

D R A F T

SUMMARY

Permits person to bring action against insurer or other person that commits unlawful insurance practice. Directs court to award attorney fees in certain circumstances. Allows class actions against persons that commit unlawful insurance practices. Requires insurer or other person to indemnify insurance producer against insurance producer's unlawful acts or omissions if insurance producer acted within scope of insurance producer's employment. Establishes two-year statute of limitations for actions.

Permits Attorney General to punish unlawful insurance practice as unlawful practice under unlawful trade practices law.

A BILL FOR AN ACT

1
2 Relating to remedies for unlawful insurance practices; creating new pro-
3 visions; amending ORS 646.607, 746.308, 746.612, 746.680 and 746.685; and
4 repealing ORS 746.530.

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

6 **SECTION 1. Section 2 of this 2013 Act is added to and made a part**
7 **of ORS chapter 746.**

8 **SECTION 2. (1)(a) A person that suffers an ascertainable loss of**
9 **money or property, real or personal, as a result of an act or omission**
10 **prohibited under ORS 746.075, 746.110, 746.230, 746.240 or 746.405 to**
11 **746.530 that another person commits may bring an individual action**
12 **in an appropriate court to recover actual damages or statutory dam-**
13 **ages of \$200, whichever is greater.**

14 **(b) The court or the jury may award punitive damages and the**
15 **court may provide equitable relief that the court considers necessary**
16 **and proper.**

1 (c) A person must bring an action under this subsection within two
2 years after discovering the unlawful act or omission.

3 (d) A person may maintain an action under this subsection as a
4 class action. In a class action under this subsection:

5 (A) Plaintiffs in the action may recover statutory damages on be-
6 half of class members only if the plaintiffs establish that the class
7 members have suffered an ascertainable loss of money or property,
8 real or personal, as a result of an actual or alleged unlawful act or
9 omission by the defendant;

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

11 (C) The court may award equitable relief.

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

21 (2) An insurer or other person that employs an insurance producer
22 shall indemnify and hold the insurance producer harmless against li-
23 ability, settlements, costs, damages and expenses in connection with
24 an action brought under subsection (1) of this section for the insur-
25 ance producer's actual or alleged unlawful act or omission, provided
26 that:

27 (a) The insurance producer acted within the scope, duties and re-
28 sponsibilities of the insurance producer's employment at the time the
29 actual or alleged unlawful act or omission occurred; and

30 (b) The actual or alleged unlawful act or omission did not result
31 from the insurance producer's intentional or willful wrongdoing.

1 **SECTION 3.** ORS 646.607 is amended to read:

2 646.607. A person engages in an unlawful practice [*when*] **if** in the course
3 of the person's business, vocation or occupation the person:

4 (1) Employs any unconscionable tactic in connection with [*the sale, rental*
5 *or other disposition of*] **selling, renting or otherwise disposing of** real es-
6 tate, goods or services, or [*collection or enforcement of*] **collecting or en-**
7 **forcing** an obligation;

8 (2) Fails to deliver all or any portion of real estate, goods or services as
9 promised, and upon request of the customer, fails to refund [*any*] money that
10 [*has been received*] **the person receives** from the customer [*that was for the*
11 *purchase of the*] **to purchase the** undelivered real estate, goods or services
12 and that [*is not retained by*] the seller **does not retain** pursuant to any
13 right, claim or defense asserted in good faith. This subsection does not create
14 a warranty obligation and does not apply to a dispute over the quality of real
15 estate, goods or services delivered to a customer;

16 (3) Violates ORS 401.965 (2);

17 (4) Violates a provision of ORS 646A.725 to 646A.750;

18 (5) Violates ORS 646A.530; [*or*]

19 (6) Employs a collection practice that is unlawful under ORS 646.639[.];

20 **or**

21 (7) **Violates a provision of ORS 746.075, 746.110, 746.230, 746.240 or**
22 **746.405 to 746.530.**

23 **SECTION 4.** ORS 746.308 is amended to read:

24 746.308. An insurer that violates ORS 819.014 or 819.018, [*shall be con-*
25 *sidered to have violated a provision of the Insurance Code*] **in addition to**
26 **any other penalties provided for the violation, is also subject to an**
27 **action brought under ORS 646.607 or section 2 of this 2013 Act.**

28 **SECTION 5.** ORS 746.612 is amended to read:

29 746.612. [*Nothing in ORS 746.607 may be construed to create a new private*
30 *right of action against a health insurer*] **Notwithstanding the provisions**
31 **of section 2 of this 2013 Act, a violation of ORS 746.607 does not create**

1 **a new private right of action against a health insurer.**

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

3 **746.680. Notwithstanding the provisions of section 2 of this 2013 Act:**

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

9 (2) A licensee or insurance-support organization that discloses informa-
10 tion in violation of ORS 746.665 or a health insurer that uses or discloses
11 information in violation of ORS 746.607 (1) or (2) is liable for damages sus-
12 tained by the individual about whom the information relates. However, an
13 individual is not entitled to a monetary award that exceeds the actual dam-
14 ages [*sustained by*] the individual **sustains** as a result of the violation of
15 ORS 746.607 (1) or (2) or 746.665.

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

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

20 (5) Except as specifically provided in this section, [*there shall be no*] a
21 remedy or recovery **is not** available to individuals, in law or in equity, for
22 occurrences [*constituting*] **that constitute** a violation of any provision of
23 ORS 746.600 to 746.690.

24 **SECTION 7.** ORS 746.685 is amended to read:

25 **746.685. [No] Notwithstanding the provisions of section 2 of this 2013**
26 **Act, a** cause of action in the nature of defamation, invasion of privacy or
27 negligence [*shall*] **does not** arise against [*any*] a person for disclosing per-
28 sonal or privileged information in accordance with ORS 746.600 to 746.690
29 and 750.055, nor [*shall such*] **does** a cause of action arise against [*any*] a
30 person for furnishing personal or privileged information to an insurer, in-
31 surance producer or insurance-support organization. However, this section

1 [shall] **does not** provide [no] immunity for disclosing or furnishing false in-
2 formation with malice or willful intent to injure any person.

3 **SECTION 8. ORS 746.530 is repealed.**

4 **SECTION 9. Section 2 of this 2013 Act, the amendments to ORS**
5 **646.607 and 746.612 by sections 3 and 5 of this 2013 Act and the repeal**
6 **of ORS 746.530 by section 8 of this 2013 Act apply to all actual or al-**
7 **leged acts or omissions prohibited under ORS 746.075, 746.110, 746.230,**
8 **746.240 or 746.405 to 746.530 that a person commits on or after the ef-**
9 **fective date of this 2013 Act.**

10
