

# House Bill 3075

Sponsored by COMMITTEE ON CONSUMER PROTECTION

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits person to bring action against insurer or other person that commits or performs unfair claim settlement practice. Requires notice to Director of Department of Consumer and Business Services in certain circumstances. Permits court to award attorney fees in certain circumstances. Specifies what may constitute prima facie evidence of unfair claim settlement practice. Requires that person bring action within two years after discovering unfair claim settlement practice.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to actions brought for unfair claim settlement practices; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of the Insurance Code.**

5 **SECTION 2. (1) A person who suffers an ascertainable injury or loss as a result of an**  
6 **insurer's or another person's committing or performing a practice prohibited under ORS**  
7 **746.230 may bring an individual action in contract or tort in an appropriate court to recover**  
8 **actual and consequential damages or \$200, whichever is greater. A court or jury may award**  
9 **punitive damages, and the court may provide equitable relief the court considers necessary**  
10 **or proper.**

11 **(2) A person who brings an action under subsection (1) of this section shall at the same**  
12 **time mail a copy of the complaint or other initial pleading to the Director of the Department**  
13 **of Consumer and Business Services. The person's failure to mail a copy of the complaint to**  
14 **the director does not constitute a jurisdictional defect, but a court may not enter judgment**  
15 **for the person until the person files proof with the court that the person has complied with**  
16 **this requirement. An affidavit or return receipt is proof of mailing. The person shall also**  
17 **mail a copy of any judgment rendered in the action to the director immediately after the**  
18 **court renders the judgment.**

19 **(3) Except as provided in subsection (4) of this section, the court may award reasonable**  
20 **attorney fees to the prevailing party in an action under this section.**

21 **(4) The court may not award attorney fees to a prevailing defendant under the provisions**  
22 **of subsection (3) of this section if the action under this section is maintained as a class**  
23 **action pursuant to ORCP 32.**

24 **(5) Any civil or administrative penalty that the Department of Consumer and Business**  
25 **Services imposes on a respondent in a final order for a violation of ORS 746.230 or any**  
26 **judgment a court renders against a respondent for a violation of ORS 746.230 is prima facie**  
27 **evidence in an action brought under this section that the respondent committed or per-**  
28 **formed a practice prohibited under ORS 746.230. A respondent's assurance of voluntary**  
29 **compliance, whether or not approved by the court, is not evidence of a violation.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       **(6) A person who brings an action under this section must do so within two years after**  
2 **the date on which the person discovers the unlawful practice. The two-year period does not**  
3 **begin or run while any complaint that the Director of the Department of Consumer and**  
4 **Business Services has filed to punish violations of ORS 746.230 is pending, if the person's**  
5 **action is based in whole or in part on any matter that is also a basis for the director's**  
6 **complaint.**

7       **SECTION 3.** **Section 2 of this 2007 Act applies to any action for a violation of ORS 746.230**  
8 **brought on or after the effective date of this 2007 Act.**

9       **SECTION 4.** **This 2007 Act being necessary for the immediate preservation of the public**  
10 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
11 **on its passage.**

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