

Senate Bill 513

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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 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 provisions; amending ORS
3 646.607, 746.308, 746.612, 746.680 and 746.685; and repealing ORS 746.530.

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

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

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

11 **(b) The court or the jury may award punitive damages and the court may provide equi-
12 table relief that the court considers necessary and proper.**

13 **(c) A person must bring an action under this subsection within two years after discov-
14 ering the unlawful act or omission.**

15 **(d) A person may maintain an action under this subsection as a class action. In a class
16 action under this subsection:**

17 **(A) Plaintiffs in the action may recover statutory damages on behalf of class members
18 only if the plaintiffs establish that the class members have suffered an ascertainable loss of
19 money or property, real or personal, as a result of an actual or alleged unlawful act or
20 omission by the defendant;**

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

22 **(C) The court may award equitable relief.**

23 **(e) The court may award reasonable attorney fees and costs at trial and on appeal to a
24 prevailing plaintiff in an action under this subsection. The court may award reasonable at-
25 torney fees and costs at trial and on appeal to a prevailing defendant only if the court finds
26 that an objectively reasonable basis for bringing the action or asserting the ground for appeal
27 did not exist. The court may not award attorney fees to a prevailing defendant under the
28 provisions of this paragraph if the plaintiff maintains the action under this paragraph as 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 **class action in accordance with ORCP 32.**

2 **(2) An insurer or other person that employs an insurance producer shall indemnify and**
 3 **hold the insurance producer harmless against liability, settlements, costs, damages and ex-**
 4 **penditures in connection with an action brought under subsection (1) of this section for the in-**
 5 **surance producer’s actual or alleged unlawful act or omission, provided that:**

6 **(a) The insurance producer acted within the scope, duties and responsibilities of the in-**
 7 **surance producer’s employment at the time the actual or alleged unlawful act or omission**
 8 **occurred; and**

9 **(b) The actual or alleged unlawful act or omission did not result from the insurance**
 10 **producer’s intentional or willful wrongdoing.**

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

12 646.607. A person engages in an unlawful practice *[when]* **if** in the course of the person’s busi-
 13 ness, vocation or occupation the person:

14 (1) Employs any unconscionable tactic in connection with *[the sale, rental or other disposition*
 15 *of]* **selling, renting or otherwise disposing of** real estate, goods or services, or *[collection or*
 16 *enforcement of]* **collecting or enforcing** an obligation;

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

23 (3) Violates ORS 401.965 (2);

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

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

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

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

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

29 746.308. An insurer that violates ORS 819.014 or 819.018, *[shall be considered to have violated a*
 30 *provision of the Insurance Code]* **in addition to any other penalties provided for the violation,**
 31 **is also subject to an action brought under ORS 646.607 or section 2 of this 2013 Act.**

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

33 746.612. *[Nothing in ORS 746.607 may be construed to create a new private right of action against*
 34 *a health insurer]* **Notwithstanding the provisions of section 2 of this 2013 Act, a violation of**
 35 **ORS 746.607 does not create a new private right of action against a health insurer.**

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

37 746.680. **Notwithstanding the provisions of section 2 of this 2013 Act:**

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

42 (2) A licensee or insurance-support organization that discloses information in violation of ORS
 43 746.665 or a health insurer that uses or discloses information in violation of ORS 746.607 (1) or (2)
 44 is liable for damages sustained by the individual about whom the information relates. However, an
 45 individual is not entitled to a monetary award that exceeds the actual damages *[sustained by]* the

1 individual **sustains** as a result of the violation of ORS 746.607 (1) or (2) or 746.665.

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

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

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

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

10 746.685. *[No]* **Notwithstanding the provisions of section 2 of this 2013 Act, a** cause of action
11 in the nature of defamation, invasion of privacy or negligence *[shall]* **does not** arise against *[any]*
12 **a** person for disclosing personal or privileged information in accordance with ORS 746.600 to 746.690
13 and 750.055, nor *[shall such]* **does** a cause of action arise against *[any]* **a** person for furnishing per-
14 sonal or privileged information to an insurer, insurance producer or insurance-support organization.
15 However, this section *[shall]* **does not** provide *[no]* immunity for disclosing or furnishing false in-
16 formation with malice or willful intent to injure any person.

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

18 **SECTION 9.** Section 2 of this 2013 Act, the amendments to ORS 646.607 and 746.612 by
19 sections 3 and 5 of this 2013 Act and the repeal of ORS 746.530 by section 8 of this 2013 Act
20 apply to all actual or alleged acts or omissions prohibited under ORS 746.075, 746.110, 746.230,
21 746.240 or 746.405 to 746.530 that a person commits on or after the effective date of this 2013
22 Act.