

SB 174 -2 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 3/5, 3/20

WHAT THE MEASURE DOES:

The measure designates certain unfair insurance practices as unlawful trade practices under the Unlawful Trade Practices Act, providing civil enforcement and a private right of action for violations.

Detailed Summary:

Adds trade practices prohibited by Oregon’s insurance statutes (ORS 746.230, 746.650, 746.663, 746.686, 746.687) as bases for consumers to bring civil actions and prosecuting attorneys to bring enforcement actions under Oregon’s Unlawful Trade Practices Act (UTPA).

- Requires an individual filing an insurance-related UTPA lawsuit to mail a copy of the complaint and any resulting judgment to the Department of Consumer and Business Services (DCBS).
- Requires the Director of DCBS to make a request before a prosecuting attorney initiates a UTPA enforcement action related to insurance.
- Clarifies various provisions of the UTPA, including a court’s authority to award equitable relief.
- Modifies the standard for filing a UTPA claim against a seller lender of a manufactured dwelling.
- Applies to conduct that occurs on or after the effective date.

ISSUES DISCUSSED:

- Potential effect on insurance premiums, especially medical malpractice rates
- Insurers' profit margins and settlement values in Oregon as compared to other states
- Oregon law regulating insurance practices as compared to Washington and California
- Oregon's Unfair Claims Settlement Practices Act not intended to provide a private right of action
- Individuals' negative experiences with insurance companies
- Gap in existing consumer protections as to insurance practices
- Oregon Department of Consumer and Business Services as regulator of insurance practices

EFFECT OF AMENDMENT:

-2 The amendment creates two exemptions from insurance-related UTPA civil actions. First, a civil action may not be filed against an attorney as to their legal advice relating to an insurance claim. ORS 746.230. Second, a civil action may not be filed against an insurance agent regarding the selling, soliciting, or negotiating of insurance. ORS 731.104.

REVENUE: Has minimal revenue impact

FISCAL: Has minimal fiscal impact

BACKGROUND:

The UTPA (ORS 646.605–646.656, ORS 646A.030–646A.765) is designed to protect consumers from deceptive sales and business practices. Consumers may bring a civil action for any of the specific acts prohibited by the UTPA and may recover associated monetary damages, reasonable attorney fees, punitive damages, and equitable relief. ORS 646.638. Prevailing defendants can recover their reasonable attorney fees if “there was no objectively reasonable basis for bringing the action.” ORS 646.638(3). The statute of limitations is generally one year from

discovery of a UTPA violation. ORS 646.638(6). As an alternative enforcement mechanism, a prosecuting attorney – defined as a District Attorney or Attorney General – may issue an investigative demand into suspected UTPA violations or, with probable cause, bring a lawsuit on behalf of the State of Oregon to restrain a person or entity from engaging in an unlawful trade practice. ORS 646.618, 646.332.