82nd OREGON LEGISLATIVE ASSEMBLY--2023 Regular Session

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

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

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

SECTION 1. ORS 746.230 is amended to read:

746.230. (1) An insurer [or other person], or another person that is acting on behalf of the insurer in settling or adjusting claims, may not commit or perform any of the following unfair 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 ultimately recovered in actions brought by such claimants;

(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]
(k) Delaying investigation or payment of claims by requiring a claimant or the claimant’s physi-
cian, naturopathic physician, physician assistant or nurse practitioner to submit a preliminary
claim report and then requiring subsequent submission of loss forms when both 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;
(b) A substantial increase in the number of lawsuits filed against the insurer or [its] the
insurer’s insureds by claimants; or
(c) Other relevant evidence.
(3)(a) Except as provided in paragraph (b) of this subsection, an insured may bring an
individual action in the circuit court in which the insured resides, or another court of com-
petent jurisdiction, to recover the insured’s actual damages that result from an unfair claim
settlement practice prohibited by this section, together with the costs of the action, includ-
ing reasonable attorney fees and litigation costs.
(b) An insured may not bring an action under paragraph (a) of this subsection:
(A) For a practice related to settling a workers’ compensation or medical malpractice
claim; or
(B) Against an attorney in the attorney's personal capacity for an act or practice that
the attorney undertakes on behalf of an insurer, insured, beneficiary or other person in ad-
vising, presenting or negotiating an insurance claim.
(c) Not less than 45 days before commencing an action described in paragraph (a) of this
subsection an insured shall notify the insurer and the Director of the Department of Con-
sumer and Business Services of the basis for the action in writing and by regular mail, reg-
istered mail or certified mail with return receipt requested. The notice is effective three
business days after the date of the insured’s mailing.
(d) If an insurer does not resolve the claim that is the subject of an action described in
paragraph (a) of this subsection within 45 days after the date of the insured’s notice under
paragraph (c) of this subsection, the insured may bring the action as plaintiff without further
notice. The time limit within which a plaintiff must bring an action under subsection (5) of
this section is tolled during the 45-day period.
(4) A court may triple an award of actual damages in an action under subsection (3) of
this section if the court finds that the defendant in the action acted unreasonably. This
subsection and subsection (3) of this section do not limit a court’s ability to provide any
other remedy available at law or in equity.
(5) A plaintiff must bring an action under subsection (3) of this section within two years
after the date of an alleged violation or the date on which the violation is or should have
been discovered.

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

SECTION 2. The amendments to ORS 746.230 by section 1 of this 2023 Act apply to policies of property insurance and casualty insurance that an insurer issues or renews on or after the effective date of this 2023 Act.