



**Date: February 1, 2022**

**To: The Honorable Janelle Bynum, Chair  
Members of the House Judiciary Committee**

**Re: HB 4075 – Criminal Injuries Compensation Account**

**Position: Oppose**

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The American Property Casualty Insurance Association (APCIA)<sup>1</sup> urges the legislature to **oppose HB 4075**, which would require 50 percent of restitution ordered to insurance carriers to be distributed to the Criminal Injuries Compensation Account.

It would be fundamentally unfair to require insurers to give up 50 percent of all restitution payments. The purpose of restitution is to give back something that was lost or stolen to its owner to make up for loss, damage, or injury that has been caused. The process and costs to even get to the point where restitution is paid would likely be very expensive to an insurer (involving claims adjusters, attorneys, court appearances, etc.) If this money is not returned to insurers through restitution, the overall losses associated with criminality and fraud will be higher and that will ultimately impact the consumer of insurance.

The bill would put insurers headquartered in Oregon at a competitive disadvantage. Nearly every other state imposes a retaliatory tax on Oregon-based insurance companies when that state's aggregate financial burden on insurers is lower than Oregon's. Retaliatory statutes are written broadly to apply to any financial burdens on insurers, so an Oregon-based insurer can still be subject to retaliation regardless of whether HB 4075 is formally considered a tax under another state's law. Requiring insurers to turnover 50 percent of all restitution payments would have a significant impact on the aggregate financial burden imposed by Oregon. Any increase in Oregon's aggregate burden could further increase (dollar-for-dollar) the amount of retaliatory taxes owed to other states. In this way, HB 4075 would effectively penalize Oregon companies through retaliatory taxation in other states.

The requirement for insurers to give up half of their restitution payments also raises serious constitutional questions. The Oregon Constitution requires all taxation to be uniform on the same class of subjects. There is a strong likelihood the charge created in HB 4075 could be considered a tax for purposes of the uniformity requirement because the funds would not be used for the regulation or benefit of insurers. Instead, the proceeds would go toward the Criminal Injuries Compensation Account, which is overseen by

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<sup>1</sup> APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

the Oregon and helps victims of violent crimes pay their medical bills and other expenses. There is no reason for treating restitution paid to an insurer differently than any other restitution payment, so this legislation may run afoul of the Oregon Constitution's uniformity clause.

Furthermore, HB 4075 may also be considered a taking under the Takings Clause of the federal Constitution. The Takings Clause obligates the government to provide just compensation when taking private property for public use. The United States Supreme Court has repeatedly said that the Takings Clause is designed to bar government from forcing some people alone to bear public burdens which, in all fairness, should be borne by the public as a whole. In fact, a *per se* taking occurs when the government commands the relinquishment of funds linked to a specific, identifiable property interest. Therefore, the requirement in HB 4075 for insurers to relinquish half of their restitution payments would likely qualify as a *per se* taking under the US Constitution.

Since this legislation is fundamentally unfair and potentially unconstitutional, **we urge the legislature to reject HB 4075**. Should you have any questions, please contact me at 209.968.9107 or [denneile.ritter@apci.org](mailto:denneile.ritter@apci.org).

Sincerely,

A handwritten signature in black ink that reads "Denni Ritter". The signature is written in a cursive, flowing style.

**Denni Ritter**

Assistant Vice President, State Government Relations  
American Property Casualty Insurance Association (APCIA)  
[denneile.ritter@apci.org](mailto:denneile.ritter@apci.org)