



Property Casualty Insurers
Association of America

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May 8, 2013

The Honorable Chip Shields
Chair, Senate General Government, Consumer & Small Business Protection Committee
900 Court St. NE, S-421
Salem, OR 97301

Re: Please Oppose HB 3160

Dear Senator Shields:

On behalf of PCI and our members, who collectively write 43% of the property casualty insurance policies in force in Oregon today, I write to oppose HB 3160.

In general, PCI opposes HB 3160 because it proposes to create new private rights of action and potentially imposes a new, additional regulatory and civil litigation scheme on insurers. The provisions included in HB 3160 are unnecessary and present a wide variety of potential unintended consequences - including the potential for market disruption that is ultimately felt by consumers (based on what we have witnessed in other states that have enacted similar proposals).

In California, "third party bad faith" became the law of the land due to a state Supreme Court ruling - and, when another court repealed it a decade later, court cases involving personal disputes had doubled, and insurance premiums had risen by 30% or more. In Washington State, "first party bad faith" became law in late 2007 - and each year, more than 1,000 notices are filed under the law informing the state Insurance Commissioner that a bad faith lawsuit may be filed. Very few lawsuits go forward, however - which suggests that insurers, who predicted that the law would be used not to correct consumer grievances, but to leverage higher settlements - were correct.

You will hear testimony at today's hearing about our industry's opposition to HB 3160. But I also would like to address issues that have been raised by this committee on this issue at previous hearings.

You may recall that during the March 15 Senate General Government, Consumer & Small Business Protection hearing on several measures relating to Oregon's Unfair Trade Practices Act and private rights of action involving insurance companies (the same provisions that are included in HB 3160), you and other members of the committee raised important questions with respect to the other state laws, as well as the cost impact of the proposed legislation.

1. UTPA statutes across the country

Testimony at the hearing from witnesses in support of SB 512, SB 513 and SB 514 indicated that as many as 35 states include insurance under the regulatory and/or enforcement mechanisms of an Unfair Trade Practices Act. But research done by our industry suggests that only **nine** states have combined their Unfair Claims Settlement Practices (UCSP) statute into their Unlawful Trade Practices Act (UTPA). Five of these states **do not allow** private rights of action for alleged UCSP violations, and only 2 (Florida and Massachusetts) allow **both** first and third parties to bring claims under the UTPA for alleged violations of the UCSP (as is proposed in HB 3160). Both of those states have higher average annual insurance rates than consumers pay in Oregon (FL: \$1037, MA: \$891, OR: \$724).

2. Insurance costs resulting from passage of the Washington Insurance Fair Conduct Act (IFCA)

Testimony from proponents of the legislation authorizing new private rights of action, class action lawsuits and the award of plaintiffs' attorney fees in actions alleging insurer misconduct or bad faith suggested that insurance premiums for home and auto insurance have not been impacted by enactment of IFCA in 2007.

Washington, unlike Oregon, requires prior approval of all rates by the Insurance Commissioner, which allows broad authority to the Commissioner that can result in artificial rate suppression. Even so, the cost of insurance premiums for homeowners' insurance in Washington State rose more than twice as fast in the two years after enactment of IFCA than in the two years prior. According to the National Association of Insurance Commissioners:

- From 2005-2007 (pre-IFCA), Washington homeowners insurance rates rose 11.7%. From 2008-2010 (post-IFCA), Washington homeowners insurance rates rose more than twice as fast, at 27.0%. In this case, first party bad faith can clearly be shown to have had a negative impact on consumers.

But even more telling in the near term than premiums about the impact of Washington's first party bad faith law – provisions of which are substantially similar to the provisions in the proposed Oregon bills – is the impact on insurers' loss costs in **first party lines of coverage**.

Claims or loss costs are the "real time" indicator of what is happening to the cost of settling claims. These are costs that are eventually included in rating plans filed with the regulator and paid by consumers. And data from the insurance industry as well as from the nation's insurance regulators shows that claims costs are rising in Washington, which should serve as a "canary in the coal mine" for Oregon policymakers. Consider:

- Auto insurance rates did not increase in Washington from 2008 to 2010. In fact, they went down slightly (1.2% overall). That is because the loss costs for Bodily Injury (BI) and Property Damage (PD) liability dropped 1.5% during this period. BI and PD liability coverages combined represent about 60% of the total liability loss cost (and hence the same for premium) in Washington. These coverages are not affected by the first-party bad faith law, but they are the primary driver of how the entire liability premium moves.

- On the other hand, Personal Injury Protection (PIP), Med Pay (MP) and Uninsured/Underinsured Motorist (UM/UIM) are first-party coverages – and they are affected by IFCA. These coverages represent about 40% of insurers' loss costs (and hence the same for premium). Here's what happened to claim severity in these three coverage lines from 2008 to 2009 alone (latest NAIC data), comparing Washington to countrywide data:

Increase in Claim Severity (from 2008 to 2009)		
First-party coverage	Washington	Countrywide
PIP	+ 7.2%	+ 4.3%
Med Pay	+22.9%	+ 3.8%
UM/UIM (BI)	+14.1%	+ 2.0%
UM/UIM (PD)	+ 4.4%	+ 1.3%

Source: NAIC Auto Insurance Database Report, 2012 Edition

- In each of these first-party coverage lines, claim severity rose much higher than the countrywide average. This suggests that these coverages were negatively impacted by IFCA, Washington's first-party bad faith law. The reason why their increases weren't noted in the overall liability premium is because they were overshadowed by the decreases in BI and PD losses.

I hope this additional information has proven helpful. PCI, the nation's premier property casualty insurance trade association, representing more than 1,000 member companies nationwide, compiled this information using data from the National Association of Insurance Commissioners.

HB 3160 is a blunt and inaccurate instrument that will clog Oregon's courts with lawsuits, increase the number and complexity of insurance claims disputes, and - if California and Washington are accurate examples - have a profound and negative impact on the cost of insurance for Oregonians. PCI urges you to oppose this measure.

Please see attached a one-page summary of our additional concerns, as well as existing statutory, regulatory and case-law remedies that exist for consumers in Oregon today.

Please let me know if we can answer any questions or provide any additional information.

Sincerely,



Kenton Brine

cc: Members of the Senate General Government, Consumer & Small Business Protection Committee