

HB 3242 B STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Judiciary**Action Date:** 05/17/23**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 3-1-0-1**Yeas:** 3 - Gelser Blouin, Manning Jr, Prozanski**Nays:** 1 - Thatcher**Abs:** 1 - Linthicum**Fiscal:** Has minimal fiscal impact**Revenue:** Has minimal revenue impact**Prepared By:** Lucy Ohlsen, LPRO Analyst**Meeting Dates:** 4/18, 4/19, 5/17**WHAT THE MEASURE DOES:**

Establishes a private right of action for insured to recover actual damages, attorney fees, and litigation costs, resulting from insurer and any other person acting on behalf of insurer in settling or adjusting claims' unfair claims settlement practice.

ISSUES DISCUSSED:

- Relationship of measure to House Bill 3243 A (2023)
- Potential for duplicative lawsuits
- Similar provisions in other states
- Meaning of "other person" in measure
- Notice required prior to filing suit

EFFECT OF AMENDMENT:

Changes class prohibited from engaging in unlawful claims settlement practices to insurer and any other person acting on behalf of insurer in settling or adjusting claims. Specifies that an insured may not bring an action under the measure for a practice related to settling a workers' compensation claim, medical malpractice claim. Specifies that an insured may not bring an action against an attorney in the attorney's individual capacity for an act undertaken on behalf of an insurer, insured, beneficiary or other person in advising, presenting or negotiating an insurance claim. Modifies notice requirement prior to filing an action from 20 to 45 days. Makes conforming amendments.

BACKGROUND:

ORS 746.230 prohibits insurers from engaging in unfair claim settlement practices. Unfair claim settlement practices under the statute include misrepresenting policy provisions, failing to act promptly upon communications relating to claims, and refusing to pay claims without conducting a reasonable investigation, among other things.

House Bill 3242 B allows an insured to bring a civil action against an insurer for unfair claim settlement practices, including practices that are not described in current law but that are deemed unfair by the Director of the Department of Consumer and Business Services (DCBS) or a court. If the insured prevailed, they would be entitled to up to three times actual damages as well as attorney fees.

Before bringing the action, the insured must give written notice to the insurer and DCBS not less than 45 days before commencing an action, and may only proceed to bring the action if the insurer does not resolve the claim within 45 days of providing written notice. An action must be brought within two years of the date of the violation or the date on which the violation is or should have been discovered. The measure authorizes treble damages,

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allowing a court to triple an award of actual damages with the finding the defendant acted unreasonably. An insured may not bring an action under the measure for a practice related to settling a workers' compensation claim, medical malpractice claim. An insured also may not bring an action against an attorney in the attorney's individual capacity for an act undertaken on behalf of an insurer, insured, beneficiary or other person in advising, presenting or negotiating an insurance claim.