

April 2, 2025

Delivered via email

RE: Please **oppose HB 3816**

The Hon. Jason Kropf, Chair
The Hon. Willy Chotzen, Vice Chair
The Hon. Kim Wallan, Vice Chair
Members, House Committee on Judiciary

Dear Chair Kropf and Committee Members,

On behalf of the **American Property Casualty Insurance Association, the National Association of Mutual Insurance Companies** and **the Northwest Insurance Council**, whose members collectively underwrite the vast majority of Property & Casualty (auto, home, business & liability) insurance in force in Oregon today, we write **in opposition to HB 3816**, which would require 50 percent of restitution ordered to insurance carriers to be distributed to the Criminal Injuries Compensation Account, and ask you to reject this legislation.

Fundamentally unfair

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 insurance consumers.

Further, while we appreciate the effort made in the –3 amendment to draw a distinction between cases pursued by public prosecutors that result in an order of restitution and cases in which the insurer files a civil suit to seek recovery from a defendant, we do not believe an insurer will have authority under the bill to supersede the decision of a prosecutor to determine whether or not they will pursue charges. That decision will likely be made by the prosecutor.

Negative “retaliatory tax” impacts

Oregon and nearly every state in the country imposes a “retaliatory tax” on insurers, to equalize taxes paid by domestic (in-state) and foreign (out-of-state) insurers in every state where they sell insurance. HB 3816 would impact the insurance retaliatory tax in two negative ways.

1. Reducing restitution paid to insurers by 50% in statute will be viewed by other states as a tax imposed on insurers, which means an Oregon-based company could pay more in other states where they write business, putting them at a competitive disadvantage to out-of-state insurers writing in the same states.

2. As Oregon's aggregate tax burden (in this case, the payment of 50% of restitution back to the state) grows, it "catches up" with other states that currently have higher aggregate taxes on insurance companies. That means out-of-state companies may pay LESS to the state of Oregon in retaliatory taxes. Retaliatory taxes currently generate roughly \$78 million per year to the Oregon General Fund.

Significant constitutional questions

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 3816 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 the state 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 3816 may also be considered a taking under the Takings Clause of the U.S. 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 3816 for insurers to relinquish half of their restitution payments would likely qualify as a *per se* taking under the U.S. Constitution.

Accordingly, we strongly and respectfully urge this Committee and the Oregon Legislature not to pass legislation that is fundamentally unfair, has negative impacts on insurance revenues, and is potentially unconstitutional. For these reasons, we oppose HB 3816 and we ask that the committee **not pass** this bill.

If our associations can provide any additional information, please do not hesitate to contact any or all of us.

Respectfully submitted,

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