

# D R A F T

## SUMMARY

Specifies procedures Director of Department of Consumer and Business Services may use to investigate violations of Insurance Code.

Permits complainant to submit complaint of violation to director and specifies required contents of complaint. Specifies procedures for director to investigate complaint and provides dates by which director must complete investigation.

Permits director to engage in negotiations to settle complaint or to enter into remediation agreement to remedy violation. Requires director to issue order to remedy violation if settlement negotiations or negotiations for remedial agreement fail.

Provides for person to bring action for violation of Insurance Code in specified circumstances.

Becomes operative January 1, 2018.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to remedies for violations of the Insurance Code; creating new  
3 provisions; amending ORS 731.028, 731.988, 737.045, 744.992 and 746.675;  
4 repealing ORS 731.232, 731.236, 731.240, 731.248, 731.252 and 731.264; and  
5 declaring an emergency.

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

7 **SECTION 1. Sections 2 to 7 of this 2017 Act are added to and made**  
8 **a part of ORS 731.216 to 731.268.**

9 **SECTION 2. As used in ORS 731.216 to 731.268:**

10 (1) **“Complainant” means a person that submits a complaint to the**  
11 **Director of the Department of Consumer and Business Services.**

12 (2) **“Complaint” means a written or oral statement that a person**  
13 **submits to the director that:**

**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 (a) Alleges that another person violated or is about to violate a  
2 provision of the Insurance Code;

3 (b) Alleges that the violation described in paragraph (a) of this  
4 subsection has or will injure the person; and

5 (c) Seeks an administrative remedy from the director.

6 (3) "Petition" means a request to the director to enforce the pro-  
7 visions of a settlement agreement or an order that the director issued.

8 (4) "Remedial agreement" means a written agreement with specific  
9 terms and conditions in which a respondent agrees to remedy a vio-  
10 lation of the Insurance Code that the director found after an investi-  
11 gation that the director did not initiate as a response to a complaint.

12 (5) "Respondent" means a person that a complaint identifies as  
13 allegedly violating or about to violate a provision of the Insurance  
14 Code.

15 (6) "Settlement agreement" means a written agreement with spe-  
16 cific terms and conditions into which the director and a respondent  
17 enter to settle a complaint.

18 SECTION 3. (1)(a) The Director of the Department of Consumer and  
19 Business Services shall enforce the Insurance Code in accordance with  
20 ORS 731.216 to 731.268 and in a manner that serves the public interest.

21 (b) Any enforcement action that the director takes under ORS  
22 731.216 to 731.268 must be in addition to, and not in lieu of, any action  
23 the director takes to advocate for insurance consumers or to investi-  
24 gate and penalize unfair claim settlement practices listed in ORS  
25 746.230.

26 (2)(a) The director, in enforcing the Insurance Code, has all of the  
27 powers and authority that the Insurance Code and other applicable  
28 laws of this state expressly confer or reasonably imply. The director's  
29 power and authority includes but is not limited to administering oaths  
30 and affirmations, issuing subpoenas for witnesses and compelling the  
31 witnesses to attend, taking testimony and other evidence and requir-

1 **ing the production of books, papers, correspondence, memoranda,**  
2 **agreements and other documents and records, including electronic**  
3 **documents and records, that the director considers relevant or mate-**  
4 **rial to the director's investigation or enforcement action.**

5 **(b) A witness who appears before the director must receive fees and**  
6 **mileage in accordance with ORS 44.415 (2). The director may apply to**  
7 **a circuit court of this state to compel a witness to appear before the**  
8 **director or to give testimony and to punish a witness who fails to ap-**  
9 **pear or testify by means of contempt proceedings.**

10 **(3) The director, at the director's own initiative and without need-**  
11 **ing to respond to a complaint under section 4 of this 2017 Act, may**  
12 **examine and investigate any insurance matter and the books, records**  
13 **and operations of any insurer in order to determine whether a person**  
14 **has violated the Insurance Code or in order to obtain information that**  
15 **is useful for lawfully administering the Insurance Code. The Depart-**  
16 **ment of Consumer and Business Services shall pay the expenses of an**  
17 **examination or investigation under this subsection.**

18 **(4)(a) A person may not knowingly or wilfully:**

19 **(A) Impede the director in an enforcement action under ORS 731.216**  
20 **to 731.268;**

21 **(B) Interfere with an investigation or enforcement action; or**

22 **(C) Fail to obey or violate the terms of an order the director issues**  
23 **under sections 731.216 to 731.268.**

24 **(b) Appealing an order the director issued is not a failure to obey**  
25 **or a violation of the terms of the order.**

26 **SECTION 4. (1)(a) A complaint under ORS 731.216 to 731.268 must:**

27 **(A) Identify as a respondent the person that the complainant alleges**  
28 **has violated or will violate a provision of the Insurance Code, provid-**  
29 **ing the respondent's name, address and any other available contact**  
30 **information;**

31 **(B) Describe each act or omission that the complainant believes**

1 **constitutes a violation of the Insurance Code; and**

2 **(C) Provide any other information that the director requires to in-**  
3 **vestigate the complaint.**

4 **(b) If a complainant submits a written complaint, the complainant**  
5 **shall sign the complaint. If the complainant submits an oral com-**  
6 **plaint, the director shall record the substance of the complaint in**  
7 **writing and require the complainant to authenticate the record of the**  
8 **complaint in a manner that the director specifies by rule.**

9 **(c) The director shall provide forms, including electronic forms, for**  
10 **submitting a complaint under this section and may by rule give ex-**  
11 **amples of or otherwise specify the type of information the director**  
12 **needs to investigate the complaint.**

13 **(2) The director shall dismiss a complaint if:**

14 **(a) The complainant submits the complaint more than one year af-**  
15 **ter an alleged violation of the Insurance Code occurred; or**

16 **(b) The complainant brings an action in a state or federal court that**  
17 **alleges the same or substantially similar acts, omissions or violations**  
18 **that the complaint alleges and the action commences:**

19 **(A) Before the complainant submits the complaint; or**

20 **(B) Before the director concludes an investigation or proceeding**  
21 **related to the complaint.**

22 **(3)(a) Within 10 business days after receiving a complaint under this**  
23 **section, the director shall notify the respondent of the complaint.**

24 **(b) In a notice under paragraph (a) of this subsection, the director**  
25 **shall:**

26 **(A) Set forth the provision of the Insurance Code that the re-**  
27 **spondent allegedly violated or is about to violate, a description of the**  
28 **alleged violation, the date or anticipated date of the alleged violation**  
29 **and a description of the place and circumstances in which the alleged**  
30 **violation occurred or is about to occur; and**

31 **(B) State that the respondent may submit to the director an answer**

1 to the complaint within 30 days after the date of the notice.

2 (4)(a) Except as provided in paragraph (b) of this subsection and  
3 ORS 731.216 to 731.268, a complaint under this section and any infor-  
4 mation the director obtains in an investigation of the complaint are  
5 confidential. The director may not disclose the complaint or informa-  
6 tion except as provided in ORS 705.137 and may not use the complaint  
7 or information in any action, suit or court proceeding unless the di-  
8 rector determines that the complaint or information is necessary to  
9 enforce a violation of the Insurance Code by means of the action, suit  
10 or court proceeding.

11 (b)(A) The director may use a complaint and the information de-  
12 scribed in paragraph (a) of this subsection to:

13 (i) Compile and publish each year a statistical report with each  
14 insurer's name and identifying number, the percentage of total com-  
15 plaints that the director receives that are attributable to each insurer,  
16 the type and disposition of each complaint; and

17 (ii) Provide any requester with information about complaints that  
18 the director receives against an insurer that allege that the insurer  
19 engaged in an unfair claim settlement practice described in ORS  
20 746.230.

21 (B) Before compiling and publishing a report or providing informa-  
22 tion to any person under this paragraph, the director shall remove  
23 information that could identify a complainant.

24 (5) The director may investigate a complaint submitted under this  
25 section if the director determines that the complaint alleges facts that  
26 constitute a prima facie violation of a provision of the Insurance Code.  
27 If the director determines during the course of the director's investi-  
28 gation that evidence against another person warrants naming the  
29 other person as a respondent in the complaint, the director shall  
30 amend the complaint to add the other person as a respondent and  
31 shall:

1 (a) Serve each respondent with a copy of the amended complaint  
2 within 10 days after making the amendment; and

3 (b) Notify each respondent of the respondent's procedural rights  
4 and obligations, including the right to submit an answer to the  
5 amended complaint within 30 days after the date of the amended  
6 complaint.

7 (6) If, after investigating, the director finds substantial evidence to  
8 support the allegations in a complaint, the director shall sign and is-  
9 sue a finding, with copies to the complainant and respondent, that:

10 (a) Names the complainant and the respondent;

11 (b) Summarizes the allegations in the complaint;

12 (c) Lists, describes or summarizes, as appropriate, facts that relate  
13 to the allegations in the complaint; and

14 (d) States that the director has found substantial evidence to sup-  
15 port the allegations in the complaint.

16 (7)(a) Except as provided in paragraph (b) of this subsection, if the  
17 director does not begin an investigation of a complaint within one year  
18 after the date of the complaint, or if the director does not find sub-  
19 stantial evidence of a violation of the Insurance Code within one year  
20 after beginning an investigation of a complaint, the director shall  
21 dismiss the complaint.

22 (b) If the director dismisses a complaint under paragraph (a) of this  
23 subsection, the director shall on the same date as the date of the dis-  
24 missal notify the complainant that the complainant has 90 days within  
25 which to bring an action under section 7 of this 2017 Act that alleges  
26 the same or substantially similar acts, omissions or violations. For  
27 purposes of this subsection, a notice is effective five days after the  
28 date on which the director sends the notice. The notice shall state that  
29 the complainant may not bring an action after the 90-day period ex-  
30 pires.

31 (c) The director need not dismiss a complaint under paragraph (a)

1 of this subsection and need not notify the complainant as provided in  
2 paragraph (b) of this subsection if the director notifies the  
3 complainant and each respondent that the director needs additional  
4 time to complete an investigation of the complaint. A notice under  
5 this paragraph must include an estimate the time remaining until the  
6 director completes the investigation.

7 (8)(a) A respondent named in a complaint under this section may  
8 not, with an intention of contravening a purpose of the Insurance  
9 Code, engage in conduct that deprives a complainant of any services  
10 or benefits to which the complainant is entitled under the terms of  
11 any contract or policy the complainant has with the respondent during  
12 a period that begins when the director notifies the respondent of the  
13 complaint and that ends with an order from the director or the  
14 settlement or dismissal of the complaint.

15 (b) A complainant may amend a complaint the complainant sub-  
16 mitted under this section to allege that a respondent engaged in con-  
17 duct prohibited under paragraph (a) of this subsection, or may bring  
18 an action as provided in section 7 of this 2017 Act.

19 (c) A respondent may defend against an amended complaint or an  
20 action on the basis that the director dismissed the complaint on the  
21 merits or for a lack of substantial evidence to support the complaint  
22 after the occurrence of the conduct that the complainant alleges in  
23 paragraph (a) of this subsection.

24 SECTION 5. (1) Except as otherwise provided in this section, if the  
25 Director of the Department of Consumer and Business Services finds  
26 that substantial evidence exists to support allegations in a complaint  
27 or if the director finds from the director's own investigation that  
28 substantial evidence exists that a violation of the Insurance Code has  
29 occurred, the director may at any time after the date on which the  
30 director issues the finding negotiate with a respondent to attempt to  
31 settle the complaint or remedy the violation. If the complaint names

1 more than one respondent or the director's investigation finds that  
2 more than one person engaged in a violation of the Insurance Code,  
3 the director may negotiate with each respondent or person separately  
4 or with all respondents and persons at once.

5 (2) The director, at the director's sole discretion, may include a  
6 complainant in any negotiations the director conducts with a re-  
7 spondent to settle a complaint.

8 (3)(a) Except as provided in paragraph (b) of this subsection, if the  
9 director reaches a settlement with a respondent or if the respondent  
10 agrees to the terms of a remedy for a violation of the Insurance Code,  
11 the director shall record the terms and conditions of the settlement  
12 or a remedy in a written agreement signed by, as appropriate, the  
13 complainant, the respondent and the director or a designee of the di-  
14 rector. The director shall issue the signed settlement agreement or  
15 remedial agreement as a final order. A settlement agreement or re-  
16 medial agreement may include any terms and conditions that the di-  
17 rector may include in an order the director issues after a hearing  
18 under section 6 of this 2017 Act.

19 (b) If the director has invited a complainant to participate in  
20 settlement negotiations with a respondent and the complainant objects  
21 to the terms of a settlement that the director reaches with a re-  
22 spondent, the director may, at the director's option:

23 (A) Continue negotiations until the settlement satisfies the  
24 complainant's objection; or

25 (B) Offer to terminate settlement negotiations and dismiss the  
26 complaint so that the complainant may bring an action against the  
27 respondent under section 7 of this 2017 Act.

28 (c) If a settlement agreement or remedial agreement will terminate  
29 after a specific time or as a consequence of the occurrence of specific  
30 conditions, the director shall specify the date on which the settlement  
31 agreement or remedial agreement will terminate or the conditions that



1 will cause the settlement agreement or remedial agreement to termi-  
2 nate. The director shall also specify any time limitations or other  
3 limitations on the ability of any party to the settlement agreement or  
4 remedial agreement to enforce the terms and conditions of the settle-  
5 ment agreement or remedial agreement.

6 (d) The terms of a settlement agreement or remedial agreement  
7 under this section bind a respondent's agents and successors in inter-  
8 est.

9 (4)(a) Except as provided in any limitations the director specifies  
10 under subsection (3)(c) of this section, a complainant at any time after  
11 the date of a settlement agreement under subsection (3) of this section  
12 may seek to enforce the terms of the settlement agreement by:

13 (A) Submitting a petition to the director;

14 (B) Bringing an action to seek specific performance of the settle-  
15 ment agreement or an injunction against a violation of the terms and  
16 conditions of the settlement agreement; or

17 (C) Bringing an action to seek enforcement of the settlement  
18 agreement under a writ of mandamus.

19 (b) A complainant must submit a petition the director or bring an  
20 action under paragraph (a) of this subsection within one year after the  
21 date on which a respondent violated, or failed to perform in accord-  
22 ance with, a term or condition of the settlement agreement.

23 (c) The director shall investigate a petition in the same manner  
24 that the director investigates a complaint under section 4 of this 2017  
25 Act. The director by rule may specify a form and format for and the  
26 required contents of a petition under this subsection.

27 (5) Any statements or actions that are directly related to negoti-  
28 ations to settle a complaint are confidential. The director may not  
29 disclose any of the statements or actions under ORS 192.410 to 192.505  
30 or in any other manner. A statement or action that is related to ne-  
31 gotiations to settle a complaint may not be used in any action, suit

1 or court proceeding without the written consent of the person that  
2 made the statement or took the action.

3 **SECTION 6.** (1) The Director of the Department of Consumer and  
4 Business Services shall take an action described in subsection (2) of  
5 this section if the director:

6 (a) Finds substantial evidence to support a complaint and the di-  
7 rector and the respondent cannot agree to settle the complaint;

8 (b) Finds substantial evidence that a violation of the Insurance  
9 Code occurred after conducting an investigation independent of a  
10 complaint, and the respondent declines to enter into a remedial  
11 agreement; or

12 (c) Determines that the risk of actual or potential harm from a vi-  
13 olation or the interests of justice require the director to resolve a  
14 complaint or impose a remedy for, or enjoin, a violation described in  
15 paragraph (b) of this subsection without first negotiating with the re-  
16 spondent.

17 (2) Under any of the circumstances described in subsection (1) of  
18 this section, the director, as circumstances warrant, shall, in writing:

19 (a) Order the respondent to cease and desist from a continuing vi-  
20 olation of a provision of the Insurance Code;

21 (b) Order the respondent to perform a specific action that:

22 (A) Carries out the purposes of the Insurance Code;

23 (B) Reverses or eliminates the effects of the respondent's violation  
24 of a provision of the Insurance Code, such as:

25 (i) Paying restitution or actual damages to the complainant;

26 (ii) Complying with a cease and desist letter from the director or  
27 an injunction from a court; and

28 (iii) Protecting the complainant's rights and the rights of persons  
29 that are similarly situated;

30 (c) Order the respondent to refrain from any action that would  
31 jeopardize the complainant's rights and the rights of other persons

1 that are similar situated or that would otherwise frustrate the pur-  
2 poses of the Insurance Code; or

3 (d) Require the respondent to report to the director concerning the  
4 respondent's compliance with any of the other terms of the director's  
5 order.

6 (3)(a) The director shall notify each respondent named in the com-  
7 plaint of an order or requirement under subsection (2) of this section.

8 (b) The director shall provide notice under this subsection by de-  
9 livering the notice to the respondent or by mailing the notice by cer-  
10 tified or registered mail, return receipt requested and postage prepaid,  
11 to the respondent's residential or business address as the address ap-  
12 pears in the department's records. A notice the director mails under  
13 this paragraph is effective on the date that the director deposits the  
14 notice in the United States mail.

15 (c) In a notice under paragraph (a) of this subsection, the director  
16 shall state that each respondent may request within 20 days after the  
17 date of the order a hearing that the director will conduct as a con-  
18 tested case hearing in accordance with ORS 183.413 to 183.470. If a re-  
19 spondent requests a hearing, the director shall schedule the hearing  
20 for a date that is not later than 30 days after the director receives the  
21 respondent's request.

22 (d) If a respondent does not request a contested case hearing within  
23 20 days after the date of an order under subsection (2) of this section,  
24 the order becomes a final order 21 days after the date of a notice under  
25 this subsection.

26 (4)(a) At the conclusion of a contested case proceeding under sub-  
27 section (3) of this section, the director shall issue findings of fact and  
28 conclusions of law in a written final order that, as appropriate:

29 (A) Reiterates the terms and conditions of the order the director  
30 issued under subsection (2) of this section;

31 (B) Amends the order the director issued under subsection (2) of

1 **this section; or**

2 **(C) Dismisses the complaint or the director's finding against the**  
3 **respondent in whole or in part if the respondent establishes to the**  
4 **hearing officer's satisfaction that a violation did not occur.**

5 **(b) The director may reopen negotiations to settle the complaint**  
6 **or enter into a remedial agreement during the course of a hearing**  
7 **under this subsection.**

8 **(c) The director shall sign and date a final order the director issues**  
9 **under paragraph (a) of this subsection, file the final order with the**  
10 **Department of Consumer and Business Services and provide copies of**  
11 **the final order to the complainant and the respondent. In addition to**  
12 **any terms and conditions described in subsection (2) of this section**  
13 **that the director may specify, the director shall state in the order:**

14 **(A) The purpose and intent of the order;**

15 **(B) The factual grounds upon which the director bases the order;**  
16 **and**

17 **(C) The provisions of the Insurance Code that authorize the terms**  
18 **and conditions the director specifies in the order.**

19 **(d) A respondent may appeal the director's final order as provided**  
20 **in ORS 183.480 to 183.497.**

21 **(5) The terms of a final order under this section bind a respondent's**  
22 **agents and successors in interest.**

23 **(6) The director may amend the terms and conditions of a final or-**  
24 **der under this section or section 5 of this 2017 Act if the terms and**  
25 **conditions cause undue hardship for a respondent or another person**  
26 **and the amendment would not remove or alter terms and conditions**  
27 **that are essential for protecting a complainant's rights.**

28 **(7) The director may not issue an order under subsection (2) of this**  
29 **section and shall dismiss the complaint as provided in section 7 (2) of**  
30 **this 2017 Act if a complainant brings an action in a state or federal**  
31 **court that begins before the director issues an order under subsection**

1 (2) of this section and in the action alleges the same or substantially  
2 similar acts, omissions or violations that the complainant alleged in  
3 the complaint to the director.

4 (8) An order of the director under this section:

5 (a) Does not relieve or absolve any person of liability under any  
6 other law of this state; and

7 (b) Supplements and is not in lieu of any other power the director  
8 has to suspend or revoke a license or certificate of authority or impose  
9 and enforce a penalty, fine or forfeiture.

10 SECTION 7. (1)(a) A person that suffers an ascertainable harm as  
11 a result of a violation of the Insurance Code, including a violation of  
12 section 4 (8) of this 2017 Act, may bring an action in a state or federal  
13 court to seek a remedy for the harm:

14 (A) Not later than one year after the date on which the alleged vi-  
15 olation occurred, except as provided in paragraph (b) of this sub-  
16 section; or

17 (B) Within 90 days after receiving a notice under section 4 (7)(b) of  
18 this 2017 Act.

19 (b) Filing a complaint under section 4 of this 2017 Act tolls the  
20 limitation set forth in paragraph (a)(A) of this subsection until the  
21 director dismisses the complaint under section 4 of this 2017 Act, en-  
22 ters a settlement agreement with the respondent under section 5 of  
23 this 2017 Act or issues an order related to the complaint under section  
24 6 of this 2017 Act.

25 (2)(a) A person need not file a complaint under section 4 of this 2017  
26 Act before bringing an action under subsection (1) of this section, but  
27 bringing an action precludes the person from submitting a complaint  
28 that alleges the same or substantially similar acts, omissions or vio-  
29 lations.

30 (b) If a person has submitted a complaint before bringing an action  
31 under subsection (1) of this section, the Director of the Department

1 of Consumer and Business Services shall dismiss the complaint with-  
2 out prejudice once a trial commences in the action. The person may  
3 submit a complaint again if the person discontinues the action or if a  
4 court dismisses the action other than on the merits.

5 (3) A respondent in a complaint under section 4 of this 2017 Act  
6 may elect to defend against the complaint in a state or federal court  
7 proceeding under this section. If the respondent elects to defend  
8 against the complaint under this subsection, the director shall bring  
9 an appropriate action without charge to the complainant that sub-  
10 mitted the complaint.

11 (4) In an action under this section:

12 (a) A jury shall try the action at the request of any party to the  
13 action;

14 (b) The court may enjoin a violation of the Insurance Code and  
15 grant any other equitable relief the court deems appropriate; and

16 (c) The court may award actual damages or \$200, whichever is  
17 greater, and punitive damages.

18 (5) After approving an attorney fee agreement, the court may award  
19 reasonable attorney fees and costs to a prevailing plaintiff, including  
20 the director if the director brings an action under subsection (3) of this  
21 section. The court may award reasonable attorney fees and costs to a  
22 prevailing defendant in an action that the director brings under sub-  
23 section (3) of this section only if the court determines that the director  
24 did not have an objectively reasonable basis for bringing the action.

25 (6) An award of actual damages as compensation for a defendant's  
26 failure to provide services or benefits is limited to an amount that is  
27 equivalent to the value of services and benefits the plaintiff did not  
28 receive in the period that begins two years before the plaintiff sub-  
29 mitted a complaint under section 4 of this 2017 Act or brought an  
30 action under this section, whichever is later.

31 SECTION 8. ORS 731.028 is amended to read:

1 731.028. (1) The State Accident Insurance Fund Corporation is subject as  
2 a domestic insurer to ORS [731.248, 731.252,] 731.256, 731.258, 731.260, 731.296  
3 to 731.316, 731.488, 731.574, 731.592, 731.594, 731.730, 731.731, 731.735, 731.737,  
4 731.870, 731.988, 731.992, 733.010 to 733.060, 733.140 to 733.170, 733.210, 737.205,  
5 737.215, 737.225, 737.235 to 737.340, 737.505 and 737.560, ORS chapters 742, 743,  
6 743A, 743B and 744 and ORS 746.015, 746.075, 746.110, 746.145 to 746.155,  
7 746.230 and 746.240 **and sections 2 to 7 of this 2017 Act.** However:

8 (a) The requirements of the Director of the Department of Consumer and  
9 Business Services under ORS 733.010 to 733.060, 733.140 to 733.170 and 733.210  
10 govern in the case of a conflict between those requirements and the re-  
11 quirements of any accounting system prescribed by the Oregon Department  
12 of Administrative Services.

13 (b) The filing requirements of ORS 737.205 to 737.340, 737.505 and 737.560  
14 are in lieu of any similar filing requirements prescribed by any other law  
15 of this state.

16 (c) The requirements of ORS chapters 743, 743A and 743B are applicable  
17 only with respect to excess workers' compensation insurance furnished by  
18 the corporation.

19 (d) The provisions of ORS chapter 744 apply only with respect to the  
20 regulation of insurance producers.

21 (e) For each year that the Secretary of State conducts an audit of the  
22 State Accident Insurance Fund Corporation under ORS 297.210, the director  
23 may accept the audit and a copy of the Secretary of State's audit report in  
24 lieu of the requirements of ORS 731.488 if the director determines that the  
25 purposes of ORS 731.488 are adequately served by the Secretary of State's  
26 audit and report. The Secretary of State shall file a copy of *[its]* **the** audit  
27 report of the State Accident Insurance Fund Corporation with the director.

28 (2) The provisions of subsection (1) of this section govern in the case of  
29 a conflict between those provisions and the provisions of ORS chapter 656  
30 that apply only to the State Accident Insurance Fund Corporation.

31 **SECTION 9.** ORS 731.988 is amended to read:

1       731.988. (1) **Except as provided in subsection (7) of this section**, a  
2 person that violates any provision of the Insurance Code, any lawful rule or  
3 final order of the Director of the Department of Consumer and Business  
4 Services or any judgment that a court makes in response to the director's  
5 application, shall forfeit and pay to the General Fund of the State Treasury  
6 a civil penalty in an amount determined by the director that does not exceed  
7 \$10,000 for each offense. The civil penalty for individual insurance producers,  
8 adjusters or insurance consultants may not exceed \$1,000 for each offense.  
9 Each violation is a separate offense.

10       (2) In addition to the civil penalty specified in subsection (1) of this sec-  
11 tion, a person that violates any provision of the Insurance Code, any lawful  
12 rule or final order of the director or any judgment that a court makes in  
13 response to the director's application, may be required to forfeit and pay to  
14 the General Fund of the State Treasury a civil penalty in an amount deter-  
15 mined by the director that does not exceed the amount by which the person  
16 profited in any transaction that violates the provision, rule, order or judg-  
17 ment.

18       (3) In addition to the civil penalties specified in subsections (1) and (2)  
19 of this section, an insurer that must submit a report under ORS 742.400 and  
20 that fails to do so within the specified time may be required to pay to the  
21 General Fund of the State Treasury a civil penalty in an amount determined  
22 by the director that does not exceed \$10,000.

23       (4) In addition to the penalties specified in [*subsection*] **subsections** (1),  
24 (2), (5) and (6) of this section, a director or officer of an insurance holding  
25 company system who engages in a transaction or makes an investment that  
26 has not been properly reported under, or does not otherwise comply with,  
27 ORS 732.517 to 732.592, who knowingly participates in or assents to the  
28 transaction or investment, or who permits another officer or an agent of the  
29 insurance holding company system to engage in the transaction or make the  
30 investment, shall pay, in the director or officer's individual capacity, a civil  
31 penalty in an amount determined by the Director **of the Department of**



1 **Consumer and Business Services** that does not exceed \$10,000.

2 (5) In addition to the penalties specified in subsections (1), (2), (4) and (6)  
3 of this section, an insurer or other person that fails to make a required filing  
4 or demonstrate a good faith effort to comply with a filing requirement under  
5 ORS 732.527, 732.537, 732.539, 732.542 or 732.544 shall pay a civil penalty in  
6 an amount determined by the director that does not exceed \$50,000.

7 (6) In addition to the penalties specified in subsections (1), (2), (4) and (5)  
8 of this section, an insurer or other person that violates [*a cease and desist*]  
9 **an** order the director has issued under [*ORS 731.252*] **section 6 of this 2017**  
10 **Act** in connection with a violation of a provision of ORS 732.517 to 732.592  
11 may be subject to a civil penalty in an amount determined by the director  
12 that does not exceed \$10,000 for each day of the violation.

13 (7) **A civil penalty imposed for a violation of sections 2 to 7 of this**  
14 **2017 Act must be applied first toward reimbursing the costs the direc-**  
15 **tor incurred in investigating and determining that a violation oc-**  
16 **curred, in conducting hearings and in assessing and collecting the civil**  
17 **penalty. The director shall pay the remainder to the General Fund of**  
18 **the State Treasury as provided in subsection (1) of this section.**

19 (8) **If the director or the Attorney General finds that an insurer or**  
20 **other person is engaged in a pattern or practice of resistance to the**  
21 **rights that the Insurance Code protects or that an insurer or other**  
22 **person has denied rights that the Insurance Code protects to a group**  
23 **of persons, the director or the Attorney General, in addition to any**  
24 **other applicable civil penalties under this section, may recover an**  
25 **amount that does not exceed:**

26 (a) **\$50,000 for a first violation; or**

27 (b) **\$100,000 for a second or subsequent violation.**

28 [(7)] (9) A civil penalty imposed under this section may be recovered ei-  
29 ther as provided in subsection [(8)] (10) of this section or in an action  
30 brought in the name of the State of Oregon in any court of appropriate ju-  
31 risdiction.

1        [(8)] (10) Civil penalties under this section must be imposed and enforced  
2 in accordance with ORS 183.745.

3        [(9)] (11) The provisions of this section are in addition to and not in lieu  
4 of any other enforcement provisions specified in the Insurance Code.

5        **SECTION 10.** ORS 737.045 is amended to read:

6        737.045. (1) If the Director of the Department of Consumer and Business  
7 Services has reason to believe that a rate, rating plan or rating system filed  
8 or used by an insurer or filed by a rating or advisory organization on behalf  
9 of an insurer does not comply with the requirements and standards of this  
10 chapter, the director may issue an order directing the insurer or the rating  
11 or advisory organization to discontinue or desist from the noncompliance.  
12 An order issued under this subsection is subject to the provisions of [ORS  
13 731.252] **section 6 of this 2017 Act.**

14        (2) If the director holds a hearing on an order issued pursuant to sub-  
15 section (1) of this section, the insurer or rating or advisory organization  
16 filing or using the rate, rating plan or rating system shall pay to the director  
17 the just and legitimate costs of the hearing, including actual necessary ex-  
18 penses.

19        (3) If the director finds after a hearing under ORS 737.340 that any rate,  
20 rating plan or rating system violates the provisions of this chapter, the di-  
21 rector may issue an order specifying the violation and stating when, within  
22 a reasonable period of time, the further use of such rate, rating plan or rat-  
23 ing system by an insurer or rating or advisory organization shall be prohib-  
24 ited.

25        (4) If the director finds after a hearing under ORS 737.215 or 737.340 that  
26 an insurer or rating or advisory organization is in violation of any provision  
27 of this chapter other than the provisions dealing with rates, rating plans or  
28 rating systems, the director may issue an order specifying the violation and  
29 requiring compliance within a reasonable time.

30        (5) If the director finds after a hearing under ORS 737.215 that the vio-  
31 lation of any of the provisions of this chapter applicable to it by any insurer

1 or rating organization that has been the subject of a hearing was willful, the  
2 director may suspend or revoke the certificate of authority of such insurer  
3 or the license of such rating organization.

4 (6) If the director finds after a hearing that any rating organization has  
5 willfully engaged in any fraudulent or dishonest act or practices, the director  
6 may suspend or revoke the license of such organization.

7 **SECTION 11.** ORS 744.992 is amended to read:

8 744.992. (1) A person who violates any provision of ORS 744.318 to 744.384,  
9 744.991 and 744.992 is subject to civil penalties under ORS 731.988 and [*cease*  
10 *and desist orders under ORS 731.252*] **an order under section 6 of this 2017**  
11 **Act.**

12 (2) If a person violates any provision of ORS 744.318 to 744.384, 744.991  
13 and 744.992, the Director of the Department of Consumer and Business Ser-  
14 vices may seek an injunction in a court of competent jurisdiction and may  
15 apply for temporary and permanent orders that the director determines are  
16 necessary to restrain the person from committing the violation.

17 (3) A person damaged by the acts of a person in violation of any provision  
18 of ORS 744.318 to 744.384, 744.991 and 744.992 may bring a civil action  
19 against the person committing the violation in a court of competent juris-  
20 diction. [*Nothing in*] This subsection [*shall be construed to*] **does not** alter  
21 the provisions of ORS 743.168 or 743.171 relating to the period of  
22 incontestability of a policy of life insurance.

23 (4) A violation of any provision of ORS 744.318 to 744.384, 744.991 and  
24 744.992 attendant to the execution of a life settlement purchase agreement  
25 renders the life settlement purchase agreement voidable and subject to  
26 rescission by the life settlement purchaser, upon return of the policy received  
27 to the life settlement provider. Suit for rescission may be brought in a court  
28 of competent jurisdiction or where the alleged violator resides or has a  
29 principal place of business or where the alleged violation occurred.

30 (5) Except for an act under ORS 744.369 (8) to (16), the enforcement pro-  
31 visions and penalties of this section do not apply to an owner.

1       **SECTION 12.** ORS 746.675 is amended to read:

2       746.675. For the purpose of ORS 746.600 to 746.690 and 750.055, an  
3 insurance-support organization transacting business outside this state  
4 [*which*] **that** has an effect on a person residing in this state [*shall be con-*  
5 *sidered to have*] **has** appointed the Director of the Department of Consumer  
6 and Business Services to accept service of process on [*its*] **the**  
7 **organization's** behalf. [*Notice of such service shall be given forthwith by the*  
8 *director as provided for orders and notices under ORS 731.248 (3).*] **The di-**  
9 **rector shall give notice of service to the organization in the same**  
10 **manner provided for notice under section 6 (3)(b) of this 2017 Act.**

11       **SECTION 13.** ORS 731.232, 731.236, 731.240, 731.248, 731.252 and 731.264  
12 **are repealed.**

13       **SECTION 14.** Sections 2 to 7 of this 2017 Act and the amendments  
14 **to ORS 731.028, 731.988, 737.045, 744.992 and 746.675 by sections 8 to 12**  
15 **of this 2017 Act apply to violations of the Insurance Code that occur**  
16 **on or after the operative date specified in section 15 of this 2017 Act.**

17       **SECTION 15.** (1) Sections 2 to 7 of this 2017 Act, the amendments  
18 **to ORS 731.028, 731.988, 737.045, 744.992 and 746.675 by sections 8 to 12**  
19 **of this 2017 Act and the repeal of ORS 731.232, 731.236, 731.240, 731.248,**  
20 **731.252 and 731.264 by section 13 of this 2017 Act become operative on**  
21 **January 1, 2018.**

22       (2) **The Director of the Department of Consumer and Business Ser-**  
23 **VICES may adopt rules and take any other action before the operative**  
24 **date specified in subsection (1) of this section that is necessary to en-**  
25 **able the director, on and after the operative date specified in sub-**  
26 **section (1) of this section, to exercise all of the duties, functions and**  
27 **powers conferred on the director by sections 2 to 7 of this 2017 Act and**  
28 **the amendments to ORS 731.028, 731.988, 737.045, 744.992 and 746.675 by**  
29 **sections 8 to 12 of this 2017 Act.**

30       **SECTION 16.** **This 2017 Act being necessary for the immediate**  
31 **preservation of the public peace, health and safety, an emergency is**

1 **declared to exist, and this 2017 Act takes effect on its passage.**

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