

B-Engrossed
House Bill 3242

Ordered by the Senate May 22
Including House Amendments dated March 27 and Senate Amendments
dated May 22

Sponsored by Representatives SOSA, PHAM H, Senator CAMPOS; Representatives NELSON, TRAN, Senators
FREDERICK, MEEK (at the request of Oregon Trial Lawyers Association)

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.

Provides insured with cause of action for insurer's unfair claim settlement practices, other than practices related to settling workers' compensation or **medical malpractice** claim. **Provides that insured may not bring action against attorney in attorney's personal capacity for act or practice that attorney undertakes on behalf of insurer, insured, beneficiary or other person in advising, presenting or negotiating insurance claim.**

A BILL FOR AN ACT

1
2 Relating to insurance claim settlement practices; creating new provisions; and amending ORS
3 746.230.

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

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

6 746.230. (1) An insurer [*or other person*], **or another person that is acting on behalf of the**
7 **insurer in settling or adjusting claims**, may not commit or perform any of the following unfair
8 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*]

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 **at the insureds' or beneficiaries' request**, of the coverage under which payment has been made;

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

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

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

10 (n) Any of the practices described in ORS 746.233.

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

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

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

18 (c) Other relevant evidence.

19 **(3)(a) Except as provided in paragraph (b) of this subsection, an insured may bring an**
20 **individual action in the circuit court in which the insured resides, or another court of com-**
21 **petent jurisdiction, to recover the insured's actual damages that result from an unfair claim**
22 **settlement practice prohibited by this section, together with the costs of the action, includ-**
23 **ing reasonable attorney fees and litigation costs.**

24 **(b) An insured may not bring an action under paragraph (a) of this subsection:**

25 **(A) For a practice related to settling a workers' compensation or medical malpractice**
26 **claim; or**

27 **(B) Against an attorney in the attorney's personal capacity for an act or practice that**
28 **the attorney undertakes on behalf of an insurer, insured, beneficiary or other person in ad-**
29 **vising, presenting or negotiating an insurance claim.**

30 **(c) Not less than 45 days before commencing an action described in paragraph (a) of this**
31 **subsection an insured shall notify the insurer and the Director of the Department of Con-**
32 **sumer and Business Services of the basis for the action in writing and by regular mail, reg-**
33 **istered mail or certified mail with return receipt requested. The notice is effective three**
34 **business days after the date of the insured's mailing.**

35 **(d) If an insurer does not resolve the claim that is the subject of an action described in**
36 **paragraph (a) of this subsection within 45 days after the date of the insured's notice under**
37 **paragraph (c) of this subsection, the insured may bring the action as plaintiff without further**
38 **notice. The time limit within which a plaintiff must bring an action under subsection (5) of**
39 **this section is tolled during the 45-day period.**

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

44 **(5) A plaintiff must bring an action under subsection (3) of this section within two years**
45 **after the date of an alleged violation or the date on which the violation is or should have**

1 **been discovered.**

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

6 **SECTION 2. The amendments to ORS 746.230 by section 1 of this 2023 Act apply to poli-**
7 **cies of property insurance and casualty insurance that an insurer issues or renews on or**
8 **after the effective date of this 2023 Act.**

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