

Senate Bill 514

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**.

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; creating new provisions;
3 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** commit or perform any
7 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 relating to claims;

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

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

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

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

18 (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially
19 less than amounts ultimately recovered in actions [*brought by such*] **the claimants bring**;

20 (h) Attempting to settle claims for less than the amount to which a reasonable person would
21 believe a reasonable person was entitled after referring to written or printed advertising material
22 accompanying or made part of an application;

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

25 (j) Failing, after [*payment of*] **paying** a claim, to [*inform*] **respond to requests by** insureds or
26 beneficiaries[, *upon request by them, of*] **with information about** the coverage under which **the**
27 **insurer or the other person made the** payment [*has been made*];

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

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

3 (m) Failing to promptly provide the proper explanation of the basis **the insurer or other per-**
4 **son** relied on in the insurance policy in relation to the facts or applicable law [*for the denial of*] to
5 **deny** a claim.

6 (2)(a) **A person that suffers an ascertainable loss of money or property, real or personal,**
7 **as a result of an insurer's or another person's act or omission that violates subsection (1)**
8 **of this section may bring an individual action in an appropriate court to recover actual**
9 **damages or statutory damages of \$200, whichever is greater. The court or the jury may**
10 **award punitive damages and the court may provide equitable relief that the court considers**
11 **necessary and proper.**

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

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

16 (A) **Plaintiffs in the action may recover statutory damages on behalf of class members**
17 **only if the plaintiffs establish that the class members have suffered an ascertainable loss of**
18 **money or property, real or personal, as a result of an act or omission of the defendants that**
19 **violated subsection (1) of this section;**

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

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

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

29 [(2)] (3)(a) [*No*] **An insurer [shall] may not** refuse, without just cause, to pay or settle claims
30 [*arising*] **that arise** under coverages provided by [*its*] **the insurer's** policies with such frequency
31 as to indicate a general business practice in this state, which general business practice is evidenced
32 by:

33 [(a)] (A) **A substantial increase in the number of complaints [*against the insurer received by*] the**
34 **Department of Consumer and Business Services receives against the insurer;**

35 [(b)] (B) **A substantial increase in the number of lawsuits [*filed*] claimants file** against the
36 insurer or [*its*] **the insurer's** insureds [*by claimants*]; or

37 [(c)] (C) **Other relevant evidence.**

38 (b) **Evidence of practices described in paragraph (a) of this subsection may be admitted,**
39 **in accordance with applicable rules of evidence, in an action that a person brings under**
40 **subsection (2) of this section.**

41 [(3)(a)] (4)(a) [*No*] **A health maintenance organization, as defined in ORS 750.005, [shall] may**
42 **not** unreasonably withhold [*the*] granting [*of*] participating provider status [*from*] **to** a class of
43 statutorily authorized health care providers for services **the health care providers** rendered within
44 the lawful scope of practice if the health care providers are licensed as [*such*] **health care provid-**
45 **ers** and reimbursement is for services mandated by statute.

1 (b) Any health maintenance organization that fails to comply with paragraph (a) of this sub-
2 section [*shall be*] **is** subject to discipline under ORS 746.015.

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

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

8 **SECTION 3. This 2013 Act being necessary for the immediate preservation of the public**
9 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
10 **on its passage.**

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