

# House Bill 3092

Sponsored by Representative BARKER (at the request of National Insurance Crime Bureau)

## 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**.

Creates crime of insurance fraud. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Permits court to order restitution to insurer for value of benefit, payment for loss or recovery obtained illegally.

Requires prosecuting attorney to notify Director of Department of Consumer and Business Services and any appropriate regulatory body or professional licensing board of conviction of person for crime of insurance fraud.

Permits insurer to bring action to recover value of benefits, payments or recoveries provided or paid to person convicted of insurance fraud, unless and to extent person has made or was ordered to make restitution.

Exempts person who provides information in connection with suspected insurance fraud from civil liability for providing information.

Requires insurer to report suspected insurance fraud to Department of Consumer and Business Services and to cooperate with investigation and prosecution.

Requires insurer to provide certain notices on insurance applications and claim forms.

## A BILL FOR AN ACT

1  
2 Relating to insurance fraud; creating new provisions; and amending ORS 161.005, 165.692, 166.715,  
3 166.725 and 743.028.

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

5 **SECTION 1. (1) A person commits the crime of insurance fraud if the person knowingly:**

6 **(a) Provides false information or makes or causes to be made a false representation in**  
7 **connection with a claim for an insurance benefit, a payment for a loss or a recovery;**

8 **(b) Fails to decline, refuse or return an insurance benefit, a payment for a loss or a re-**  
9 **covery to which the person is not entitled by reason of an insurer's mistake or other facts**  
10 **or circumstances connected with the person's claim or the coverage provided by an applica-**  
11 **ble insurance policy;**

12 **(c) Conceals from or fails to disclose to an insurer the occurrence of an event or the**  
13 **existence of information that would cause the insurer not to provide an insurance benefit,**  
14 **a payment for a loss or a recovery to which the person is not entitled;**

15 **(d) Obtains or retains an insurance benefit, a payment for a loss or a recovery in an**  
16 **amount greater than that to which the person is entitled under the insurance policy; or**

17 **(e) Makes or causes to be made during an official proceeding, as defined in ORS 162.105,**  
18 **a false statement in connection with an insurance claim.**

19 **(2) Insurance fraud is:**

20 **(a) A Class B felony if the value of the benefit or the amount paid or to be paid for a loss**  
21 **or recovery is \$10,000 or more;**

22 **(b) A Class C felony if the value of the benefit or the amount paid or to be paid for a loss**  
23 **or recovery is \$750 or more and less than \$10,000; or**

24 **(c) A Class A misdemeanor if the value of the benefit or the amount paid or to be paid**

**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 for a loss or recovery is less than \$750.

2 (3) A court may order a person convicted of the crime of insurance fraud, in addition to  
 3 and not in lieu of the penalties set forth in subsection (2) of this section, to make restitution  
 4 to the insurer for the value of any benefit, payment for a loss or recovery the person ob-  
 5 tained.

6 **SECTION 2.** A prosecuting attorney shall notify the Director of the Department of Con-  
 7 sumer and Business Services and any appropriate regulatory body or professional licensing  
 8 board of the conviction of a person for insurance fraud under section 1 of this 2009 Act.

9 **SECTION 3.** (1) An insurer has a civil cause of action to recover payments or recoveries  
 10 obtained by or the value of benefits provided to a person convicted of insurance fraud under  
 11 section 1 of this 2009 Act, unless and to the extent that the person convicted has made or  
 12 has been ordered to make restitution under section 1 (3) of this 2009 Act.

13 (2) An insurer, after obtaining a judgment for a civil cause of action under subsection (1)  
 14 of this section, shall notify the Department of Consumer and Business Services and any ap-  
 15 propriate regulatory body or professional licensing board of the judgment obtained.

16 **SECTION 4.** ORS 165.692 is amended to read:

17 165.692. A person commits the crime of making a false claim for health care payment when the  
 18 person **knowingly**:

19 (1) [*Knowingly*] Makes or causes to be made a claim for health care payment that contains any  
 20 false statement or false representation of a material fact in order to receive a health care payment;  
 21 [*or*]

22 (2) [*Knowingly*] Conceals from or fails to disclose to a health care payor the occurrence of any  
 23 event or the existence of any information with the intent to obtain a health care payment to which  
 24 the person is not entitled, or to obtain or retain a health care payment in an amount greater than  
 25 that to which the person is or was entitled[.]; **or**

26 (3) **Makes or causes to be made a claim for a health care payment for health care ser-**  
 27 **VICES the person did not use or that were not provided to the person.**

28 **SECTION 5.** (1) A person may provide information, including a report or oral or written  
 29 evidence or testimony, concerning insurance fraud that the person reasonably anticipates  
 30 will occur or that the person knows or suspects has occurred to a court, to the Department  
 31 of Consumer and Business Services, a law enforcement agency or an insurer.

32 (2) If a person in good faith provides information in accordance with subsection (1) of this  
 33 section for the purpose of preventing, investigating or prosecuting insurance fraud, the per-  
 34 son is not liable for civil damages as a result of providing the information.

35 (3) An insurer that reasonably believes that a person has committed, is committing or  
 36 is about to commit an act that may constitute insurance fraud under section 1 of this 2009  
 37 Act shall disclose all material information concerning the crime to the Department of Con-  
 38 sumer and Business Services. The insurer shall cooperate with the department in any in-  
 39 vestigation the department or a prosecuting attorney conducts or any prosecution that a  
 40 prosecuting attorney commences under section 1 of this 2009 Act.

41 **SECTION 6.** ORS 743.028 is amended to read:

42 743.028. (1) The Director of the Department of Consumer and Business Services shall prescribe  
 43 uniform health insurance claim forms which shall be used by all insurers transacting health insur-  
 44 ance in this state and by all state agencies that require health insurance claim forms for their re-  
 45 cords.

1 (2) All health insurance claim forms prescribed under subsection (1) of this section must  
2 contain or have attached to them the following notice, prominently displayed in prominent  
3 typeface:  
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5  
6 NOTICE

7 FOR YOUR PROTECTION, OREGON LAW REQUIRES THAT YOU BE INFORMED THAT  
8 PRESENTING A FRAUDULENT CLAIM FOR AN INSURANCE BENEFIT OR PAYMENT OF  
9 A LOSS OR A RECOVERY IS A CRIME PUNISHABLE BY FINES OR IMPRISONMENT, OR  
10 BOTH.  
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12  
13 (3) The absence of the notice described in subsection (2) of this section is not a defense  
14 to a charge of making a false claim for a health care payment under ORS 165.692.

15 SECTION 7. (1) An insurer, on all insurance policy applications and on all insurance  
16 claim forms the insurer issues or provides to an insured, shall attach or incorporate the  
17 following notice, prominently displayed in prominent typeface:  
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19  
20 NOTICE

21 FOR YOUR PROTECTION, OREGON LAW REQUIRES THAT YOU BE INFORMED THAT  
22 PRESENTING A FRAUDULENT CLAIM FOR AN INSURANCE BENEFIT OR PAYMENT OF  
23 A LOSS OR A RECOVERY IS A CRIME PUNISHABLE BY FINES OR IMPRISONMENT, OR  
24 BOTH.  
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26  
27 (2) The absence of the notice described in subsection (1) of this section is not a defense  
28 to a charge of insurance fraud under section 1 of this 2009 Act.

29 SECTION 8. ORS 161.005 is amended to read:

30 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290  
31 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,  
32 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to  
33 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.215 to 163.257,  
34 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.505 to  
35 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305  
36 to 164.377, 164.395 to 164.415, 164.805, 164.886, 165.002 to 165.102, 165.109, **165.692**, 165.805, 166.005  
37 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057, 167.060 to 167.100,  
38 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 [and], 167.820  
39 **and section 1 of this 2009 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

40 SECTION 9. ORS 166.715 is amended to read:

41 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

42 (1) "Documentary material" means any book, paper, document, writing, drawing, graph, chart,  
43 photograph, phonograph record, magnetic tape, computer printout, other data compilation from  
44 which information can be obtained or from which information can be translated into usable form,  
45 or other tangible item.

1 (2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business  
 2 trust or other profit or nonprofit legal entity, and includes any union, association or group of indi-  
 3 viduals associated in fact although not a legal entity, and both illicit and licit enterprises and gov-  
 4 ernmental and nongovernmental entities.

5 (3) "Investigative agency" means the Department of Justice or any district attorney.

6 (4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering  
 7 activity that have the same or similar intents, results, accomplices, victims or methods of commis-  
 8 sion or otherwise are interrelated by distinguishing characteristics, including a nexus to the same  
 9 enterprise, and are not isolated incidents, provided at least one of such incidents occurred after  
 10 November 1, 1981, and that the last of such incidents occurred within five years after a prior inci-  
 11 dent of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other  
 12 provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct  
 13 that constitutes an incident of racketeering activity may be used to establish a pattern of  
 14 racketeering activity without regard to whether the conduct previously has been the subject of a  
 15 criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted  
 16 in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within  
 17 the jurisdiction of the juvenile court.

18 (5) "Person" means any individual or entity capable of holding a legal or beneficial interest in  
 19 real or personal property.

20 (6) "Racketeering activity" includes conduct of a person committed both before and after the  
 21 person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to  
 22 commit, or to solicit, coerce or intimidate another person to commit:

23 (a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following  
 24 provisions of the Oregon Revised Statutes:

25 (A) ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, relating to securities;

26 (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;

27 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing  
 28 governmental administration;

29 (D) ORS 162.405 to 162.425, relating to abuse of public office;

30 (E) ORS 162.455, relating to interference with legislative operation;

31 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;

32 (G) ORS 163.160 to 163.205, relating to assault and related offenses;

33 (H) ORS 163.225 and 163.235, relating to kidnapping;

34 (I) ORS 163.275, relating to coercion;

35 (J) ORS 163.670 to 163.693, relating to sexual conduct of children;

36 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098, 164.125, 164.135,  
 37 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and  
 38 related offenses;

39 (L) ORS 164.315 to 164.335, relating to arson and related offenses;

40 (M) ORS 164.345 to 164.365, relating to criminal mischief;

41 (N) ORS 164.395 to 164.415, relating to robbery;

42 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a  
 43 recording;

44 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and  
 45 related offenses;

- 1 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- 2 (R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;
- 3 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating
- 4 to firearms and other weapons;
- 5 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.054,
- 6 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355,
- 7 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexually explicit
- 8 material, sexual conduct, gambling, computer crimes involving the Oregon State Lottery, animal
- 9 fighting, forcible recovery of a fighting bird and related offenses;
- 10 (U) ORS 171.990, relating to legislative witnesses;
- 11 (V) ORS 260.575 and 260.665, relating to election offenses;
- 12 (W) ORS 314.075, relating to income tax;
- 13 (X) ORS 180.440 (2) and ORS chapter 323, relating to cigarette and tobacco products taxes and
- 14 the directory developed under ORS 180.425;
- 15 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS
- 16 411.990 (2) and (3);
- 17 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
- 18 (AA) ORS 463.995, relating to boxing, mixed martial arts and entertainment wrestling, as defined
- 19 in ORS 463.015;
- 20 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445,
- 21 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS
- 22 chapter 471 relating to licenses issued under the Liquor Control Act;
- 23 (CC) ORS 475.005 to 475.285 and 475.840 to 475.980, relating to controlled substances;
- 24 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;
- 25 (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;
- 26 (FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;
- 27 (GG) ORS chapter 706, relating to banking law administration;
- 28 (HH) ORS chapter 714, relating to branch banking;
- 29 (II) ORS chapter 716, relating to mutual savings banks;
- 30 (JJ) ORS chapter 723, relating to credit unions;
- 31 (KK) ORS chapter 726, relating to pawnbrokers;
- 32 (LL) ORS 166.382 and 166.384, relating to destructive devices;
- 33 (MM) ORS 165.074;
- 34 (NN) ORS 59.840 to 59.980, relating to mortgage bankers and mortgage brokers;
- 35 (OO) ORS chapter 496, 497 or 498, relating to wildlife;
- 36 (PP) ORS 163.355 to 163.427, relating to sexual offenses;
- 37 (QQ) ORS 166.015, relating to riot;
- 38 (RR) ORS 166.155 and 166.165, relating to intimidation;
- 39 (SS) ORS chapter 696, relating to real estate and escrow;
- 40 (TT) ORS chapter 704, relating to outfitters and guides;
- 41 (UU) ORS 165.692, relating to making a false claim for health care payment;
- 42 (VV) ORS 162.117, relating to public investment fraud;
- 43 (WW) ORS 164.170 or 164.172;
- 44 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;
- 45 (YY) ORS 164.886;

1 (ZZ) ORS 167.312 and 167.388;

2 (AAA) ORS 164.889;

3 (BBB) ORS 165.800; [or]

4 (CCC) ORS 163.263, 163.264 or 163.266; or

5 **(DDD) Section 1 of this 2009 Act.**

6 (b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

7 (7) “Unlawful debt” means any money or other thing of value constituting principal or interest  
8 of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred  
9 or contracted:

10 (a) In violation of any one of the following:

11 (A) ORS chapter 462, relating to racing;

12 (B) ORS 167.108 to 167.164, relating to gambling; or

13 (C) ORS 82.010 to 82.170, relating to interest and usury.

14 (b) In gambling activity in violation of federal law or in the business of lending money at a rate  
15 usurious under federal or state law.

16 (8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute  
17 in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions  
18 from what the statute was when this section was enacted, the reference shall extend to and include  
19 amendments to the statute.

20 **SECTION 10.** ORS 166.725 is amended to read:

21 166.725. (1) Any circuit court may, after making due provision for the rights of innocent persons,  
22 enjoin violations of the provisions of ORS 166.720 (1) to (4) by issuing appropriate orders and judg-  
23 ments, including, but not limited to:

24 (a) Ordering a divestiture by the defendant of any interest in any enterprise, including real  
25 property.

26 (b) Imposing reasonable restrictions upon the future activities or investments of any defendant,  
27 including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor  
28 as the enterprise in which the defendant was engaged in violation of the provisions of ORS 166.720  
29 (1) to (4).

30 (c) Ordering the dissolution or reorganization of any enterprise.

31 (d) Ordering the suspension or revocation of a license, permit or prior approval granted to any  
32 enterprise by any agency of the state.

33 (e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state,  
34 or the revocation of a certificate of authority authorizing a foreign corporation to conduct business  
35 within this state, upon finding that the board of directors or a managerial agent acting on behalf  
36 of the corporation, in conducting the affairs of the corporation, has authorized or engaged in con-  
37 duct in violation of ORS 166.720 (1) to (4) and that, for the prevention of future criminal activity,  
38 the public interest requires the charter of the corporation forfeited and the corporation dissolved  
39 or the certificate of authority revoked.

40 (2) All property, real or personal, including money, used in the course of, derived from or real-  
41 ized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfei-  
42 ture to the state. The state shall dispose of all forfeited property as soon as commercially feasible.  
43 If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures  
44 or dispositions under this section shall be made with due provision for the rights of innocent per-  
45 sons. Forfeited property shall be distributed as follows:

1 (a)(A) All moneys and the clear proceeds of all other property forfeited shall be deposited with  
 2 the State Treasurer to the credit of the Common School Fund.

3 (B) For purposes of subparagraph (A) of this paragraph, “clear proceeds” means proceeds of  
 4 forfeited property less costs of maintaining and preserving property pending its sale or other dispo-  
 5 sition, less costs of sale or disposition and, if the Department of Justice has not otherwise recovered  
 6 its costs and expenses of the investigation and prosecution leading to the forfeiture, less 30 percent  
 7 of the remaining proceeds of the property which is awarded to the department as reasonable re-  
 8 imbursement for costs of such investigation and prosecution.

9 (b) Any amounts awarded to the Department of Justice pursuant to paragraph (a) of this sub-  
 10 section shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

11 (3) Property subject to forfeiture under this section may be seized by a police officer, as defined  
 12 in ORS 133.525 (2), upon court process. Seizure without process may be made if:

13 (a) The seizure is incident to a lawful arrest or search or an inspection under an administrative  
 14 inspection warrant; or

15 (b) The property subject to seizure has been the subject of a prior judgment in favor of the state  
 16 in a forfeiture proceeding based upon this section.

17 (4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall  
 18 be instituted promptly. Property taken or detained under this section shall not be subject to  
 19 replevin, but is deemed to be in the custody of the police officer making the seizure, subject only  
 20 to the order of the court. When property is seized under this section, pending forfeiture and final  
 21 disposition, the police officer may:

22 (a) Place the property under seal;

23 (b) Remove the property to a place designated by the court; or

24 (c) Require another agency authorized by law to take custody of the property and remove it to  
 25 an appropriate location.

26 (5) The Attorney General, any district attorney or any state agency having jurisdiction over  
 27 conduct in violation of a provision of ORS 166.715 to 166.735 may institute civil proceedings under  
 28 this section. In any action brought under this section, the circuit court shall give priority to the  
 29 hearing and determination. Pending final determination, the circuit court may at any time enter  
 30 such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance  
 31 of satisfactory performance bonds, as the court may deem proper. The Attorney General, district  
 32 attorney or state agency bringing an action under this section may be awarded, upon entry of a  
 33 judgment in favor of the state, costs of investigation and litigation, reasonably incurred. Amounts  
 34 recovered may include costs and expenses of state and local governmental departments and agencies  
 35 incurred in connection with the investigation or litigation.

36 (6)(a) Any aggrieved person may institute a proceeding under subsection (1) of this section:

37 (A) If the proceeding is based upon racketeering activity for which a criminal conviction has  
 38 been obtained, any rights of appeal have expired and the action is against the individual convicted  
 39 of the racketeering activity; or

40 (B) If the person is entitled to pursue a cause of action under subsection (7)(a)(B) of this section.

41 (b) In such proceeding, relief shall be granted in conformity with the principles that govern the  
 42 granting of injunctive relief from threatened loss or damage in other civil cases, except that no  
 43 showing of special or irreparable damage to the person shall have to be made. Upon the execution  
 44 of proper bond against damages for an injunction improvidently granted and a showing of immediate  
 45 danger of significant loss or damage, a temporary restraining order and a preliminary injunction

1 may be issued in any such action before a final determination on the merits.

2 (7)(a) Any person who is injured by reason of any violation of the provisions of ORS 166.720 (1)  
 3 to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate,  
 4 punitive damages:

5 (A) If a criminal conviction for the racketeering activity that is the basis of the violation has  
 6 been obtained, any rights of appeal have expired and the action is against the individual convicted  
 7 of the racketeering activity; or

8 (B) If the violation is based on racketeering activity as defined in ORS 166.715 (6)(a)(B) to (J),  
 9 (K) as it relates to burglary and criminal trespass, (L) to (P), (S), (T), (U), (V), (X) to (Z), (AA) to  
 10 (DD), (KK), (LL), [or] (OO) to (VV) or **(DDD)**.

11 (b) The defendant or any injured person may demand a trial by jury in any civil action brought  
 12 pursuant to this subsection.

13 (c) Any injured person shall have a right or claim to forfeited property or to the proceeds de-  
 14 rived therefrom superior to any right or claim the state has in the same property or proceeds.

15 (8) An investigative agency may bring an action for civil penalties for any violation of ORS  
 16 166.720 (1) to (4). Upon proof of any such violation, the court shall impose a civil penalty of not more  
 17 than \$250,000.

18 (9) A judgment rendered in favor of the state in any criminal proceeding under ORS 166.715 to  
 19 166.735 shall estop the defendant in any subsequent civil action or proceeding brought by the state  
 20 or any other person as to all matters as to which such judgment would be an estoppel as between  
 21 the state and the defendant.

22 (10) The Attorney General may, upon timely application, intervene in any civil action or pro-  
 23 ceeding brought under subsection (6) or (7) of this section if the Attorney General certifies that, in  
 24 the opinion of the Attorney General, the action or proceeding is of general public importance. In  
 25 such action or proceeding, the state shall be entitled to the same relief as if the Attorney General  
 26 instituted the action or proceeding.

27 (11)(a) Notwithstanding any other provision of law, a criminal or civil action or proceeding un-  
 28 der ORS 166.715 to 166.735 may be commenced at any time within five years after the conduct in  
 29 violation of a provision of ORS 166.715 to 166.735 terminates or the cause of action accrues. If a  
 30 criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish,  
 31 prevent or restrain any violation of the provisions of ORS 166.715 to 166.735, the running of the  
 32 period of limitations prescribed by this section with respect to any cause of action arising under  
 33 subsection (6) or (7) of this section which is based in whole or in part upon any matter complained  
 34 of in any such prosecution, action or proceeding shall be suspended during the pendency of such  
 35 prosecution, action or proceeding and for two years following its termination.

36 (b) A cause of action arising under subsection (6)(a)(A) or (7)(a)(A) of this section accrues when  
 37 the criminal conviction for the underlying activity is obtained. In addition to any suspension of the  
 38 running of the period of limitations provided for in paragraph (a) of this subsection, the period of  
 39 limitations prescribed by paragraph (a) of this subsection is suspended during any appeal from the  
 40 criminal conviction for the underlying activity.

41 (12) The application of one civil remedy under any provision of ORS 166.715 to 166.735 shall not  
 42 preclude the application of any other remedy, civil or criminal, under ORS 166.715 to 166.735 or any  
 43 other provision of law. Civil remedies under ORS 166.715 to 166.735 are supplemental and not mu-  
 44 tually exclusive.

45 (13) Notwithstanding subsection (6) or (7) of this section, a person may not institute a proceed-



1 ing under subsection (6) of this section and does not have a cause of action under subsection (7) of  
2 this section if the conduct that is the basis of the proceeding or action could also be the basis of  
3 a claim of discrimination because of sex that constitutes sexual harassment.

4 (14) In an action brought under the provisions of this section by a person other than the At-  
5 torney General, a district attorney or a state agency, the court may award reasonable attorney fees  
6 to the prevailing party. In a civil action brought under the provisions of this section by the Attorney  
7 General, a district attorney or a state agency:

8 (a) The court may award reasonable attorney fees to the Attorney General, district attorney or  
9 state agency if the Attorney General, district attorney or state agency prevails in the action; and

10 (b) The court may award reasonable attorney fees to a defendant who prevails in an action un-  
11 der this section if the court determines that the Attorney General, district attorney or state agency  
12 had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an  
13 adverse decision of the trial court.

14 **SECTION 11. Sections 1, 2, 3, 5 and 7 of this 2009 Act and the amendments to ORS**  
15 **161.005, 165.692, 166.715, 166.725 and 743.028 by sections 4, 6, 8, 9 and 10 of this 2009 Act apply**  
16 **to all insurers in operation on or after the effective date of this 2009 Act and to all applica-**  
17 **tions and claims for insurance, insurance benefits and payments for losses or recoveries**  
18 **obtained, provided or delivered, as appropriate, on or after the effective date of this 2009 Act.**  
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