

March 1, 2023

House Committee on Business and Labor

Subject: **Support for HB 3243**

Dear Mr. Chair and Members of the Committee:

I am pleased to submit this written statement for the Committee's March 1 hearing as an individual citizen of Oregon, unaffiliated with any business, trade, professional, or government entity directly or indirectly affected by HB 3243.

By way of **professional background**, I am an economist who for many years has concentrated on consumer protection and regulation with a focus on health insurance and financial services. I have taught at the university level, advised state and municipal governments (including state insurance departments and attorneys general), trade unions, and major citizens' organizations, served as an expert witness in state and federal courts, and published extensively on the above-referenced subjects.

I write in **strong support** of HB 3243.

Oregon is one of a minority of states that exempts the business of insurance from the application of its state UDAP consumer protection statutes. New and evolving developments in the insurance industry having a direct and material impact on consumers and small businesses make the Legislature's consideration of HB 3243 especially timely and important.

Among its immediate neighbors, Washington and California have some of the strongest statutes, most extensive enforcement tools, and resilient programs for overseeing consumer protections relating to unfair, deceptive, or unfairly discriminatory insurance products, advertising and sales, underwriting and servicing, and related practices. (Public investigation and enforcement activities are supplemented by private consumer protection actions made possible by state UDAP statutes).

Notwithstanding industry arguments to the contrary, effective consumer protections have not deterred industry activity either in Washington or California (as measured by premiums written and other indicators); nor have they incentivized consumer fraud or rampant claims and settlement activity, or had more than a trivial impact on state insurance department regulatory budgets. (Indeed, the cost of regulation per dollar of gross premium written in California and Washington exceeds the cost in Oregon by only one or two tenths of one percent--.01%-.02%)<sup>1</sup>.

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<sup>1</sup> The ratio of regulatory costs to gross premium are calculated on a statewide basis, annually, by the National Association of Insurance Commissioners.

In contrast, in recent times, Washington and California have made important, innovative contributions to consumer insurance protections under state UDAP laws. To highlight just a few:

- **Cyber Security and Health Insurance Data Breaches.** The California and Washington State Attorneys General investigated and sued Anthem and Premera Blue Cross-Blue Shield for violating the federal HIPAA law and the states's UDAP statute by misrepresenting to policyholders its privacy and technical safeguards against data hackers.
- **Racial Discrimination in Auto Insurance Rating Models.** The Washington State AG undertook a major investigation of auto insurance ratemaking methodologies to determine if the use of credit histories and derivative insurance scoring algorithms had a discriminatory impact on minority drivers in violation of the state's UDAP statute.
- **Mental Health.** Washington State sued Allianz for discrimination against policyholders claiming mental health disorders as a basis for canceling purchased travel.

From a macro perspective, academic experts such as Professor Sharon Tennyson at Cornell University, who have studied consumer protection regulation in the insurance industry conclude that structural features intrinsic to the insurance marketplace-- complex conditional contracts, persistent information asymmetries, and consumer decision psychology, among them-- preclude it from performing satisfactorily without regulatory safeguards.<sup>2</sup>

Although one can clearly debate alternative approaches to consumer protection oversight, the necessary starting point for public policy is statutory authority for inclusion of the business of insurance under state UDAP statutes. For that reason, I urge this Committee to approve HB 3243 and move it forward to final enactment.

Respectfully,

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<sup>2</sup> Tennyson, Sharon. "Rethinking Consumer Protection Regulation in Insurance Markets" *Networks Financial Institute* (2010).