

# House Bill 4136

Sponsored by Representative GREENLICK; Representatives BAILEY, BUCKLEY, DEMBROW, FREDERICK, GELSER, HARKER, HOLVEY, KENY-GUYER, KOMP, KOTEK, TOMEI, WITT (Presession filed.)

## 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 prosecuting attorney to investigate and prosecute suit against insurer or other person that commits prohibited insurance practices. Permits person to bring action against insurer or other person that commits prohibited insurance practices. Directs court to award attorney fees in certain circumstances. Allows class actions against persons committing prohibited insurance practices. Establishes one-year statute of limitations for actions against persons committing prohibited insurance practices.

Declares emergency, effective on passage.

## 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, 746.685 and 819.014; repealing ORS 746.300 and 746.530; and declaring  
4 an emergency.

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

6 **SECTION 1. Sections 2 to 7 of this 2012 Act are added to and made a part of ORS chapter**  
7 **746.**

8 **SECTION 2. (1) A person who suffers an ascertainable loss of money or property, real**  
9 **or personal, as a result of a practice prohibited by this chapter committed by another person**  
10 **may bring an individual action in an appropriate court to recover actual damages or statu-**  
11 **tory damages of \$200, whichever is greater. The court or the jury, as the case may be, may**  
12 **award punitive damages, and the court may provide the equitable relief the court considers**  
13 **necessary and proper.**

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

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

22 **(4) Actions brought under this section shall be commenced within one year from the**  
23 **discovery of the prohibited practice.**

24 **(5) A class action may be maintained under this section. In a class action under this**  
25 **section:**

26 **(a) Statutory damages under subsection (1) of this section may be recovered on behalf**  
27 **of the class members only if the plaintiffs in the action establish that the members have**  
28 **sustained an ascertainable loss of money or property, real or personal, as a result of a**

**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 practice prohibited by this chapter caused by the defendant;

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

3 (c) The court may award equitable relief.

4 **SECTION 3.** For the purposes of sections 3 to 7 of this 2012 Act, “prosecuting attorney”  
5 means the Attorney General or the district attorney of a county in which a violation of this  
6 chapter is alleged to have occurred.

7 **SECTION 4.** (1) When it appears to a prosecuting attorney that a person is engaging in,  
8 has engaged in, or is about to engage in any practice prohibited by this chapter, the prose-  
9 cuting attorney may execute in writing and cause to be served an investigative demand upon  
10 any person who is believed to have information, documentary material or physical evidence  
11 relevant to the alleged or suspected violation. The investigative demand shall require the  
12 person, under oath or otherwise, to appear and testify, to answer written interrogatories or  
13 to produce relevant documentary material or physical evidence for examination, at a rea-  
14 sonable time and place as stated in the investigative demand, concerning conduct of any  
15 practice that is the subject matter of the investigation.

16 (2) At any time before the return date specified in an investigative demand, or within 20  
17 days after the demand has been served, whichever period is shorter, a petition to extend the  
18 return date, or to modify or set aside the demand, stating good cause, including a request  
19 for privileged material, may be filed in the appropriate court.

20 **SECTION 5.** Service of an investigative demand issued by a prosecuting attorney under  
21 section 4 of this 2012 Act shall be made personally within this state. If personal service  
22 within this state cannot be made, substituted service of the investigative demand may be  
23 made by any of the following methods:

24 (1) Personal service outside of this state;

25 (2) Mailing by registered or certified mail to the last-known place of business, residence  
26 or abode within or outside of this state of the person for whom the service is intended;

27 (3) For any person other than a natural person, in the manner provided for service of  
28 summons in an action or suit; or

29 (4) Such service as the court may direct in lieu of personal service within this state.

30 **SECTION 6.** (1) If any person, after being served with an investigative demand under  
31 section 4 of this 2012 Act, fails or refuses to obey an investigative demand issued by the  
32 prosecuting attorney, the prosecuting attorney may, after notice, apply to an appropriate  
33 court and, after a hearing, request an order:

34 (a) Granting injunctive relief to restrain the person from engaging in conduct of any as-  
35 pect of the practice that is involved in the alleged or suspected violation; or

36 (b) Granting other relief as may be required, until the person obeys the investigative  
37 demand.

38 (2) Disobedience of any final order of a court under this section shall be punished as a  
39 contempt of court.

40 **SECTION 7.** (1) A prosecuting attorney who has probable cause to believe that a person  
41 is engaging in, has engaged in, or is about to engage in any practice prohibited by this  
42 chapter may bring suit in the name of the State of Oregon in the appropriate court to re-  
43 strain the person from engaging in the alleged violation.

44 (2)(a) Except as provided in subsections (5) and (6) of this section, before filing a suit  
45 under subsection (1) of this section, the prosecuting attorney shall notify in writing the

1 person charged of the alleged violation and the relief to be sought. Notice shall be served in  
 2 the manner set forth in section 4 of this 2012 Act for the service of investigative demands.

3 (b) The person charged shall have 10 days within which to execute and deliver to the  
 4 prosecuting attorney an assurance of voluntary compliance. The assurance shall set forth  
 5 what actions, if any, the person charged intends to take with respect to the alleged violation.  
 6 The assurance of voluntary compliance may not be considered an admission of a violation for  
 7 any purpose.

8 (c) If the prosecuting attorney is satisfied with the assurance of voluntary compliance,  
 9 it may be submitted to an appropriate court for approval and, if approved, shall then be filed  
 10 with the clerk of the court. If an approved assurance of voluntary compliance provides for  
 11 the payment of an amount of money, as restitution or otherwise, and if the amount is not  
 12 paid within 90 days of the date the court approves the assurance, or, if the assurance of  
 13 voluntary compliance requires periodic payments, any periodic payment is not paid within  
 14 30 days of the date specified in the assurance of voluntary compliance for any periodic pay-  
 15 ment, then the prosecuting attorney may submit that portion of the assurance of voluntary  
 16 compliance to the court with a certificate stating the unpaid balance in a form that fully  
 17 complies with the requirements of ORS 18.038 and 18.042. Upon submission of an assurance  
 18 of voluntary compliance under this subsection, the court shall sign the assurance of volun-  
 19 tary compliance and it shall be entered in the register of the court and the clerk of the court  
 20 shall note in the register that it creates a lien. The assurance of voluntary compliance con-  
 21 stitutes a judgment in favor of the State of Oregon and may be enforced as provided in ORS  
 22 chapter 18. The notice of the prosecuting attorney under this subsection is not a public re-  
 23 cord until the expiration of 10 days from the service of the notice.

24 (3) The prosecuting attorney may reject as unsatisfactory any assurance of voluntary  
 25 compliance that:

26 (a) Does not contain a promise to make restitution in specific amounts or through arbi-  
 27 tration for persons who suffered any ascertainable loss of money or property as a result of  
 28 the alleged violation; or

29 (b) Does not contain any provision, including but not limited to the keeping of records,  
 30 that the prosecuting attorney reasonably believes to be necessary to ensure the continued  
 31 cessation of the alleged violation, if the provision was included in a proposed assurance at-  
 32 tached to the notice served pursuant to this section.

33 (4) Violation of any of the terms of an assurance of voluntary compliance that have been  
 34 approved by and filed with the court constitutes a contempt of court.

35 (5) The prosecuting attorney need not serve notice pursuant to subsection (2) of this  
 36 section before filing a suit if, within two years of the filing of such suit, the person charged  
 37 with the alleged violation submitted to any prosecuting attorney an assurance of voluntary  
 38 compliance that was accepted by and filed with an appropriate court. The prosecuting at-  
 39 torney shall in such case serve notice on the defendant in the manner set forth in section 4  
 40 of this 2012 Act for the service of investigative demands, on the 10th or earlier day previous  
 41 to the filing of suit.

42 (6) If the prosecuting attorney alleges that the prosecuting attorney has reason to believe  
 43 that the delay caused by complying with the provisions of subsection (2) or (5) of this section  
 44 would cause immediate harm to the public health, safety or welfare, the prosecuting attorney  
 45 may immediately institute a suit under subsection (1) of this section.

1 (7) A temporary restraining order may be granted without prior notice to the person if  
 2 the court finds there is a threat of immediate harm to the public health, safety or welfare.  
 3 A temporary restraining order expires by its terms within such time after entry, not to ex-  
 4 ceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause  
 5 shown, is extended for a like period or unless the person restrained consents that it may be  
 6 extended for a longer period.

7 (8) The court may award reasonable attorney fees to the prevailing party in an action  
 8 under this section. If the defendant prevails in the action and the court finds that the de-  
 9 fendant had in good faith submitted to the prosecuting attorney a satisfactory assurance of  
 10 voluntary compliance prior to the institution of the suit or that the prosecuting attorney, in  
 11 a suit brought under subsections (5) and (6) of this section, did not have reasonable grounds  
 12 to proceed under those subsections, the court shall award reasonable attorney fees at trial  
 13 and on appeal to the defendant.

14 **SECTION 8.** ORS 746.308 is amended to read:

15 746.308. An insurer that violates ORS 819.014 or 819.018 shall be considered to have violated a  
 16 provision of [*the Insurance Code*] **ORS chapter 746.**

17 **SECTION 9.** ORS 746.612 is amended to read:

18 746.612. **Notwithstanding section 2 of this 2012 Act,** nothing in ORS 746.607 may be construed  
 19 to create a new private right of action against a health insurer.

20 **SECTION 10.** ORS 746.680 is amended to read:

21 746.680. **Notwithstanding section 2 of this 2012 Act:**

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

26 (2) A licensee or insurance-support organization that discloses information in violation of ORS  
 27 746.665 or a health insurer that uses or discloses information in violation of ORS 746.607 (1) or (2)  
 28 is liable for damages sustained by the individual about whom the information relates. However, an  
 29 individual is not entitled to a monetary award that exceeds the actual damages sustained by the  
 30 individual as a result of the violation of ORS 746.607 (1) or (2) or 746.665.

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

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

35 (5) Except as specifically provided in this section, there shall be no remedy or recovery available  
 36 to individuals, in law or in equity, for occurrences constituting a violation of any provision of ORS  
 37 746.600 to 746.690.

38 **SECTION 11.** ORS 746.685 is amended to read:

39 746.685. **Notwithstanding section 2 of this 2012 Act or sections 3 to 7 of this 2012 Act,** no  
 40 cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any  
 41 person for disclosing personal or privileged information in accordance with ORS 746.600 to 746.690  
 42 and 750.055, nor shall such a cause of action arise against any person for furnishing personal or  
 43 privileged information to an insurer, insurance producer or insurance-support organization. How-  
 44 ever, this section shall provide no immunity for disclosing or furnishing false information with mal-  
 45 ice or willful intent to injure any person.

1       **SECTION 12.** ORS 819.014 is amended to read:

2       819.014. (1) An insurer commits the offense of insurer failure to follow procedures for a totaled  
3 vehicle if the insurer declares that the vehicle is a totaled vehicle and does not:

4       (a) Obtain the certificate of title from the owner of the vehicle as a condition of settlement of  
5 the claim and surrender it to the Department of Transportation within 30 days of its receipt; or

6       (b) If the insurer does not obtain the certificate from the registered owner, notify the department  
7 that the vehicle is a totaled vehicle within 30 days of declaring it to be so, or taking title to or  
8 possession of it, and notify the registered owner of the vehicle that the registered owner must sur-  
9 render the certificate to the department and must notify any subsequent purchaser that the vehicle  
10 is a totaled vehicle.

11       (2) If the vehicle is one for which title was issued in a form other than a certificate, the insurer  
12 shall notify the department that the vehicle is a totaled vehicle and shall follow procedures adopted  
13 by the department by rule.

14       (3) The offense described in this section, insurer failure to follow procedures for a totaled vehi-  
15 cle, is a violation of [*the Insurance Code*] **ORS chapter 746**, as provided in ORS 746.308.

16       **SECTION 13. ORS 746.300 and 746.530 are repealed.**

17       **SECTION 14. Sections 2 to 7 of this 2012 Act, the amendments to ORS 746.308, 746.612,**  
18 **746.680, 746.685 and 819.014 by sections 8 to 12 of this 2012 Act and the repeal of ORS 746.300**  
19 **and 746.530 by section 13 of this 2012 Act apply to all practices prohibited by ORS chapter 746**  
20 **committed on or after the effective date of this 2012 Act.**

21       **SECTION 15. This 2012 Act being necessary for the immediate preservation of the public**  
22 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**  
23 **on its passage.**

24

---