

# D R A F T

## SUMMARY

Establishes private right of action for insurer's or another person's alleged unfair claim settlement practice. Establishes conditions under which aggrieved person may bring action.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to private actions to redress unfair claim settlement practices; cre-  
3 ating new provisions; amending ORS 746.230; and declaring an emergency.

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

5 **SECTION 1.** ORS 746.230 is amended to read:

6 746.230. (1) [*No*] **An** insurer or [*other*] **another** person [*shall*] **may not**  
7 commit or perform any of the following unfair claim settlement practices:

8 (a) Misrepresenting facts or policy provisions in settling claims;

9 (b) Failing to acknowledge and act promptly upon communications relat-  
10 ing to claims;

11 (c) Failing to adopt and implement reasonable standards for [*the prompt*  
12 *investigation of*] **promptly investigating** claims;

13 (d) Refusing to pay claims without conducting a reasonable investigation  
14 based on all available information;

15 (e) Failing to affirm or deny coverage of claims within a reasonable time  
16 after **receiving** completed proof of loss statements [*have been submitted*];

17 (f) Not attempting, in good faith, to promptly and equitably settle claims  
18 in which liability has become reasonably clear;

19 (g) Compelling claimants to initiate litigation to recover amounts due by  
20 offering substantially less than amounts ultimately recovered in actions

1 [*brought by such*] **the claimants bring;**

2 (h) Attempting to settle claims for less than the amount to which a rea-  
3 sonable person would believe a reasonable person was entitled after referring  
4 to written or printed advertising material accompanying or made part of an  
5 application;

6 (i) Attempting to settle claims on the basis of an application altered  
7 without notice to or consent of the applicant;

8 (j) Failing, after [*payment of*] **paying** a claim, to [*inform*] **respond to**  
9 **requests by** insureds or beneficiaries[, *upon request by them, of*] **with in-**  
10 **formation about** the coverage under which **the insurer or the other per-**  
11 **son made the** payment [*has been made*];

12 (k) Delaying investigation or payment of claims by requiring a claimant  
13 or the physician of the claimant to submit a preliminary claim report and  
14 then requiring [*subsequent submission of*] **the claimant or the physician**  
15 **to submit** loss forms when both **the report and the loss forms** require  
16 essentially the same information;

17 (L) Failing to promptly settle claims under one coverage of a policy where  
18 liability has become reasonably clear in order to influence settlements under  
19 other coverages of the policy; or

20 (m) Failing to promptly provide the proper explanation of the basis **the**  
21 **insurer or other person** relied on in the insurance policy in relation to the  
22 facts or applicable law [*for the denial of*] **to deny** a claim.

23 **(2)(a) A person that suffers an ascertainable loss of money or**  
24 **property, real or personal, as a result of an insurer's or another**  
25 **person's act or omission that violates subsection (1) of this section**  
26 **may bring an individual action in an appropriate court to recover ac-**  
27 **tual damages or statutory damages of \$200, whichever is greater. The**  
28 **court or the jury may award punitive damages and the court may**  
29 **provide equitable relief that the court considers necessary and proper.**

30 **(b) A person must bring an action under this subsection within two**  
31 **years after discovering the unlawful act or omission.**

1 (c) A person may maintain an action under this subsection as a  
2 class action. In a class action under this subsection:

3 (A) Plaintiffs in the action may recover statutory damages on be-  
4 half of class members only if the plaintiffs establish that the class  
5 members have suffered an ascertainable loss of money or property,  
6 real or personal, as a result of an act or omission of the defendants  
7 that violated subsection (1) of this section;

8 (B) The trier of fact may award punitive damages; and

9 (C) The court may award equitable relief.

10 (d) The court may award reasonable attorney fees and costs at trial  
11 and on appeal to a prevailing plaintiff in an action under this sub-  
12 section. The court may award reasonable attorney fees and costs at  
13 trial and on appeal to a prevailing defendant only if the court finds  
14 that an objectively reasonable basis for bringing the action or assert-  
15 ing the ground for appeal did not exist. The court may not award at-  
16 torney fees to a prevailing defendant under the provisions of this  
17 paragraph if the plaintiff maintains the action under this paragraph  
18 as a class action in accordance with ORCP 32.

19 [(2)] (3)(a) [No] An insurer [shall] may not refuse, without just cause,  
20 to pay or settle claims [arising] that arise under coverages provided by  
21 [its] the insurer's policies with such frequency as to indicate a general  
22 business practice in this state, which general business practice is evidenced  
23 by:

24 [(a)] (A) A substantial increase in the number of complaints [against the  
25 insurer received by] the Department of Consumer and Business Services re-  
26 ceives against the insurer;

27 [(b)] (B) A substantial increase in the number of lawsuits [filed] claim-  
28 ants file against the insurer or [its] the insurer's insureds [by claimants];  
29 or

30 [(c)] (C) Other relevant evidence.

31 (b) Evidence of practices described in paragraph (a) of this sub-

1 **section may be admitted, in accordance with applicable rules of evi-**  
2 **dence, in an action that a person brings under subsection (2) of this**  
3 **section.**

4 [(3)(a)] (4)(a) [No] **A** health maintenance organization, as defined in ORS  
5 750.005, [shall] **may not** unreasonably withhold [the] granting [of] partic-  
6 ipating provider status [from] **to** a class of statutorily authorized health care  
7 providers for services **the health care providers** rendered within the lawful  
8 scope of practice if the health care providers are licensed as [such] **health**  
9 **care providers** and reimbursement is for services mandated by statute.

10 (b) Any health maintenance organization that fails to comply with para-  
11 graph (a) of this subsection [shall be] **is** subject to discipline under ORS  
12 746.015.

13 (c) This subsection does not apply to group practice health maintenance  
14 organizations that are federally qualified [pursuant to] **under** Title XIII of  
15 the Health Maintenance Organization Act.

16 **SECTION 2. The amendments to ORS 746.230 by section 1 of this**  
17 **2013 Act apply to unfair claim settlement practices that an insurer or**  
18 **other person allegedly commits on or after the effective date of this**  
19 **2013 Act.**

20 **SECTION 3. This 2013 Act being necessary for the immediate pres-**  
21 **ervation of the public peace, health and safety, an emergency is de-**  
22 **clared to exist, and this 2013 Act takes effect on its passage.**

23

---