



To: The Honorable Paul Holvey, Chair  
Members of the House Business and Labor Committee

Re: **HB 3272 – Property Insurance and Unfair Claims Settlement Act.**  
APCIA, NAMIC, and NWIC Position: **OPPOSE**

Date: March 10, 2021

Chair Holvey and Members of the House Business and Labor Committee:

The American Property Casualty Insurance Association (APCIA), National Association of Mutual Insurance Companies (NAMIC), and the Northwest Insurance Council (NWIC) who collectively represent most of the property and casualty insurers in the state of Oregon, submit the following comment regarding HB 3272, legislation which seeks to establish minimum rebuild and additional living expense timelines and creates cause of action for unfair claim settlement practices.

APCIA, NAMIC, and NWIC (hereinafter “the trades”) appreciate the opportunity to provide comments in response to proposed changes in HB 3272 and their impact on property and casualty insurance in Oregon. The trades hope the following information is helpful. We value the opportunity to work together to achieve our shared goal of ensuring affordable insurance is widely available in Oregon and that the market remains stable and competitive.

### **Extraordinary Challenges to the Property & Casualty Industry in 2020**

Compounded effects of COVID-19, catastrophes, and civil unrest have put unusual pressure on the U.S. property casualty insurance industry. Western states are particularly under pressure after multiple above-average wildfire seasons in recent years – including Oregon during the 2020 wildfire season -- as well as increased litigation. The record-breaking 2020 wildfire season unfortunately further compounded these challenges, as the projected year-end U.S. homeowner combined ratio jumped to 109.1 percent, the worst in 10 years, following an unprecedented number of fires and other catastrophes, setting numerous records throughout the season. Following are some noteworthy statistics:

- 2020 was the sixth consecutive year the U.S. has experienced 10 or more billion-dollar weather and climate-related disasters, as it recorded 22 individual 22 disasters, shattering the previous record, and well ahead of the yearly average of 6.6 events.
- U.S. total insured losses totaled \$67 billion, with wildfires contributing \$11 billion.
- The 2020 wildfire season was the most severe on record based on acreage with 10.3 million acres burned.

As you know, Oregon residents unfortunately suffered some of the worst devastation of 2020 after 1.2 million acres burned, double the 10-year average. Over four thousand homes were destroyed and over twenty-five thousand claims filed. Losses due to smoke damage and evacuations were significant, representing 35 percent of all losses in Oregon. Particularly concerning were the large swaths of affordable housing lost, and the immeasurable devastation from the loss of nine Oregon lives.

### **ORS chapter 742 - Insurance Policies Generally; Property and Casualty Policies**

Oregon communities are hurting, and property and casualty insurers are sensitive to this pain. In light of this, members of the trades are concerned about the potential adverse impacts to Oregon homeowners following proposed changes in HB 3272. The broad expansion of coverage proposed in Sections 2 and 3 of the bill, which modifies ORS Chapter 742 – Insurance Policies Generally; Property and Casualty Policies, will result in substantial economic costs passed along to policyholders. Similar changes mandating extended rebuild and additional living expense (ALE) timeframes following disasters and allowing policyholders to combine coverage limits were implemented in California; however, the unintended consequences of this expansion of coverage has led to a dual crisis of affordability and availability in that state. In response, insurers have increasingly withdrawn from high-risk areas in the state, like the Wildland Urban Interface (WUI), forcing many homeowners to seek coverage in the state's residual market, the California FAIR plan. For insurers who continue to offer coverage in these areas, rates have climbed substantially, with average insurance company indications in excess of 30% in recent years and requested rate increases steadily climbing, now in to the double-digits on average.

#### Reconstruction & ALE Timeframe; Combining Limits

Insurers have developed a number of coverage options in recent years that are available by endorsement for an additional cost, to provide consumers with coverage options that may best fit their needs and budget. Examples of this are *Replacement Cost Coverage*, which will pay to replace one's personal belongings and to repair or rebuild a home with materials of like kind and quality, up to purchased policy limits, without any deduction taken for depreciation. Similarly, *Extended Replacement Cost* is another optional coverage offered by most insurers for a higher premium, which increases the dwelling limits under the policy when circumstances beyond the control of the insured such as a disaster result in a surge in costs to rebuild. Often this can be purchased in amounts that increase coverage to 125% or 150% of the reconstruction estimate and is highly recommended by insurers. For policyholders who seek total peace of mind that their property will be fully covered without risk of running out of funds, some insurers may offer *Guaranteed Replacement Cost*. This optional coverage also will not reduce a settlement for depreciation, however, unlike the Extended Replacement Cost coverage option which increases the dwelling limits, Guaranteed Replacement Cost coverage eliminates any dwelling policy limit or cap and alternatively provides a guarantee to rebuild the home to its pre-loss condition regardless of the cost. Access to this coverage will vary, and will be very expensive in areas considered 'high-risk' where reconstruction costs could surge following a disaster. However, these coverage options exist to provide policyholders the flexibility to customize a level of insurance protection that best fits their budget.

Understanding Oregon consumers have varying budgets and insurance needs, the trades recommend the changes proposed in HB 3272 not be made mandatory, but instead encourage insurers to offer

Oregon residents options for extended reconstruction and ALE timeframes, and omit language to combine policy limits, instead relying upon existing coverage options available to increase dwelling limits, to ensure affordable coverage remains available.

#### Commercial Property; Land Value Inclusion

The trades have additional concerns on proposed changes in Section 2 which do not exclude commercial property lines and lacks language for residential property claim settlements that allow reconstruction or home purchase at an alternative site. Specifically, land value should not be included in a residential property claim settlement as insurance policies do not insure land; only the property, including the dwelling, additional structures and contents set upon it.

#### Consumer Notification

Finally, among the changes proposed to ORS chapter 742, the trades have strong concerns regarding the proposed consumer notification for reconstruction estimate. The trades are unclear if the notification requires all individual elements outlined in the proposed changes be disclosed in the notice, including the following:

- (A) Labor, building materials and supplies;
- (B) Contractor's overhead and profit;
- (C) Demolition and debris removal;
- (D) Permits and architect's plans; and
- (E) Components and features of the property.

Further, under section E, proposed language identifies all the components and features of the property that must be included.

While the trades do not have a concern with providing a written notice of the total value determined in the reconstruction estimate, providing a highly detailed notice that individually lists each component above and the corresponding value will be problematic for insurers for several reasons. First, the implementation of such notice would require costly and complex programming to develop, implement and maintain; costs that may be passed along to policyholders. Additionally, there are concerns of accuracy in providing such notice in writing as individual costs may vary by contractor and are highly subject to fluctuation due to short term trends driven by materials and labor availability and costs, demand surge following a large disaster, etc., as well as any modification the insured may have made and not disclosed and reflected in the reconstruction estimate. In identifying these individually, it creates an exposure to the insurer, should any individual item not reflect actual costs at the time of loss.

The trades would instead propose a notice that discloses a general statement identifying the factors taken into consideration in determining the total reconstruction estimate provided, without identifying individual estimate values by each of the components above.

#### **ORS chapter 746.230 - Unfair claim settlement practices**

Changes proposed under Section 4 of the bill establish a private right of action for any unfair claims practice violation, including requiring notice to the insurer and the Department, and gives the insurer 20 days from “the date of the notice” to cure the violation. Absent a cure a case shall proceed and a plaintiff may recover treble damages if a court finds the insurer acted “unreasonably”. The trades and our members strongly oppose this language due to concerns of abuse and establishing a very low standard for what may be determined “unreasonable”. Further, the trades have concerns that the proposed language will allow the court to award any other available remedy, and potential violations would not be limited to those identified in the bill, but could be anything the court decides to deem as unfair.

The trades are very concerned this may lead to a significant increase in litigation, which in combination with the potential increase in costs following a disaster, may severely and adversely impact the health of the Oregon insurance market. Similar challenges of affordability and availability exist in several other catastrophe-prone states and have been exacerbated following severe increases in litigation, which have led to market destabilization in some cases.

The trades and our members believe the foremost interest of policyholders and insurers is to promote fast and fair settlement of claims when they are filed. The provisions in Section 4 are more likely to lead to increased litigation, increasing settlement costs and delays in processing and settling insurance claims – without any evidence that widespread complaints or unfair settlements are occurring in Oregon.

#### **ORS chapter 744.052 to 744.089 – Insurance Producers**

The trades are unclear on the reasoning behind adding the provisions in Section 6 of the bill. The trades are particularly concerned about the proposed language in this section, in light of other proposed changes requiring additional consumer notices and a perceived reduction of standards that may expose insurance producers as well as companies to allegations of unfair treatment and/or litigation.

#### **A Healthy and Stable Insurance Market**

Insurance carriers strive to provide a high-quality claims experience for policyholders and the trades respectfully requests that any consideration of new legislation be approached in a cautious and thoughtful manner, as always, to avoid unintended consequences from regulations implemented following a major catastrophe.

It is worth pointing out, we think, that out of more than 25,000 claims filed for fire and wind damage stemming from the Labor Day Oregon wildfires, fewer than 100 complaints have been filed with the Department of Consumer & Business Services. Considering the magnitude of the losses and the speed and thoroughness of the damage, we believe insurers “met the moment” for Oregon policyholders in the aftermath of this massive-scale disaster.

Also worth mentioning is that the most recent data from the National Association of Insurance Commissioners shows that Oregon ranks as the LEAST expensive state in the country for homeowner’s insurance. This is a market that is serving Oregonians well.

Nonetheless, insurers strive, as do lawmakers, to improve our response to catastrophes like these. Thus, the trades and our members look forward to working with the Legislature to ensure Oregon remains a healthy, stable, competitive, and responsive private insurance market.

Again, thank you for your consideration of these very important topics and for the opportunity to provide these comments.

Respectfully,

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