



To: The Honorable Senator Floyd Prozanski, Chair  
The Honorable Kim Thatcher, Vice Chair  
Senate Committee on Judiciary

From: Mark Sektnan, Vice President

Re: **SB 728 – Makes insurers subject to unlawful trade practices.**  
**APCIA Position: OPPOSE**

Date: Tuesday, March 5, 2019  
8:00 a.m., Room HR C

Chair Prozanski and Members of the Committee:

The American Property Casualty Insurers Association of America (APCIA) is **strongly opposed to SB 728** which could result in multiple lawsuits against insurers for the same claim. Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

The stated intent of SB 728 is to “merely” add insurance to the definition of businesses covered by the unfair trade practices act. This completely ignores the fact that insurance is currently heavily regulated and held accountable under rigorous oversight by the Oregon Department of Consumer and Business Services (DCBS). In fact, current Oregon law allows DCBS to seek restitution for any damages a consumer suffers if an insurer violates the state insurance code. This is a fast, fair, and affordable way to protect consumers.

This bill creates an “second” lawsuit for a claim that already falls under the jurisdiction of DCBS. SB 728 would also increase the UTPA mandate (for insurers only) beyond its current scope, which addresses “goods or services” concerning “personal, family or household purposes” and would create UTPA claims related to any type of insurance. In other words, the bill would authorize lawsuits involving commercial disputes (currently not allowed by the UTPA) and would drastically change the existing landscape of Oregon insurance law.

Only 10 states have combined their Unfair Claims Settlement Practices (UCSP) statute into their Unlawful Trade Practices Acts (UTPA). Five of those states do not allow private rights of action. And the UTPA statutes of only 2 states, (FL, MA), allow both

first *and* third parties to sue insurers for alleged UCSP violations. But SB 728 is even **more extreme** than remedies in those high-cost insurance states, providing unrestrained first- and third-party private rights of action, with no required notice to allow cure, while imposing punitive damages, one-way attorney fees and class actions, and allowing individuals to act as “private regulators” of insurers.

The impact of bills like SB 728 can be seen in the negative impacts in other states. 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.

Five of the states where similar legislation passed saw increases in insurance premiums. According to independent studies, Florida saw bodily injury (BI) auto liability insurance costs increase between 30% and 70%. Washington state currently allows this type of lawsuit and losses have increased 20 percent for all major lines of insurance, adjusted for inflation, since this type of lawsuit was permitted.

A recent study of the impacts of similar legislation in New Jersey points out the potential impacts of this extremely costly legislation. The study said the if passed, the New Jersey legislation could increase in insurance premiums of 12% for New Jersey residents and homeowners. One has to wonder, why? Oregon residents and businesses are already protected by the DCBS. In additional, Oregon consumers have spoken:

- **91%** of Oregonians who have filed claims have said that their insurance company handled the claim fairly.
- **69%** of Oregon voters feel adequately protected under current consumer protection laws.
- **75%** of Oregon voters are UNWILLING to pay ANY increase in their insurance rates for additional ways to sue their insurance provider.

This concept of expanding the UTPA to include insurance companies is not new. It has been repeatedly introduced in the Oregon Legislature and has never been accepted. SB 728 is virtually identical to HB 3160 from the 2013 legislative session. HB 3160 passed the House 33-27 in 2013 and supporters expected the Senate to also approve the bill, but the Senate’s attention was drawn to the dangers of HB 3160, and it was stalled in the Senate General Government, Consumer and Small Business Protection Committee when the session ended. The 2011 session’s SB 719 was an even earlier version of the same

concept, but it also failed to pass. It was given a “do pass” recommendation by the Senate General Government, Consumer and Small Business Protection Committee and referred to the Ways and Means Committee, but it remained in committee when the 2011 session ended.

SB 728 raises a number of very specific concerns including the following:

- SB 728 would be very costly for premium payers and taxpayers. It will create higher costs of doing business for insurers that will necessarily be reflected in higher premiums, and will burden an already taxed regulatory and court system.
- The definition of “person” is so broad and ambiguous that, as noted above, even counsel for the insured or a claimant against the insured could be sued under the new language. In other words, a claim or lawsuit for punitive damages can be filed against anyone based on a perceived wrong opinion or “representation.” Oregon law already has statutory and common law remedies against insurance companies, including attorney fees for a prevailing plaintiff.
- Minor violations or delays in insurance adjusting are treated the same as serious violations, and are subject to punitive damages. SB 728 makes all insurance issues that are subject to regulation subject to a lawsuit and punitive damages without regard to whether they have caused any damage to anyone.
- SB 728’s amendments to the UTPA would create confusion because the provisions conflict with the existing regulatory framework and Oregon insurance coverage common law as thoughtfully developed by the courts over decades. SB 728 would impose a new framework that would create uncertainty in insurance markets, among insureds and in the courts, merely to benefit a small group of trial lawyers regarding a problem that does not exist – no one has produced systematic evidence to document the supposed problem or how SB 728 would fix it without causing greater problems and greater expense.

Accordingly, for all of the abovementioned reasons, APCIA urges you to **vote NO** on this legislation.