

Senate Bill 1590

Sponsored by Senator SHIELDS; Senators BEYER, EDWARDS, Representative HOLVEY (Pre-session 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**.

Provides that insurer that has duty to defend insured against claim has fiduciary duty toward insured if insurer does defend against claim. Provides that if insurer defends claim under reservation of rights or if insured has potential liability that exceeds policy limits, insurer shall provide independent counsel that represents only insured. Prevents insurer from participating in defense, controlling settlement and contesting coverage if insurer breaches insurer's duty to defend. Specifies insurer's liability for damages if insurer breaches duty to defend.

Prohibits insurer from taking position in action brought on insurance policy that is inconsistent with statement or representation insurer made to Director of the Department of Consumer and Business Services when seeking approval for language in insurance policy. Requires director to keep record of insurer's statements and representations and make record available as public record.

Includes tractor or equipment designed for and ordinarily used on farm within uninsured motorist coverage unless tractor or equipment is used on public highway.

Requires Department of Consumer and Business Services to make information available about complaints against insurer for unfair claim settlement practices.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the duties of insurers; creating new provisions; amending ORS 31.825, 742.504 and
3 746.230; and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2016 Act are added to and made a part of ORS**
6 **chapter 742.**

7 **SECTION 2. (1) If, under a policy of casualty insurance or commercial liability insurance,**
8 **an insurer has a duty to defend an insured against a claim and the insurer does defend the**
9 **insured against the claim, the insurer has a fiduciary relationship with respect to the in-**
10 **ured. If the insurer defends against the claim under a reservation of rights or if the insured**
11 **has potential liability with respect to the claim that exceeds the limits of the insurance pol-**
12 **icy, the insurer shall provide independent counsel to defend the insured. The independent**
13 **counsel shall represent only the insured and not the insurer.**

14 **(2) If an insurer breaches the insurer's duty to defend against a claim, the insurer may**
15 **not thereafter defend or participate in a defense against the claim, may not control a**
16 **settlement of the claim and may not contest coverage of the claim.**

17 **(3) An insurer is liable for damages for breaching the insurer's duty to defend against a**
18 **claim in the amount of any judgment entered against an insured or the reasonable portion**
19 **of a settlement by or on behalf of the insured after the insurer's breach, subject to limits**
20 **set forth in the insurance policy, plus reasonable defense costs incurred by or on behalf of**
21 **the insured and any other damages available for breaching an insurance contract. In any**
22 **subsequent proceeding to contest the terms of a settlement, the insurer bears the burden**
23 **of proving that the amount of the settlement is unreasonable.**

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 **(4) An insured may assign all or any part of the insured’s cause of action for damages**
 2 **against an insurer for breaching the insurer’s duty to defend a claim, notwithstanding any**
 3 **provision of the insurance policy to the contrary.**

4 **SECTION 3. (1) An insurer may not take a position in any action brought on an insurance**
 5 **policy issued in or for delivery in this state that is inconsistent with any written or oral**
 6 **statement or representation the insurer or the insurer’s agent made to the Director of the**
 7 **Department of Consumer and Business Services concerning any language in the insurance**
 8 **policy that the insurer or the insurer’s agent submitted to the director for approval.**

9 **(2) The director shall maintain a record of all written or oral statements or representa-**
 10 **tions an insurer or the insurer’s agent makes in connection with any review and approval**
 11 **of language for insurance policies issued in or for delivery in this state. The record is a**
 12 **public record that the director shall make available in accordance with ORS 192.410 to**
 13 **192.505.**

14 **SECTION 4.** ORS 31.825 is amended to read:

15 31.825. **(1) A defendant in a tort action against whom a judgment has been rendered may assign**
 16 **any cause of action [that] the defendant has against the defendant’s insurer as a result of the judg-**
 17 **ment to the plaintiff in whose favor the judgment has been entered. [That] The assignment and any**
 18 **release or covenant given for the assignment [shall] does not extinguish the cause of action against**
 19 **the insurer unless the assignment specifically so provides.**

20 **(2) A provision in an insurance policy against liability that requires the insurer’s consent**
 21 **before rights under the insurance policy may be assigned does not prohibit an assignment,**
 22 **without the insurer’s consent, of a claim for payment under the insurance policy for losses**
 23 **or damages that arose before the assignment.**

24 **SECTION 5.** ORS 742.504 is amended to read:

25 742.504. Every policy [required to] **that must** provide the coverage specified in ORS 742.502
 26 [shall] **must** provide uninsured motorist coverage that in each instance is no less favorable in any
 27 respect to the insured or the beneficiary than if the following provisions were set forth in the policy.
 28 However, nothing contained in this section requires the insurer to reproduce in the policy the par-
 29 ticular language of any of the following provisions:

30 (1)(a) Notwithstanding ORS 30.260 to 30.300, the insurer will pay all sums that the insured or
 31 the heirs or legal representative of the insured is legally entitled to recover as damages from the
 32 owner or operator of an uninsured vehicle because of bodily injury sustained by the insured caused
 33 by accident and arising out of the ownership, maintenance or use of the uninsured vehicle. Deter-
 34 mination as to whether the insured, the insured’s heirs or the insured’s legal representative is le-
 35 gally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement
 36 between the insured and the insurer, or, in the event of disagreement, may be determined by arbi-
 37 tration as provided in subsection (10) of this section.

38 (b) [No] **A judgment against any person or organization alleged to be legally responsible for**
 39 **bodily injury, except for proceedings instituted against the insurer as provided in this policy, [shall**
 40 **be] is not** conclusive, as between the insured and the insurer, on the issues of liability of the person
 41 or organization or of the amount of damages to which the insured is legally entitled.

42 (2) As used in this policy:

43 (a) “Bodily injury” means bodily injury, sickness or disease, including death resulting therefrom.

44 (b) “Hit-and-run vehicle” means a vehicle that causes bodily injury to an insured arising out of
 45 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the

1 time of the accident, provided:

2 (A) The identity of either the operator or the owner of the hit-and-run vehicle cannot be ascer-
3 tained;

4 (B) The insured or someone on behalf of the insured reported the accident within 72 hours to
5 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-
6 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter
7 a statement under oath that the insured or the legal representative of the insured has a cause or
8 causes of action arising out of the accident for damages against a person or persons whose identities
9 are unascertainable, and setting forth the facts in support thereof; and

10 (C) At the insurer's request, the insured or the legal representative of the insured makes avail-
11 able for inspection the vehicle the insured was occupying at the time of the accident.

12 (c) "Insured," when unqualified and when applied to uninsured motorist coverage, means:

13 (A) The named insured as stated in the policy and any person designated as named insured in
14 the schedule and, while residents of the same household, the spouse of any named insured and rel-
15 atives of either, provided that neither the relative nor the spouse is the owner of a vehicle not de-
16 scribed in the policy and that, if the named insured as stated in the policy is other than an
17 individual or spouses in a marriage who are residents of the same household, the named insured
18 shall be only a person so designated in the schedule;

19 (B) Any child residing in the household of the named insured if the insured has performed the
20 duties of a parent to the child by rearing the child as the insured's own although the child is not
21 related to the insured by blood, marriage or adoption; and

22 (C) Any other person while occupying an insured vehicle, provided the actual use thereof is with
23 the permission of the named insured.

24 (d) "Insured vehicle," except as provided in paragraph (e) of this provision, means:

25 (A) The vehicle described in the policy or a newly acquired or substitute vehicle, as each of
26 those terms is defined in the public liability coverage of the policy, insured under the public liability
27 provisions of the policy; or

28 (B) A nonowned vehicle operated by the named insured or spouse if a resident of the same
29 household, provided that the actual use thereof is with the permission of the owner of the vehicle
30 and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any
31 member of the same household.

32 (e) "Insured vehicle" does not include a trailer of any type unless the trailer is a described ve-
33 hicle in the policy.

34 (f) "Occupying" means in or upon or entering into or alighting from.

35 (g) "Phantom vehicle" means a vehicle that causes bodily injury to an insured arising out of a
36 motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or
37 the vehicle the insured is occupying at the time of the accident, provided:

38 (A) The identity of either the operator or the owner of the phantom vehicle cannot be ascer-
39 tained;

40 (B) The facts of the accident can be corroborated by competent evidence other than the testi-
41 mony of the insured or any person having an uninsured motorist claim resulting from the accident;
42 and

43 (C) The insured or someone on behalf of the insured reported the accident within 72 hours to
44 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-
45 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter

1 a statement under oath that the insured or the legal representative of the insured has a cause or
 2 causes of action arising out of the accident for damages against a person or persons whose identities
 3 are unascertainable, and setting forth the facts in support thereof.

4 (h) "State" [includes] **means a state of the United States**, the District of Columbia, a territory
 5 or possession of the United States [and] **or** a province of Canada.

6 (i) "Stolen vehicle" means an insured vehicle that causes bodily injury to the insured arising
 7 out of a motor vehicle accident if:

8 (A) The vehicle is operated without the consent of the insured;

9 (B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability
 10 insurance;

11 (C) The insured or someone on behalf of the insured reported the accident within 72 hours to
 12 a police, peace or judicial officer or to the equivalent department in the state where the accident
 13 occurred; and

14 (D) The insured or someone on behalf of the insured cooperates with the appropriate law
 15 enforcement agency in the prosecution of the theft of the vehicle.

16 (j) "Sums that the insured or the heirs or legal representative of the insured is legally entitled
 17 to recover as damages" means the amount of damages that:

18 (A) A claimant could have recovered in a civil action from the owner or operator at the time
 19 of the injury after determination of fault or comparative fault and resolution of any applicable de-
 20 fenses;

21 (B) Are calculated without regard to the tort claims limitations of ORS 30.260 to 30.300; and

22 (C) Are no larger than benefits payable under the terms of the policy as provided in subsection
 23 (7) of this section.

24 (k) "Uninsured vehicle," except as provided in paragraph (L) of this provision, means:

25 (A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible
 26 motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily
 27 injury or death under ORS 806.070 applicable at the time of the accident with respect to any person
 28 or organization legally responsible for the use of the vehicle, or with respect to which there is
 29 collectible bodily injury liability insurance applicable at the time of the accident but the insurance
 30 company writing the insurance denies coverage or the company writing the insurance becomes vol-
 31 untarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insol-
 32 vent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and
 33 the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident,
 34 the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at
 35 the time of the accident.

36 (B) A hit-and-run vehicle.

37 (C) A phantom vehicle.

38 (D) A stolen vehicle.

39 (E) A vehicle that is owned or operated by a self-insurer:

40 (i) That is not in compliance with ORS 806.130 (1)(c); or

41 (ii) That provides recovery to an insured in an amount that is less than the sums that the in-
 42 sured or the heirs or legal representative of the insured is legally entitled to recover as damages
 43 for bodily injury or death that is caused by accident and that arises out of owning, maintaining or
 44 using an uninsured vehicle.

45 **(F) A tractor or equipment designed for and ordinarily used on a farm, unless the tractor**

1 **or equipment is on a public road.**

2 (L) "Uninsured vehicle" does not include:

3 (A) An insured vehicle, unless the vehicle is a stolen vehicle;

4 (B) Except as provided in paragraph (k)(E) of this subsection, a vehicle that is owned or oper-
5 ated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor
6 carrier law or any similar law;

7 (C) A vehicle that is owned by the United States of America, Canada, a state, a political sub-
8 division of any such government or an agency of any such government;

9 (D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for
10 use as a residence or premises and not as a vehicle; **or**

11 *[(E) A farm-type tractor or equipment designed for use principally off public roads, except while
12 actually upon public roads; or]*

13 *[(F)]* (E) A vehicle owned by or furnished for the regular or frequent use of the insured or any
14 member of the household of the insured.

15 *[(m) "Vehicle" means every device in, upon or by which any person or property is or may be
16 transported or drawn upon a public highway, but does not include devices moved by human power or
17 used exclusively upon stationary rails or tracks.]*

18 (m)(A) **"Vehicle" means a device, including a tractor that is ordinarily used on a farm
19 or another self-propelled device, that can draw or transport a person or property on a public
20 highway.**

21 (B) **"Vehicle" does not include:**

22 (i) **A device that relies upon human power to move;**

23 (ii) **A device that is used exclusively on stationary rails or tracks; or**

24 (iii) **A motor truck, as defined in ORS 801.355, that has a registration weight, as described
25 in ORS 803.430, of more than 8,000 pounds if the insured has employees that operate the
26 motor truck and that are covered by a workers' compensation law, disability benefits law or
27 similar law.**

28 (3)(a) This coverage applies only to accidents that occur on and after the effective date of the
29 policy, during the policy period and within the United States of America[, *its*] **or the** territories or
30 possessions **of the United States[,]** or **within** Canada.

31 (b) **This coverage applies to bodily injury to an insured, or to a relative who resides in
32 the same household, that occurs as the result of an interaction with an uninsured vehicle
33 while the insured or the relative occupies a vehicle that the insured owns or has regular use
34 of, unless the vehicle that the insured or the relative occupies is an uninsured vehicle.**

35 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which the in-
36 sured or the legal representative of the insured [*shall*], without the written consent of the insurer,
37 [*make*] **makes** any settlement with or [*prosecute*] **prosecutes** to judgment any action against any
38 person or organization who may be legally liable [*therefor*] **for the bodily injury.**

39 *[(b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other
40 than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any rel-
41 ative resident in the same household, or through being struck by the vehicle.]*

42 *[(c)]* (b) This coverage does not apply so as to inure directly or indirectly to the benefit of any
43 workers' compensation carrier, any person or organization qualifying as a self-insurer under any
44 workers' compensation or disability benefits law or any similar law or the State Accident Insurance
45 Fund Corporation.

1 [(d)] (c) This coverage does not apply with respect to underinsured motorist benefits unless:

2 (A) The limits of liability under any bodily injury liability insurance applicable at the time of
3 the accident regarding the injured person have been exhausted by payment of judgments or settle-
4 ments to the injured person or other injured persons;

5 (B) The described limits have been offered in settlement, the insurer has refused consent under
6 paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the
7 claim against the tortfeasor;

8 (C) The insured gives credit to the insurer for the unrealized portion of the described liability
9 limits as if the full limits had been received if less than the described limits have been offered in
10 settlement, and the insurer has consented under paragraph (a) of this subsection; or

11 (D) The insured gives credit to the insurer for the unrealized portion of the described liability
12 limits as if the full limits had been received if less than the described limits have been offered in
13 settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured
14 protects the insurer's right of subrogation to the claim against the tortfeasor.

15 [(e)] (d) When seeking consent under paragraph (a) or [(d)] (c) of this subsection, the insured
16 shall allow the insurer a reasonable time in which to collect and evaluate information related to
17 consent to the proposed offer of settlement. The insured shall provide promptly to the insurer any
18 information that is reasonably requested by the insurer and that is within the custody and control
19 of the insured. Consent will be presumed to be given if the insurer does not respond within a rea-
20 sonable time. For purposes of this paragraph, a "reasonable time" is no more than 30 days from the
21 insurer's receipt of a written request for consent, unless the insured and the insurer agree other-
22 wise.

23 (5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer
24 written proof of claim, under oath if required, including full particulars of the nature and extent of
25 the injuries, treatment and other details entering into the determination of the amount payable
26 hereunder. The insured and every other person making claim hereunder shall submit to examinations
27 under oath by any person named by the insurer and subscribe the same, as often as may reasonably
28 be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer fails
29 to furnish the forms within 15 days after receiving notice of claim.

30 (b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit
31 to physical examinations by physicians, physician assistants or nurse practitioners selected by the
32 insurer and shall, upon each request from the insurer, execute authorization to enable the insurer
33 to obtain medical reports and copies of records.

34 (6) If, before the insurer makes payment of loss hereunder, the insured or the legal represen-
35 tative of the insured institutes any legal action for bodily injury against any person or organization
36 legally responsible for the use of a vehicle involved in the accident, a copy of the summons and
37 complaint or other process served in connection with the legal action shall be forwarded imme-
38 diately to the insurer by the insured or the legal representative of the insured.

39 (7)(a) The limit of liability stated in the declarations as applicable to "each person" is the limit
40 of the insurer's liability for all damages because of bodily injury sustained by one person as the
41 result of any one accident and, subject to the above provision respecting each person, the limit of
42 liability stated in the declarations as applicable to "each accident" is the total limit of the
43 company's liability for all damages because of bodily injury sustained by two or more persons as the
44 result of any one accident.

45 (b) Any amount payable under the terms of this coverage because of bodily injury sustained in

1 an accident by a person who is an insured under this coverage shall be reduced by the amount paid
2 and the present value of all amounts payable on account of the bodily injury under any workers'
3 compensation law, disability benefits law or any similar law.

4 (c) Any amount payable under the terms of this coverage because of bodily injury sustained in
5 an accident by a person who is an insured under this coverage shall be reduced by the credit given
6 to the insurer pursuant to subsection [~~(4)(d)(C)~~] **(4)(c)(C)** or (D) of this section.

7 (d) The amount payable under the terms of this coverage may not be reduced by the amount of
8 liability proceeds offered, described in subsection [~~(4)(d)(B)~~] **(4)(c)(B)** or (D) of this section, that has
9 not been paid to the injured person. If liability proceeds have been offered and not paid, the amount
10 payable under the terms of the coverage shall include the amount of liability limits offered but not
11 accepted due to the insurer's refusal to consent. The insured shall cooperate so as to permit the
12 insurer to proceed by subrogation or assignment to prosecute the claim against the uninsured mo-
13 torist.

14 (8) No action shall lie against the insurer unless, as a condition precedent thereto, the insured
15 or the legal representative of the insured has fully complied with all the terms of this policy.

16 (9)(a) With respect to bodily injury to an insured:

17 (A) While occupying a vehicle owned by a named insured under this coverage, the insurance
18 under this coverage is primary.

19 (B) While occupying a vehicle not owned by a named insured under this coverage, the insurance
20 under this coverage shall apply only as excess insurance over any primary insurance available to
21 the occupant that is similar to this coverage, and this excess insurance coverage shall then apply
22 only to the sums that the insured or the heirs or legal representative of the insured is legally enti-
23 tled to recover as damages for bodily injury or death that is caused by accident and that arises out
24 of owning, maintaining or using an uninsured vehicle.

25 (b) With respect to bodily injury to an insured while occupying any motor vehicle used as a
26 public or livery conveyance, the insurance under this coverage shall apply only as excess insurance
27 over any other insurance available to the insured that is similar to this coverage, and this excess
28 insurance coverage shall then apply only to the amount by which the applicable limit of liability of
29 this coverage exceeds the sum of the applicable limits of liability of all other insurance.

30 (10) If any person making claim hereunder and the insurer do not agree that the person is le-
31 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of
32 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under
33 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time
34 of the dispute to settle the matter by arbitration, the arbitration shall take place as described in
35 ORS 742.505. Any judgment upon the award rendered by the arbitrators may be entered in any court
36 having jurisdiction thereof, provided, however, that the costs to the insured of the arbitration pro-
37 ceeding do not exceed \$100 and that all other costs of arbitration are borne by the insurer.
38 "Costs" as used in this provision does not include attorney fees or expenses incurred in the pro-
39 duction of evidence or witnesses or the making of transcripts of the arbitration proceedings. The
40 person and the insurer each agree to consider themselves bound and to be bound by any award made
41 by the arbitrators pursuant to this coverage in the event of such election. At the election of the
42 insured, the arbitration shall be held:

43 (a) In the county and state of residence of the insured;

44 (b) In the county and state where the insured's cause of action against the uninsured motorist
45 arose; or

1 (c) At any other place mutually agreed upon by the insured and the insurer.

2 (11) In the event of payment to any person under this coverage:

3 (a) The insurer shall be entitled to the extent of the payment to the proceeds of any settlement
4 or judgment that may result from the exercise of any rights of recovery of the person against any
5 uninsured motorist legally responsible for the bodily injury because of which payment is made;

6 (b) The person shall hold in trust for the benefit of the insurer all rights of recovery that the
7 person shall have against such other uninsured person or organization because of the damages that
8 are the subject of claim made under this coverage, but only to the extent that the claim is made or
9 paid herein;

10 (c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one
11 or more of whom is uninsured, the insured shall have the election to receive from the insurer any
12 payment to which the insured would be entitled under this coverage by reason of the act or acts
13 of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with
14 legal action against any or all persons claimed to be liable to the insured for the injuries. If the
15 insured elects to receive payment from the insurer under this coverage, then the insured shall hold
16 in trust for the benefit of the insurer all rights of recovery the insured shall have against any other
17 person, firm or organization because of the damages that are the subject of claim made under this
18 coverage, but only to the extent of the actual payment made by the insurer;

19 (d) The person shall do whatever is proper to secure and shall do nothing after loss to prejudice
20 such rights;

21 (e) If requested in writing by the insurer, the person shall take, through any representative not
22 in conflict in interest with the person, designated by the insurer, such action as may be necessary
23 or appropriate to recover payment as damages from such other uninsured person or organization,
24 such action to be taken in the name of the person, but only to the extent of the payment made
25 hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for ex-
26 penses, costs and attorney fees incurred by the insurer in connection therewith; and

27 (f) The person shall execute and deliver to the insurer any instruments and papers as may be
28 appropriate to secure the rights and obligations of the person and the insurer established by this
29 provision.

30 (12)(a) The parties to this coverage agree that no cause of action shall accrue to the insured
31 under this coverage unless within two years from the date of the accident:

32 (A) Agreement as to the amount due under the policy has been concluded;

33 (B) The insured or the insurer has formally instituted arbitration proceedings;

34 (C) The insured has filed an action against the insurer; or

35 (D) Suit for bodily injury has been filed against the uninsured motorist and, within two years
36 from the date of settlement or final judgment against the uninsured motorist, the insured has
37 formally instituted arbitration proceedings or filed an action against the insurer.

38 (b) For purposes of this subsection:

39 (A) "Date of settlement" means the date on which a written settlement agreement or release is
40 signed by an insured or, in the absence of these documents, the date on which the insured or the
41 attorney for the insured receives payment of any sum required by the settlement agreement. An
42 advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for pur-
43 poses of the time limitation in this subsection.

44 (B) "Final judgment" means a judgment that has become final by lapse of time for appeal or by
45 entry in an appellate court of an appellate judgment.

1 **SECTION 6.** ORS 746.230 is amended to read:

2 746.230. (1) [No] **An** insurer or other person [shall] **may not** commit or perform any of the fol-
3 lowing unfair claim settlement practices:

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

5 (b) Failing to acknowledge and act promptly upon communications relating to claims;

6 (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;

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

9 (e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof
10 of loss statements have been submitted;

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

13 (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially
14 less than amounts ultimately recovered in actions brought by such claimants;

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

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

20 (j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them,
21 of the coverage under which payment has been made;

22 (k) Delaying investigation or payment of claims by requiring a claimant or the claimant's phy-
23 sician, physician assistant or nurse practitioner to submit a preliminary claim report and then re-
24 quiring subsequent submission of loss forms when both require essentially the same information;

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

27 (m) Failing to promptly provide the proper explanation of the basis relied on in the insurance
28 policy in relation to the facts or applicable law for the denial of a claim.

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

32 (a) A substantial increase in the number of complaints against the insurer received by the De-
33 partment of Consumer and Business Services;

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

36 (c) Other relevant evidence.

37 (3)(a) [No] **A** health maintenance organization, as defined in ORS 750.005, [shall] **may not** un-
38 reasonably withhold the granting of participating provider status from a class of statutorily au-
39 thorized health care providers for services rendered within the lawful scope of practice if the health
40 care providers are licensed as [such] **health care providers** and reimbursement is for services
41 mandated by statute.

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

44 (c) This subsection does not apply to group practice health maintenance organizations that are
45 federally qualified pursuant to Title XIII of the Health Maintenance Organization Act.

1 **(4) The department shall provide to any requester information about complaints against**
 2 **an insurer for any of the unfair claim settlement practices described in this section. Before**
 3 **providing the information, the department shall remove any personal information that could**
 4 **identify any individual.**

5 **SECTION 7.** ORS 746.230, as amended by section 6, chapter 59, Oregon Laws 2015, is amended
 6 to read:

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

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

10 (b) Failing to acknowledge and act promptly upon communications relating to claims;

11 (c) Failing to adopt and implement reasonable standards for the prompt investigation of 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 completed proof
 15 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 claimants;

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 a claim, to inform insureds or beneficiaries, upon request by them,
 26 of the coverage under which payment has been made;

27 (k) Delaying investigation or payment of claims by requiring a claimant or the claimant's phy-
 28 sician, physician assistant or nurse practitioner to submit a preliminary claim report and then re-
 29 quiring subsequent submission of loss forms when both require essentially the same information;

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

32 (m) Failing to promptly provide the proper explanation of the basis relied on in the insurance
 33 policy in relation to the facts or applicable law for the denial of a claim.

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

37 (a) A substantial increase in the number of complaints against the insurer received by the De-
 38 partment of Consumer and Business Services;

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

41 (c) Other relevant evidence.

42 **(3) The department shall provide to any requester information about complaints against**
 43 **an insurer for any of the unfair claim settlement practices described in this section. Before**
 44 **providing the information, the department shall remove any personal information that could**
 45 **identify any individual.**

