



RE: House Bill 3243 Relating to violations of the Insurance Code as unlawful trade practices. Includes insurance in definition of goods and services that are subject to penalties for unlawful trade practices.

Dear Chair Holvey, Vice-Chairs Elmer and Sosa, and Members of the House Committee on Business and Labor:

The Oregon Land Title Association (OLTA) is the professional association for the title insurance industry in Oregon, and membership includes title insurance underwriters and underwritten agent companies, many of which are locally owned throughout the State. OLTA promotes the educational, ethical, professional and legislative interests of the title industry. OLTA works with regulators, legislators, county clerks, and the public to ensure the title industry is responsive to evolving customer needs.

OLTA opposes House Bill 3242.

Insurance has been exempted from the Unlawful Trade Practices Act (UTPA) for at least 50 years.¹ Insurance is exempt for good reason. In Oregon, insurance companies are regulated by the Department of Business and Consumer Services, Department of Financial Regulation (DFR), which pursuant to its rule-making authority, adopts administrative Rules under the Insurance Code to guide the conduct of Oregon insurers.

House Bill 3242 attempts to subject insurers to UTPA liability for alleged missteps in claims handling under ORS 746.230 of the Insurance Code. However, DFR has already promulgated Rules under this Insurance Code section 746.230, found at Oregon Administrative Rules 836-080-0215 to 0235.² The Rules require prompt claim acknowledgment, handling, and settlement, and provide clear guideposts for insurers throughout the process with explicit timelines.³ The Rules represent a well-coordinated and extensive regulatory scheme by which insurers are already bound.

For regulated industries such as insurers, a regulatory scheme such as the Insurance Code and related Administrative Rules provide clear guidelines. For example, OAR 836-080-0225(1) states an insurer must respond to a claim within 30 days.

The uncertainty of a court's or jury's determination under the UTPA is inconsistent with the current regulations applicable to insurers.

To subject Insurers to possible UTPA liability is duplicative and will lead to uncertainty. To subject insurers to administrative rules on the one hand, and the possibility of common-law liability under a different standard on the other, is counterproductive. For at least 50 years, the Legislature has not found it necessary; instead, deferring to the DFR to capably do its job.

In any case, Title Insurance should be exempted from HB 3243.

¹ See 1973 ORS § 646.605(7), excluding 'insurance' from the definition of 'real estate, goods, and services' covered by the UTPA, available [here](#).

² <https://secure.sos.state.or.us/oard/view.action?ruleNumber=836-080-0215> to <https://secure.sos.state.or.us/oard/view.action?ruleNumber=836-080-0235>

³ We will not repeat the Rules in full here, but only select a few to convey the clarity they give insurers in handling Oregon claims. OAR 836-080-0215 requires that a claim file be maintained in sufficient detail to allow reconstruction of pertinent dates and events. OAR 836-080-220 (1) requires an insurer to disclose all policy terms and coverages to a first-party insured; (2) proscribes concealment of benefits pertinent to the claim; (4) limits the insurer's ability to deny untimely claims in some circumstances; (5) prohibits over-broad releases of liability; and (6) prohibits partial claim checks conditioned on a full release of liability. Etc.

Title insurance is not like other kinds of insurance. Title insurance premiums are paid once, at date of policy. Title insurance policies are based on matters existing as of the date of policy. Title insurance forms and rates are set forth in a rating manual, which is actively regulated by the DFR.

The Insurance Code and Administrative Rules provide an extensive regulatory scheme with clear guidelines for the DFR to regulate Insurers in Oregon, particularly title insurers. If the bill proceeds, it should be amended to exclude title insurance.

Thank you for your consideration of this input from OLTA.

Submitted by Ian Kyle, Chair, OLTA Legislative Committee

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