

House Bill 3272

Sponsored by Representative MARSH

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**.

Requires insurer that provides coverage for full replacement costs of damaged or destroyed property to allow insured not less than 24 months of additional living expenses and not less than 24 months within which to repair, rebuild or replace damaged or lost property or, if damage or loss to the property results from emergency or major disaster, not less than 36 months of additional living expenses and time within which to repair, rebuild or replace damaged or lost property.

Requires insurer to provide insured with estimate of cost to repair, rebuild or replace damaged or lost property every other year at time insurer offers to renew insurance policy. Specifies elements required in estimate. Prohibits policy of property insurance or casualty insurance from limiting or denying payment of replacement cost or building code upgrade cost for damaged or lost property on basis that insured has decided to rebuild or purchase existing structure in new location.

Provides insured with cause of action for insurer's unfair claim settlement practices.

Creates duty of reasonable due care for insurance producer toward insured.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to insurance; creating new provisions; amending ORS 746.230; and declaring an emergency.

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

4 **SECTION 1. Sections 2 and 3 of this 2021 Act are added to and made a part of ORS**
5 **chapter 742.**

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Emergency" has the meaning given that term in ORS 401.025.**

8 (b) **"Major disaster" has the meaning given that term in ORS 401.025.**

9 (2) **If a policy of property insurance or casualty insurance requires an insured to repair,**
10 **rebuild or replace damaged or lost property in order to collect the full replacement cost for**
11 **the property, the insurer shall:**

12 (a) **Allow an insured not less than 24 months of additional living expenses subject to the**
13 **policy limits on the total amount of living expenses. If the damage or loss occurs because**
14 **of an emergency or major disaster, the insurer shall allow not less than 36 months of addi-**
15 **tional living expenses.**

16 (b) **Allow an insured to repair, rebuild or replace damaged or lost property:**

17 (A) **In not fewer than 36 months after the date of the insurer's initial payment toward**
18 **the cash value of the property that was damaged or lost as a condition of receiving the full**
19 **replacement cost of the damaged or lost property, if the damage to or loss of the property**
20 **was a result of an emergency or a major disaster; or**

21 (B) **In not fewer than 24 months after the date of the insurer's initial payment toward**
22 **the cash value of the property that was damaged or lost as a condition of receiving the full**
23 **cost of repairing, rebuilding or replacing the property, in circumstances other than the cir-**
24 **cumstances described in subparagraph (A) of this paragraph.**

25 (c) **Provide to an insured every other year at the time the insured offers to renew the**

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 policy of property insurance or casualty insurance an estimate of the cost necessary to re-
 2 build or replace the covered property. The estimate must include, at a minimum, costs for
 3 the following items:

- 4 (A) Labor, building materials and supplies;
- 5 (B) Contractor's overhead and profit;
- 6 (C) Demolition and debris removal;
- 7 (D) Permits and architect's plans; and

8 (E) Components and features of the property. The estimate must take into account, as
 9 appropriate, the style or model and size of the component or feature, the type of materials
 10 used for the component or feature and the topology and geographic location of the property
 11 and must include, at a minimum:

- 12 (i) The foundation;
- 13 (ii) The frame;
- 14 (iii) The roof;
- 15 (iv) Siding;
- 16 (v) Square footage;
- 17 (vi) Number of stories of the component or feature;
- 18 (vii) Any wall heights that are not standard;
- 19 (viii) Interior features and finishes, such as the heating and air conditioning system,
 20 walls, flooring, ceiling, fireplaces, kitchen and bath;
- 21 (ix) The age of the original property or the year of the original property's construction;
 22 and
- 23 (x) Any attached garage.

24 (3) Subsection (2) of this section does not prohibit an insurer from allowing an insured
 25 additional time to collect the full replacement cost for lost or damaged property or for ad-
 26 ditional living expenses.

27 (4) A policy of property insurance or casualty insurance may not limit or deny a payment
 28 of the replacement cost or building code upgrade cost, including a payment of any extended
 29 replacement cost available under the policy coverage, for an insured structure that was a
 30 total loss on the basis that the insured decided to rebuild in a new location or to purchase
 31 an existing structure in a new location if the policy otherwise covers the replacement cost
 32 or building code upgrade cost, except that the measure of indemnity may not exceed the re-
 33 placement cost, building code upgrade cost or extended replacement cost for repairing, re-
 34 building or replacing the structure at the original location.

35 **SECTION 3.** A policy of property insurance or casualty insurance that covers an
 36 insured's residence must permit the insured to combine payments up to the policy limits for
 37 claims of damage to or loss of the insured's primary dwelling and other structures and for
 38 any of the covered expenses reasonably necessary to rebuild or replace the damaged or lost
 39 dwelling or other structure, if the policy limits for rebuilding or replacing the damaged or
 40 lost dwelling are insufficient.

41 **SECTION 4.** ORS 746.230 is amended to read:

42 746.230. (1) An insurer or other person may not commit or perform any of the following unfair
 43 claim settlement practices:

- 44 (a) Misrepresenting facts or policy provisions in settling claims;
- 45 (b) Failing to acknowledge and act promptly upon communications relating to claims;

- 1 (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;
 2 (d) Refusing to pay claims without conducting a reasonable investigation based on all available
 3 information;
 4 (e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof
 5 of loss statements have been submitted;
 6 (f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has
 7 become reasonably clear;
 8 (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially
 9 less than amounts ultimately recovered in actions brought by such claimants;
 10 (h) Attempting to settle claims for less than the amount to which a reasonable person would
 11 believe a reasonable person was entitled after referring to written or printed advertising material
 12 accompanying or made part of an application;
 13 (i) Attempting to settle claims on the basis of an application altered without notice to or consent
 14 of the applicant;
 15 (j) Failing, after payment of a claim, to inform insureds or beneficiaries, *[upon request by them]*
 16 **at the insureds' or beneficiaries' request**, of the coverage under which payment has been made;
 17 (k) Delaying investigation or payment of claims by requiring a claimant or the claimant's phy-
 18 sician, naturopathic physician, physician assistant or nurse practitioner to submit a preliminary
 19 claim report and then requiring subsequent submission of loss forms when both require essentially
 20 the same information;
 21 (L) Failing to promptly settle claims under one coverage of a policy where liability has become
 22 reasonably clear in order to influence settlements under other coverages of the policy;
 23 (m) Failing to promptly provide the proper explanation of the basis relied on in the insurance
 24 policy in relation to the facts or applicable law for the denial of a claim; or
 25 (n) Any of the practices described in ORS 746.233.
- 26 (2) *[No]* **An insurer** *[shall]* **may not** refuse, without just cause, to pay or settle claims arising
 27 under coverages provided by *[its]* **the insurer's** policies with such frequency as to indicate a general
 28 business practice in this state, which general business practice is evidenced by:
 29 (a) A substantial increase in the number of complaints against the insurer received by the De-
 30 partment of Consumer and Business Services;
 31 (b) A substantial increase in the number of lawsuits filed against the insurer or *[its]* **the**
 32 **insurer's** insureds by claimants; or
 33 (c) Other relevant evidence.
- 34 (3)(a) **An insured may bring an individual action in the circuit court in which the insured**
 35 **resides, or another court of competent jurisdiction, to recover the insured's actual damages**
 36 **that result from an unfair claim settlement practice prohibited by this section, together with**
 37 **the costs of the action, including reasonable attorney fees and litigation costs.**
 38 (b) **Not less than 20 days before commencing an action described in paragraph (a) of this**
 39 **subsection a plaintiff shall notify the defendant and the Director of the Department of Con-**
 40 **sumer and Business Services of the basis for the action in writing and by regular mail, reg-**
 41 **istered mail or certified mail with return receipt requested. The notice is effective three**
 42 **business days after the date of the plaintiff's mailing.**
 43 (c) **If an insurer does not resolve the claim that is the subject of an action described in**
 44 **paragraph (a) of this subsection within 20 days after the date of the plaintiff's notice under**
 45 **paragraph (b) of this subsection, the plaintiff may continue with the action without further**

1 notice. The time limit within which a plaintiff must bring an action under subsection (5) of
2 this section is tolled during the 20-day period.

3 (4) A court may triple an award of actual damages in an action under subsection (3) of
4 this section if the court finds that the defendant in the action acted unreasonably. This
5 subsection and subsection (3) of this section do not limit a court's ability to provide any
6 other remedy available at law or in equity.

7 (5) A plaintiff must bring an action under subsection (3) of this section within two years
8 after the date of an alleged violation or the date on which the violation is or should have
9 been discovered.

10 (6) The unfair claim settlement practices described in this section are not exclusive or
11 comprehensive and the director or a court may deem an act or practice that is not described
12 in this section to be an unfair claim settlement practice or a violation of a provision of the
13 Insurance Code or other law.

14 SECTION 5. Section 6 of this 2021 Act is added to and made a part of ORS 744.052 to
15 744.089.

16 SECTION 6. An insurance producer licensed under ORS 744.052 to 744.089 owes a duty
17 of reasonable due care to an insured or other person to which the insurance producer solic-
18 its, negotiates or sells insurance. The insurance producer shall at all times act toward the
19 insured or other person as would a reasonably prudent insurance producer and may not en-
20 gage in any unreasonable act or omission with respect to the insured or other person.

21 SECTION 7. Sections 2 and 3 of this 2021 Act and the amendments to ORS 746.230 by
22 section 4 of this 2021 Act apply to policies of property insurance and casualty insurance that
23 an insurer issues or renews on and after the effective date of this 2021 Act.

24 SECTION 8. This 2021 Act being necessary for the immediate preservation of the public
25 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
26 on its passage.