



# Oregon

John A. Kitzhaber, MD, Governor

## Department of Consumer and Business Services

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March 23, 2011

Honorable Chip Shields, Chair and Members of the  
Senate General Government Small Business and Consumer Protection Committee  
900 Court St. NE, Room 453  
Salem, Oregon 97301

Dear Senator Shields and Committee Members:

After hearing the testimony on SB 719 last Thursday, I thought it would be valuable to provide the committee with some clarification on the Insurance Division's enforcement powers and practices.

Both the Unlawful Trade Practices (UTPA) provisions (ORS 646.605 to 646.652) and the trade practices provisions of the Insurance Code (ORS chapter 746) originated during the 1965 Legislative Session. The provisions of the Insurance Code are fairly comprehensive and include broad consumer protections very similar to those contained in the UTPA.

The Department of Consumer and Business Services (DCBS) is a strong regulator, and we use more than just the trade practices section of the Insurance Code to regulate the insurance industry and protect consumers. Whenever possible, our focus is to make consumers whole when they are harmed by violations of the Insurance Code. From 2008 to 2010, the Insurance Division recovered over \$22 million for consumers. This is money that was paid to or for the benefit of consumers and is above and beyond any administrative penalties or assessments imposed by the department.

DCBS has a dedicated team of consumer advocates who work with consumers to resolve individual insurance problems. Our advocates take great pride in recovering money for consumers who have been wronged by those we regulate. From 2008 to 2010, the consumer advocacy team alone recovered \$5.63 million from insurance companies for Oregon consumers.

Whether it's through consumer complaints or independent investigation, when the Insurance Division of DCBS identifies a recurring problem or pattern of conduct that violates the Insurance Code, the division's market surveillance staff is at the ready to conduct an in-depth investigation. Through its investigations, our market surveillance team often assists groups of consumers, many of whom may not even realize that they have been wronged. From 2008 through 2010, our market surveillance team was responsible for recovering over \$17 million for consumers, including \$1.2 million from Regence BlueCross BlueShield of Oregon and \$780,000 from PacifiCare of Oregon in 2009. Recoveries like these are very much an untold story, as they are not published as part of our enforcement actions.

In addition to recovering money for consumers, the department uses its significant authority under the law to penalize those who violate the Insurance Code. The department's broad enforcement powers include the ability to impose fines, require disgorgement of profits, issue cease-and-desist orders, suspend or revoke licenses and certificates of authority, and even refer matters to law enforcement for criminal

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prosecution. In the last three months alone we have revoked, suspended, or requested and received surrender of eight producer (agent) licenses.

Since 2010, the department has initiated enforcement actions that have resulted in the levying of tens of thousands of dollars in fines against insurers. During all of 2010 and the first three months of 2011, the department collected over \$368,000 in fines from actions against companies and producers.

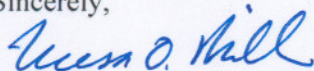
Although the department has strong enforcement powers, we are not always able to provide the relief requested by consumers. For example, the department, like most if not all agencies, does not have the kind of equitable powers typically reserved for the courts. As such, the department cannot require an insurance company to reinstate an individual Medicare supplement policy and, under the circumstances described at the hearing on Thursday, to pay a claim under such a policy no longer in effect. Given that the UTPA closely tracks the authority we have under the Insurance Code, it's not clear to me that bringing insurance under the UTPA would fix the issues discussed at Thursday's hearing. If SB 719 is intended to give regulators equitable-type powers allowing them to provide specific remedies requested by consumers, it would need to be redrafted to achieve this goal.

Senate Bill 719's creation of a dual system of state regulation for insurance raises some concerns. For example, if the Attorney General and DCBS both have authority to address violations of the Insurance Code, under SB 719 one could issue rules that are inconsistent with rules issued by the other. Also, under SB 719, DCBS and the Attorney General could both separately require conflicting or different remedial action for a producer who violated the Insurance Code, or an insurer that had problems with its claims processing system. If the Attorney General and DCBS could not agree on the remedial action necessary—which regulator should the producer or the insurer listen to?

Finally, I think it is important to note that no one provided testimony explaining the value of adding a second regulator. Rather, the proponents of SB 719 clearly felt that the prevailing plaintiff attorney's fees provision afforded by the UTPA would remedy their concerns. If the legislature agrees with the proponents, then it could add such a provision to the Insurance Code instead of creating a system of dual regulation.

If you have additional questions about the Insurance Division's regulatory powers or processes, please feel free to contact me. I'm happy to help in any way I can.

Sincerely,



Teresa D. Miller  
Insurance Division Administrator