

House Bill 2494

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Consumer Protection and Government Accountability)

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 unlawful insurance practices. Directs court to award attorney fees in certain circumstances. Allows class actions against persons committing unlawful insurance practices. Establishes one-year statute of limitations for actions against unlawful insurance practices.

A BILL FOR AN ACT

1
2 Relating to remedies for unlawful insurance practices; creating new provisions; amending ORS
3 746.308, 746.612, 746.680 and 746.685; and repealing ORS 746.300 and 746.530.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 746.**

6 **SECTION 2. (1) Any person who suffers any ascertainable loss of money or property, real
7 or personal, as a result of any act or omission prohibited by this chapter committed by any
8 person, may bring an individual action in an appropriate court to recover actual damages or
9 statutory damages of \$200, whichever is greater. The court or the jury, as the case may be,
10 may award punitive damages, and the court may provide the equitable relief the court con-
11 siderers necessary and proper.**

12 **(2) The court may award reasonable attorney fees and costs at trial and on appeal to a
13 prevailing plaintiff in an action under this section. The court may award reasonable attorney
14 fees and costs at trial and on appeal to a prevailing defendant only if the court finds there
15 was no objectively reasonable basis for bringing the action or asserting the ground for ap-
16 peal.**

17 **(3) The court may not award attorney fees to a prevailing defendant under the provisions
18 of subsection (2) of this section if the action under this section is maintained as a class
19 action pursuant to ORCP 32.**

20 **(4) Actions brought under this section shall be commenced within one year from the
21 discovery of the unlawful act or omission.**

22 **(5) A class action may be maintained under this section. In any class action under this
23 section:**

24 **(a) Statutory damages under subsection (1) of this section may be recovered on behalf
25 of the class members only if the plaintiffs in the action establish that the members have
26 sustained an ascertainable loss of money or property, real or personal, as a result of any act
27 or omission prohibited by this chapter committed by the defendant;**

28 **(b) The trier of fact may award punitive damages; and**

29 **(c) The court may award equitable relief.**

30 **SECTION 3. ORS 746.308 is amended to read:**

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.

1 746.308. An insurer that violates ORS 819.014 or 819.018 shall be considered to have violated a
2 provision of [*the Insurance Code*] **ORS chapter 746.**

3 **SECTION 4.** ORS 746.612 is amended to read:

4 746.612. **Notwithstanding section 2 of this 2011 Act,** nothing in ORS 746.607 may be construed
5 to create a new private right of action against a health insurer.

6 **SECTION 5.** ORS 746.680 is amended to read:

7 746.680. **Notwithstanding section 2 of this 2011 Act:**

8 (1) A person whose rights granted under ORS 746.607 (7), 746.640, 746.645 or 746.650 are violated
9 may apply to the circuit court for the county in which the person resides, or any other court of
10 competent jurisdiction, for appropriate equitable relief if an insurer, insurance producer or
11 insurance-support organization fails to comply with ORS 746.607 (7), 746.640, 746.645 or 746.650.

12 (2) A licensee or insurance-support organization that discloses information in violation of ORS
13 746.665 or a health insurer that uses or discloses information in violation of ORS 746.607 (1) or (2)
14 is liable for damages sustained by the individual about whom the information relates. However, an
15 individual is not entitled to a monetary award that exceeds the actual damages sustained by the
16 individual as a result of the violation of ORS 746.607 (1) or (2) or 746.665.

17 (3) In any action brought pursuant to this section, the court may award the cost of the action
18 and reasonable attorney fees to the prevailing party.

19 (4) An action under this section must be brought within two years from the date the alleged
20 violation is or should have been discovered.

21 (5) Except as specifically provided in this section, there shall be no remedy or recovery available
22 to individuals, in law or in equity, for occurrences constituting a violation of any provision of ORS
23 746.600 to 746.690.

24 **SECTION 6.** ORS 746.685 is amended to read:

25 746.685. **Notwithstanding section 2 of this 2011 Act,** no cause of action in the nature of
26 defamation, invasion of privacy or negligence shall arise against any person for disclosing personal
27 or privileged information in accordance with ORS 746.600 to 746.690 and 750.055, nor shall such a
28 cause of action arise against any person for furnishing personal or privileged information to an
29 insurer, insurance producer or insurance-support organization. However, this section shall provide
30 no immunity for disclosing or furnishing false information with malice or willful intent to injure any
31 person.

32 **SECTION 7.** **ORS 746.300 and 746.530 are repealed.**

33 **SECTION 8.** **Section 2 of this 2011 Act and the repeal of ORS 746.300 and 746.530 by sec-**
34 **tion 7 of this 2011 Act apply to all acts or omissions prohibited by ORS chapter 746 committed**
35 **on or after the effective date of this 2011 Act.**

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