

House Bill 2130

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

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**.

Removes requirement that Attorney General appoint service provider and adopt rules for operation of environmental claims mediation program.

A BILL FOR AN ACT

1
2 Relating to environmental claims mediation; amending ORS 465.484.

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

4 **SECTION 1.** ORS 465.484 is amended to read:

5 465.484. (1) An insurer or any other person may not commit any of the following unfair envi-
6 ronmental claims settlement practices:

7 (a) Failure to commence investigation of an environmental claim within 15 working days after
8 receipt of a notice of an environmental claim or failure to diligently respond to tenders of environ-
9 mental claims, provided that an excess insurer may rely on the investigation of a primary insurer.

10 (b) Failure to make timely payments for costs reasonably incurred in the defense of environ-
11 mental claims or for reasonable costs for which indemnity is owed.

12 (c) Denial of a claim for any improper purpose, such as to harass or to cause unnecessary delay
13 or to needlessly increase the cost of litigation.

14 (d) Require that the insured provide answers to repetitive questions and requests for information
15 concerning matters or issues unnecessary for resolution of the environmental claim of the insured,
16 provided that an insurer may reserve its rights as to information that is not available at the time
17 of the correspondence.

18 (e) Failure to pay interest as specified in ORS 82.010:

19 (A) On payments that an insured has made and that the insurer is legally obligated to pay as
20 costs of defense or indemnity, provided that interest begins to accrue only on the 31st day after the
21 claim for payment or reimbursement is presented or payment is made by the insured, whichever is
22 later; or

23 (B) On overdue payments that an insurer agreed to make pursuant to an agreed settlement with
24 an insured, provided that interest begins to accrue on the 31st day after the date of the settlement
25 or on the date by which the insurer agreed to make the payment, whichever is later.

26 (f) Violation by insurers as described in ORS 465.479 (9)(a).

27 (2)(a) In addition to the unfair environmental claims settlement practices specified in subsection
28 (1) of this section, it is an unfair environmental claims settlement practice for an insurer to fail to
29 participate in good faith in a nonbinding environmental claim mediation described under this sub-
30 section that is requested by an insured concerning the existence, terms or conditions of a lost policy
31 or regarding coverage for an environmental claim.

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 (b) The insured may request in writing that the insurer participate in a nonbinding environ-
2 mental claim mediation.

3 (c) Upon request from an insured to participate in a nonbinding environmental claim mediation,
4 an insurer shall provide an insured with information concerning [a] nonbinding environmental
5 [claim] **claims** mediation [program]. The information must include, but need not be limited to, a de-
6 scription of how an insured can efficiently commence the mediation with the insurer.

7 (d) The purposes of the nonbinding environmental claim mediation include, but are not limited
8 to, the following:

9 (A) To assist the parties in resolving disputes concerning whether or not a general liability in-
10 surance policy applicable to the environmental claim was issued to the insured by the insurer and
11 concerning the relevant terms, conditions and exclusions;

12 (B) To determine whether the entire claim, or a portion thereof, can be settled by agreement
13 of the parties;

14 (C) To determine, if the claim cannot be settled, whether one or more issues can be resolved to
15 the satisfaction of the parties; and

16 (D) To discuss any other methods of streamlining or reducing the cost of litigation.

17 [(e) *The Attorney General shall.*]

18 [(A) *Appoint a mediation service provider to operate a mediation program related to environmental*
19 *claims;*]

20 [(B) *Prescribe by rule requirements related to qualification, training and experience for mediators*
21 *who participate in the mediation program; and*]

22 [(C) *Establish by rule a schedule of fees related to the mediation program.*]

23 [(f)] (e) Unless otherwise agreed, information provided and statements made by either party in
24 a mediation shall be kept confidential by the parties and used only for purposes of the mediation in
25 accordance with ORS 36.220.

26 [(g)] (f) The insured and the insurer shall have representatives present, or available by tele-
27 phone, with authority to settle the matter at all mediation sessions.

28 (3) The unfair environmental claims settlement practices specified in this section are in addition
29 to any provisions relating to unfair claim settlement practices under ORS 746.230.

30 (4)(a) Any insured aggrieved by one or more unfair environmental claims settlement practices
31 specified in this section may apply to the circuit court for the county in which the insured resides,
32 or any other court of competent jurisdiction, to recover the actual damages sustained, together with
33 the costs of the action, including reasonable attorney fees and litigation costs.

34 (b) Twenty days prior to filing an action based on this section, the insured must provide written
35 notice of the basis for the cause of action to the insurer and office of the Director of the Department
36 of Consumer and Business Services. Notice and proof of notice must be provided by regular mail,
37 registered mail or certified mail with return receipt requested. The insurer and director are deemed
38 to have received notice three business days after the notice is mailed.

39 (c) If the insurer fails to resolve the basis for the action within the 20-day period after the
40 written notice by the insured, the insured may bring the action without any further notice.

41 (d) If a written notice of claim is served under paragraph (b) of this subsection within the time
42 prescribed for the filing of an action under this subsection, the statute of limitations for the action
43 is tolled during the period of time required to comply with paragraph (b) of this subsection.

44 (e) In any action brought pursuant to this subsection, the court may, after finding that an
45 insurer has acted unreasonably, increase the total award of damages to an amount not to exceed

1 three times the actual damages.

2 (f) An action under this subsection must be brought within two years from the date the alleged
3 violation is, or should have been, discovered.

4 (5) The provisions of this section do not limit the ability of a court to provide for any other
5 remedy that is available at law.

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