

April 21, 2023

Sen. Floyd Prozanski, Chair
Sen. Kim Thatcher, Vice Chair
Members of the Oregon Senate Judiciary Committee

Re: Please oppose HB 3242 and HB 3243

Dear Chair Prozanski, Vice Chair Thatcher, and Committee Members,

The **Northwest Insurance Council** and the **National Association of Mutual Insurance Companies**, whose members collectively write nearly half of all home and auto insurance policies in force in the state of Oregon today, have previously provided written comment expressing our concerns in opposition to HB 3242 and HB 3243. Today, we are writing to provide additional information for your consideration, in the hope that the committee will consider rejecting these bills.

Our organizations and our members oppose HB 3242 and HB 3243 because:

- **These bills ignore or interfere with rights and protections that Oregon consumers have today.**
- **Together and separately, the bills will increase litigation, delay the resolution of claims, and increase insurance costs for insurers – costs that impact policyholder premiums.**
- **HB 3242 is premature, given pending litigation in the Oregon State Supreme Court.**
- **HB 3243 exposes insurers to an overlapping and potentially conflicting regulatory framework from both DCBS and the Department of Justice.**

We have expressed in previous testimony to the committee that these measures, if enacted, will make Oregon the nation's most extreme climate for lawsuits against insurance companies, including the threat of multiple lawsuits being pursued under the two policy changes for a single claim.

We have also expressed our concern that establishing a private right of action for violations of Oregon's Unfair Claims Settlement Practices Act (UCSPA) as proposed in HB 3242 is in conflict with the stated purpose of that act, which from its inception, enactment and implementation has been a tool for regulatory oversight and enforcement and not the basis for legal action against insurers brought by individuals.

Further, making violations of the UCSPA also a violation of the state's Unfair Trade Practices Act (UTPA) and exposing insurers to lawsuits from both first- and third-party claimants is likely to result in a dramatic increase in litigation. Keeping in mind what we believe should be the ultimate goals – promoting efficient and fair claims settlements and holding insurers accountable – it's important to understand these proposed bills could result in more claims disputes and slower resolution of those disputes when they occur.

Insurers have demonstrated a willingness to work collaboratively with the DCBS, Insurance Commissioner Stolfi and the legislature on specific proposals intended to improve transparency in underwriting and rating, to improve responsiveness from companies to policyholders and to hold our own industry accountable in the underwriting and claims process, all while seeking to protect Oregon's

status as a healthy, competitive insurance market. We would strongly urge this committee to consider our trades' testimony and written comments provided by Oregon's P&C, Life and Health insurers, business organizations, chambers of commerce and others provided for the committee record as you consider these bills. We have also included in this submission a two-page summary of concerns we've identified regarding HB 3242 and HB 3243. Our trade associations and member companies would welcome any opportunity to discuss these concerns and/or seek reasonable changes to Oregon statutes to further protect consumers. We ask you once again to reject HB 3242 and HB 3243.

Respectfully,

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Additional Concerns About House Bills 3242 & 3243

HB 3242 and HB 3243 are each uniquely extreme on their own, but if BOTH become law together, they will make Oregon the nation's most extreme state for lawsuits filed against insurance companies – more extreme than states like California, Louisiana, and Florida (where consumers pay some of the nation's highest insurance premiums).

- **HB 3242:**
 - ✓ Creates a new right to sue an insurance company for a disputed claim.
 - ✓ Prevailing plaintiff can be awarded actual damages, non-economic damages like emotional distress and pain & suffering.
 - ✓ Court can also TRIPLE the damage award and force the defendant (the insurer) to attorney fees and court costs
 - ✓ As much as 40% of litigation awards can go to the plaintiff's attorney.
 - ✓ Discourages and delays claims resolution; incentivizes lawsuits.
 - ✓ Increases claims costs, which impact the cost of insurance for Oregon consumers.
- **HB 3243:**
 - ✓ Makes violations of the existing Unfair Claims Settlement Practices Act ALSO a violation of Oregon's Unfair Trade Practices Act.
 - ✓ Allows lawsuits under *both* statutes, for everything from a delayed car repair estimate or a to the size of the type font in an insurance company ad.
 - ✓ Impacts EVERY line of insurance business – Property & Casualty (home, auto, business), plus life, health and disability insurance.
 - ✓ Allows “any person” to file lawsuits against an insurer (including insurance agents, adjusters and employees) – not just insurance claimants – threatening an explosion of litigation in Oregon courts.
 - ✓ Establishes a litigation climate Oregon has so far avoided – discouraging business and job growth in the state at the worst possible time for Oregon's working families.

Lessons for Oregon from three states with high insurance rates

- **Washington state** has a *less-extreme* version of HB 3242 in place today. Lawsuits against insurers contributed to a **20 percent increase** in insurance claims costs after the law was passed.
- For 10 years, **California** had case law in place that allowed the kind of lawsuits created by HB 3242 and HB 3243. Claims and lawsuits increased dramatically, leading to **premium increases of 32-53 percent** over the course of the decade. Once the law changed and these suits were no longer allowed, claims settlement costs and insurance premiums returned to previous levels.
- In **Florida**, lawsuit abuse became so rampant that insurers stopped writing insurance policies for homes and businesses there, while premiums skyrocketed by thousands of dollars, pushing people out of the insurance market and into a state-managed property insurance plan. Just weeks ago, the Legislature there passed new laws to limit lawsuit abuse in order to rebuild the market for affordable insurance in that state. As the reform bill was being debated in March

2023, personal injury law firms filed more than **280,000 lawsuits** against insurers before the new law could take effect.

Oregon laws, regulations and courts provide strong consumer protection

Oregon's existing statutes, case law and insurance regulation serve consumers well. IF additional protections and remedies are needed to ensure that Oregon policyholders are treated fairly and equitably by insurers, those protections should be limited to address specific barriers that aren't already addressed in Oregon laws, rules, or case law.

Oregon's consumer protections include:

- ORS Chapter 746 includes the **Unfair Claims Settlement Practices Act**, enforced by the Department of Consumer & Business Services/Division of Financial Regulation. DCBS/DFR has authority to:
 - ✓ Authorize or revoke authorization for any insurer or insurance agent/broker to write and sell insurance in Oregon.
 - ✓ Levy penalties, issue "cease and desist" orders and assess fines against insurers.
 - ✓ Review and approve/disapprove insurance company rates and policy forms before they can be sold in Oregon.
 - ✓ Audit insurance company sales and claims practices with market conduct examinations.
 - ✓ Directly intervene on behalf of policyholders who file complaints against insurers because of claims disputes, and...
 - ✓ Order an insurer to pay a claim PLUS pay restitution to a policyholder if the insurer did not follow Oregon insurance laws or rules in claims dispute.

- Remedies available to Oregon consumers under **current statutes and/or case law** include:
 - ✓ Breach of contract for policy benefits.
 - ✓ Consequential damages for breach of contract (including, potentially, punitive damages).
 - ✓ Emotional distress damages for breaches of contract that directly causes physical injury.
 - ✓ Damages in excess of the stated policy limit for failing to adequately defend the insured.
 - ✓ Unrestricted damages for the tort of intentional infliction of emotional distress.
 - ✓ Unrestricted damages for the tort of intentional interference with contractual relations.
 - ✓ Unrestricted damages for the tort of fraudulent reductions or denials of benefits.
 - ✓ Punitive damages where the misconduct of the insurer has been deliberate, intentional, wanton, and willful.
 - ✓ Assignability of claims against insurers.
 - ✓ Attorney fees for actions on the policy; 11. Actions against the insurer to recover policy proceeds following entry of a judgment.