



April 21, 2023

Members of the Senate Committee on Judiciary,

On behalf of the Oregon Association of Defense Counsel (“OADC”), which represents approximately 550+ civil defense lawyers, we write to express our concerns with HB 3242 A and HB 3243 A, and to specifically express our concerns with continued inclusion of the phrase “or other person,” in ORS 746.230 if these bills advance.

**HB 3242 A** expands the Unfair Claims Settlement Practices Act (UCSPA) to include an insured’s right to bring a private cause of action for a violation of the Act and broadens the UCSPA in several other ways.

The existing UCSPA, ORS 746.230, applies to “an insurer or other person,” and HB 3242 A retains that phrase. While included in existing law, the phrase “other person” is undefined in statute and appears to be undefined by the courts in this context. Left as part of the statute –with a new, express private right of action added – that phrase is drafted so broadly as to open the possibility of direct lawsuits against attorneys, on both sides of the bar, that work directly with clients to analyze, assess, and resolve insurance claims. While we understand from the primary proponents of the bill that direct lawsuits against attorneys is *not* the intent, this issue needs to be cleaned up to avoid any unintended consequences.

**HB 3243 A**, by expanding the Unlawful Trade Practices Act (UTPA) to include violations of the UCSPA, raises the same concern. Given how ORS 746.230 is drafted, adding violations of that statute to the UTPA could also allow for direct liability under the UTPA for attorneys, on both sides of the bar, that work directly with clients to analyze, assess, and resolve insurance claims.

OADC has identified other ambiguities and unintended consequences that may arise from passage of HB 3242 A or HB 3243 A individually, and particularly if the two bills are passed in combination. As the testimony provided on behalf of OADC identified, the combination of these statutory deficiencies – e.g., lack of proper notice and right to a jury trial –will create constitutional due process disputes that will result in significant litigation separate from the intended purpose of the bills. We urge the committee to carefully consider all of these issues, and similar issues raised by others submitting testimony in opposition to these bills.

We strongly urge the Committee, regardless of its ultimate conclusions on the other ambiguities and potential consequences, to not move these bills forward without amendment to remove or narrow the potential impact of the phrase “other person” as it currently appears in ORS 746.230. We are happy to work with other stakeholders to negotiate such amendments, but at this time must oppose HB 3242 and HB 3243 as written.

Thank you for your consideration of OADC’s input on this important matter.

Sincerely,

OADC Government Affairs Committee

Peter Tuenge – President, OADC

Heather Bowman – President-Elect, OADC

Dan Larsen – Secretary/Treasurer, OADC

Lloyd Bernstein – Chair, OADC Government Affairs Committee

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