

March 14, 2013
Vote Yes on House Bill 3160
Inclusion of the Insurance Industry under UTPA Long Overdue
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Thank you Chair and members of the Committee. My name is Charley Merten. I'm a farmer and, after 50 years, a retired attorney out of North Plains. I'd like to give you a little background on the exclusion of insurance under the current Unlawful Trade Practices Act in Oregon.

From 1969 into 1971 I was the Director of Legal Aid in Multnomah County. As you know, legal aid services only the poor. In 1969 former Governor Neil Goldschmidt, then an attorney in our program went to Salem to lobby for protection provisions like those enacted in other states. His efforts were less than fruitful. Due to that experience, we geared up in early 1970 for the 1971 session. I assigned two of our lawyers to work with Lee Johnson, the Attorney General and a Republican, in drafting legislation that would protect consumers, including the poor. Legal Aid was tired of local judges ruling that our clients, even the ones who could not read or write, were bound by contracts that they had been induced to sign, sometimes with an X, by trickery and misleading representations. Legal Aid was not after honest merchants, we were after those who prey on the poor. The legal remedies available for such practices were difficult to prove and beyond the ability of either the client or Legal Aid to fund.

The Attorney General and Legal Aid submitted several bills containing significant protections for consumers. One of those bills was the 1971 version of the Oregon Unlawful Trade Practices Act. It, for the first time, allowed consumers to recover their economic losses, **and also punitive damages**, from sellers and providers of consumer goods and services when the sale was prompted by shady representations and tactics.

Very few people opposed the bill. It is hard to argue that shady businesses which hurt consumers should not be penalized. But, surprisingly, lobbyists for the banks and insurance companies did not like the bill. Although they claimed that their clients rarely, if ever, mislead their customers and, therefore, the bill would rarely apply to them. Nonetheless, these lobbyists argued that the banks already were heavily regulated by Federal law and that insurance companies were already scrutinized by the Oregon Insurance Commissioner. They pointed out

that Legal Aid had made no complaints about these two industries, and complained that the UTPA would add an unnecessary administrative burden for them. Their plea to be exempted from the Act was granted by the legislature.

Two sessions ago the legislature repealed the UTPA for banks, but left the exemption for the insurance industry intact. It is interesting to note that as of 2013, there are 3,000 plus insurance companies doing business in Oregon but that 98.5% are headquartered outside of Oregon and do business in many states where they fall under that state's UTPA.

Currently 35 states DO NOT provide special privileges to the insurance industry and include them under their UTPA law. States in the west like Arizona, Texas, Utah, Wyoming, Washington, New Mexico, Nevada and California. But in Oregon, over 40 years later, the insurance industry still gets a free ride to cheat consumers with little or no consequence.

Holding bad actors in the insurance industry accountable for shady business practices in Oregon is long overdue. Today, shady insurance practices effect not just the poor and uneducated, but also hit the middle class and beyond. You will hear some of those stories here today.

With the modern attitude of mega corporations, policy holders have become just a number or a premium to collect. Customers don't break bread with their agents anymore. And no governmental body in our state has the money or bodies needed to collect and process any significant number of abuses, or to provide legal recourse to citizens injured by these bad practices. The UTPA is enforced by private attorneys representing consumers. The UTPA applies to all businesses, all companies, all professionals, and all service providers, except for the insurance industry. The times have changed and so should the UTPA.

Thank you.

