

HB 4098 -1, -2 STAFF MEASURE SUMMARY

House Committee On Commerce and Consumer Protection

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Meeting Dates: 2/5, 2/12

WHAT THE MEASURE DOES:

The measure designates certain insurance practices as unlawful trade practices under the Unlawful Trade Practices Act.

Detailed Summary:

Adds trade practices prohibited by Oregon's insurance statutes, ORS 746.230 (Unfair claim settlement practices), 746.650 (reasons for adverse underwriting decisions), 746.663 (cancelation or non-renewal of personal insurance policies based on credit history or insurance score), or 746.686 (use of prior claim or injury in determination to issue or renew homeowner insurance policy) or failing to provide the notices required under ORS 746.687 (Cancellation of homeowner insurance policy), 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
- Creates three exemptions, disallowing UTPA civil actions:
 - Against an attorney as to their legal advice relating to an insurance claim
 - Against an insurance agent regarding the selling, soliciting, or negotiating of insurance
 - Relating to the handling, settlement, or ultimate resolution of a medical malpractice claim or workers' compensation claim
- 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:

- The exclusion of insurance practices from the Unfair Trade Practices Act
- Exemptions in the measure
- Insurance premiums
- Insurance industry financial reporting
- First party and third-party lawsuits

EFFECT OF AMENDMENT:

- 1 The amendment excludes the adjustment of third-party insurance claims from what is included in the definition of real estate, goods, or services within the Oregon Unfair Trade Practices Act.
- 2 The Amendment removes violations of provision of ORS 746.230 (unfair claim settlement practices), 746.650 (reasons for adverse underwriting decisions), 746.663 (cancelation or non-renewal of personal insurance policies based on credit history or insurance score), or 746.686 (use of prior claim or injury in determination to issue or renew homeowner insurance policy) or failing to provide the notices required under ORS 746.687 (cancellation of homeowner insurance policy) from violations of the unfair trade practices act. Removes provisions that reference those violations from the measure. removes the exemptions that disallowed UTPA civil actions against an attorney as to their legal advice relating to an insurance claim and against an insurance agent regarding the

selling, soliciting, or negotiating of insurance.

BACKGROUND:

The Unlawful Trade Practices Act (UTPA) is one tool consumers may use to recover damages that occur because of deceptive sales or business practices. The UTPA was enacted in 1971. The UTPA provides individuals with a right of private action for deceptive practices in the sale of real estate, goods, or services. Consumers may bring a civil action for violations of the specific acts prohibited by the UTPA and may recover associated monetary damages, reasonable attorney fees, punitive damages, and equitable relief. Prevailing defendants may recover reasonable attorney fees where the action was brought without an objectively reasonable basis. As an alternative enforcement mechanism, District Attorneys or the Attorney General may issue investigative demands into suspected UTPA violations or, bring suit on behalf of the State of Oregon to restrain persons or entities from engaging in unlawful trade practices. The statute of limitations is one year from the date of discovery of the violation.

PRELIMINARY