

**PRELIMINARY STAFF MEASURE SUMMARY****CARRIER:**

Senate Committee on Business and Transportation

**REVENUE: May have revenue impact, statement not yet issued****FISCAL: May have fiscal impact, statement not yet issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Patrick Brennan, Administrator**Meeting Dates:** 2/1

**WHAT THE MEASURE DOES:** Specifies that an insurer that has the duty to defend the insured against a claim has a fiduciary duty toward the insured if the insurer does defend against the claim. Provides that if the insurer defends the claim under reservation of rights, or if the insured has potential liability that exceeds the policy limits, the insurer shall provide independent counsel that represents only the insured. Prevents an insurer from participating in the defense, controlling settlement and contesting coverage if the insurer breaches the duty to defend. Specifies the insurer's liability for damages if the insurer breaches the duty to defend. Specifies that an insurer may not take a position in an action brought on an insurance policy that is inconsistent with any statement or representation made by the insurer to the Director of the Department of Consumer and Business Services while seeking approval for language in the policy. Requires Director to maintain a record of insurers' statements and representations and to make such records available as public records. Includes tractors and equipment designed for and/or ordinarily used on a farm within uninsured motorist coverage unless the equipment is used on a public highway. Directs Department to make information available about complaints against an insurer for unfair claim settlement practices. Becomes operative on 91<sup>st</sup> day following effective date of measure. Declares emergency, effective on passage.

**ISSUES DISCUSSED:**

- Work group process
- Intended as compromise solution
- Insuring tractors for on-road and off-road uses
- Similar/related laws in other states
- Potential to discourage insurance carriers from issuing policies in Oregon
- Issues with regard to regulatory records
- Insurers' duty to defend depends on duty to indemnify
- Potential for administrative approach to issue

**EFFECT OF COMMITTEE AMENDMENT:**

*[-1 amendment]* Clarifies language regarding directive to Department of Consumer and Business Services to provide information to requester regarding complaints received by the Department against an insurer for unlawful practices under ORS 746.230. Deletes remaining provisions in measure.

**BACKGROUND:** Senate Bill 1590 makes a number of modifications to statutes related to the relationship between insurers and policyholders as follows:

- Section 2 (1) specifies the insurer's fiduciary relationship to the insured in cases where the insurer defends a claim, and specifies that they are to provide independent counsel to the insured in cases where the claim exceeds the limits of the insurance policy;

2/2/2016 2:02:00 PM \*

***This summary has not been adopted or officially endorsed by action of the committee.***

- Section 2 (2) prohibits an insurer from participating in defense against a claim, from controlling a settlement of the claim, or contesting coverage of the claim if it has in the past breached its duty to defend against the claim;
- Section 2 (3) outlines the insurer's liability in cases where a breach of duty to defend against a claim occurs;
- Section 3 (1) prohibits insurers from taking a position in an action brought on a policy that is inconsistent with any statement, written or oral, made by the insurer or its agent to the Department of Consumer and Business Services (DCBS);
- Section 3 (2) requires DCBS to maintain a record of statements made in connection with review and approval of policy language and to maintain such statements as public records;
- Section 4 specifies that, for tort actions, a policy provision requiring the insurer's consent before assignment of rights does not prohibit such assignment of a claim for payment for losses that or damages arising before the assignment;
- Section 5 modifies the definition of "uninsured vehicle" with regard to farm vehicles and equipment, unless the vehicle/equipment is on a public road
- Sections 6 and 7 requires DCBS to provide information about complaints against insurers for unfair claim settlement practices.