation's homeowners' insurance claims.

The NEGATIVE impact of such laws on Consumers & Businesses has been widely studied.

There are good reasons why so few states have adopted this statutory tort, and why there have been recent moves to limit it. Study after study has found that these laws adversely impact the insurance market and the citizens and businesses in the states that enact them.

Right next door in Washington, a study in February 2011 by the Insurance Research Council, The Impact of First-Party Bad Faith Legislation on Key Insurance Claims Trends in Washington State found that the Washington's adoption of statutory first party bad faith law immediately and dramatically increased loss costs in a variety of first party insurance, including **$190 million** in 2 years of homeowners' claims, and **$17.4 million in uninsured motorist (UM) claims** immediately after passage.

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Florida, as mentioned, is perhaps the best known and most heavily studied state with respect to statutory bad faith. And it is a cautionary tale. A September 15, 2010 study by the Berkeley Research Group, "The Impact of Bad Faith Lawsuits in Florida and Nationwide," ES-3, found Florida's average personal automobile UM/UIM pure premium was ***188% higher*** than the average for states without a bad faith cause of action. An August 2019 study by Milliman titled "Review of Florida 'Bad Faith' Claim Law," concluded that the **annual premium impact** attributable to bad faith in Florida is approximately ***$6.6 billion, or 13.5%***. That study found the effect of the current bad faith law on annual automobile first party ***UM/UIM losses to be an increase of 17.4%***.

In New Jersey, a September 2019 study by Milliman, "Review of Proposed Bill: New Jersey Insurance Fair Conduct Act", estimated that first party **UM/UIM losses will increase 17.4%** and a corresponding $130 million in increased premiums (approximately a 15% increase). Similarly, in New York, a Milliman June 2020 study, "Review of Proposed New York State Bad Faith Bill", found that an aggressive statutory bad faith bill there would **negatively impact all premiums by nearly 15%** (14.8) and ***first party UM/UIM premiums by an increase of 17.4% and No-Fault PIP by 31%.*** More recently still, a January 2022 Milliman study "Analysis of Proposed Changes to Virginia's Bad Faith Law", estimated that a then-proposed change in Virginia's statutory bad faith law would ***negatively impact first party UM/UIM premiums by 15%.***

Statutory Bad Faith Encourages Fraud and Gamesmanship

Dr. Sharon Tennyson, Professor at Cornell University, summed up the reasons for these adverse impacts from bad faith laws quite succinctly, in that they "*create incentive distortions that may lead to greater uncertainty and higher costs for insurers, higher levels of insurance fraud, and correspondingly higher insurance premiums for consumers*."1

It is well known that these laws encourage a form of conditional settlement demand aimed at setting up an insurer for extracontractual exposure. As Florida Justice Wells observed, "[T]here are strategies which have developed in the pursuit of insurance claims which are employed to create bad faith claims against insurers when, after an objective, advised view of the insurer's claims handling, bad faith did not occur...." *Berges v. Infinity Ins. Co.*, 896 So. 2d 665, 686 (Fla. 2005) (emphasis added).

1 Sharon Tennyson, PhD, William J. Warfel, PhD, *First-Party Insurance Bad Faith Liability: Law, Theory, and Economic Consequences,* ISSUE ANALYSIS (September 2008).

These demands and strategies intentionally provide inadequate documentation to validate the claim and contain short time frames for the insurer to accept, along with any number of conditions, often onerous, that the insurer must meet to have "mirror" acceptance. American Property Casualty Insurance Association (APCI) has data on thousands of such demands in Florida alone. If this bill becomes law, these cynical and self-serving practices will significantly undermine Oregon's insurance marketplace – resulting in higher premiums for Oregonians.

Current Oregon Law is Effective

The provisions of the Oregon Unfair Claims Settlement Practices Act are already one of the toughest consumer protection laws in the country. 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

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- 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 3242 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 3242.**

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