House Bill 3172
Sponsored by Representative HOLVEY

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 insured or beneficiary who suffers ascertainable loss of money or property that results from insurer's commission or performance of unfair claim settlement practice to bring action to recover insured's or beneficiary's actual damages or statutory damages of $200, whichever is greater. Specifies conditions that apply to action. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT
Relating to private actions to remedy losses resulting from commission of unfair claim settlement practices; amending ORS 731.256 and 746.230; and prescribing an effective date.

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

SECTION 1. ORS 731.256 is amended to read:

731.256. (1) The Director of the Department of Consumer and Business Services may institute actions or other lawful proceedings that the director deems necessary to enforce a provision of the Insurance Code or any order or action the director makes or takes in accordance with law.

(2) As part of or in addition to any action or proceeding the director institutes against an insurer under subsection (1) of this section, the director may:

(a) Seek restitution on a consumer's behalf for actual damages the consumer suffers as a result of the insurer's violation of a provision of the Insurance Code or applicable federal law or the insurer's breach of an insurance contract or policy the insurer has with the consumer; and

(b) Seek other equitable relief the director deems appropriate under the circumstances.

(3) If the director has reason to believe that a person has violated a provision of the Insurance Code or another law that applies to insurance operations, and if the violation is subject to criminal prosecution and in the opinion of the director criminal prosecution is warranted, the director shall give the information about the violation to the Attorney General or district attorney that has jurisdiction over the violation. The Attorney General or district attorney promptly shall institute an action or a proceeding against the person as the information requires or justifies.

(4) An action or proceeding that the director institutes under subsection (1) of this section is an exercise of the director's regulatory authority and, except as otherwise provided in subsection (3) of this section, does not create a cause of action for any other person.

(4) An action the director takes under this section does not preclude or prevent an insured or beneficiary from bringing an action to recover damages for an ascertainable loss of money or property that results from an insurer's commission or performance of an unfair claim settlement practice described in ORS 746.230.

SECTION 2. ORS 746.230 is amended to read:

746.230. (1) An insurer or other person may not commit or perform any of the following unfair

NOTE: Matter in boldfaced type in an amended section is new; matter in italic and bracketed is existing law to be omitted. New sections are in boldfaced type.

LC 3027
claim settlement practices:

(a) Misrepresenting facts or policy provisions in settling claims;
(b) Failing to acknowledge and act promptly upon communications relating to claims;
(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;
(d) Refusing to pay claims without conducting a reasonable investigation based on all available
information;
(e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof
of loss statements have been submitted;
(f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has
become reasonably clear;
(g) Compelling claimants to initiate litigation to recover amounts due by offering substantially
less than amounts that claimants ultimately [recovered in actions brought by such claimants] re-
cover from the litigation;
(h) Attempting to settle claims for less than the amount to which a reasonable person would
believe a reasonable person was entitled after referring to written or printed advertising material
accompanying or made part of an application;
(i) Attempting to settle claims on the basis of an application altered without notice to or consent
of the applicant;
[j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them,
of the coverage under which payment has been made;]

(j) Failing to inform an insured or beneficiary of the coverage under which an insurer
paid a claim after receiving a request for the information from the insured or beneficiary;
(k) Delaying investigation or payment of claims by requiring a claimant or the claimant's phy-
sician, naturopathic physician, physician assistant or nurse practitioner to submit a preliminary
claim report and then requiring subsequent submission of loss forms when both the report and the
loss form require essentially the same information;
(L) Failing to promptly settle claims under one coverage of a policy where liability has become
reasonably clear in order to influence settlements under other coverages of the policy;
(m) Failing to promptly provide the proper explanation of the basis relied on in the insurance
policy in relation to the facts or applicable law for the denial of a claim; or
(n) Any of the practices described in ORS 746.233.

(2) [No] An insurer [shall] may not refuse, without just cause, to pay or settle claims arising
under coverages provided by [its] the insurer's policies with such frequency as to indicate a general
business practice in this state, which general business practice is evidenced by:
(a) A substantial increase in the number of complaints [against the insurer received by] the De-
partment of Consumer and Business Services receives against the insurer;
(b) A substantial increase in the number of lawsuits [filed] that claimants file against the
insurer or [its insureds by claimants] the insurer's insureds; or
(c) Other relevant evidence.

(3)(a) An insured or beneficiary who suffers an ascertainable loss of money or of real or
personal property as a result of an insurer's or other person's commission or performance
of an unfair claim settlement practice described in subsection (1) of this section may bring
an action in an appropriate court of this state to recover the insured's or beneficiary's actual
damages or statutory damages of $200, whichever is greater. A court or jury may award
punitive damages and the court may provide any equitable relief the court considers neces-
(b) An insured or beneficiary that brings an action under paragraph (a) of this subsection shall mail a copy of the complaint or other initial pleading to the Director of the Department of Consumer and Business Services at the time the action commences and, upon entry of any judgment in the action, shall mail a copy of the judgment to the director. A plaintiff's failure to mail a copy of the complaint as required under this paragraph is not a jurisdictional defect, but a court may not enter judgment for the plaintiff until the plaintiff proves that the plaintiff complied with the mailing requirement. The plaintiff may prove compliance by affidavit or by providing the court with a return receipt of mailing.

(c) A court may award reasonable attorney fees and costs at trial and on appeal to a prevailing plaintiff in an action under paragraph (a) of this subsection. The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing defendant only if the court finds that an objectively reasonable basis for bringing the action or asserting the ground for appeal did not exist.

(d) A court may not award attorney fees to a prevailing defendant under the provisions of paragraph (c) of this subsection if an action under this subsection is a class action in accordance with ORCP 32.

(e) An insured or beneficiary must commence an action under paragraph (a) of this subsection within one year after the occurrence of, or the insured's or beneficiary's discovery of, the unfair claim settlement practice, whichever is later. Notwithstanding this limitation, if the director filed a complaint to prevent, restrain or punish a violation of subsection (1) of this section, the complaint tolls the limitations described in this paragraph with respect to every private right of action under this subsection that is based in whole or in part on any matter set forth in the director's complaint for the period of time in which the proceeding that the director initiated is pending.

(f) An insured or beneficiary may initiate a class action under this subsection. In any class action under this subsection:

(A) Plaintiffs may recover statutory damages on behalf of class members under paragraph (a) of this subsection only if the plaintiffs in the action establish that the class members have sustained an ascertainable loss of money or property as a result of the defendant's reckless or knowing commission or performance of an unfair claim settlement practice;

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

(C) The court may award appropriate equitable relief.

SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.