

# House Bill 3242

Sponsored by Representatives SOSA, PHAM H, Senator CAMPOS; Representatives HUDSON, NELSON, RUIZ, 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 **as introduced**.

Provides insured with cause of action for insurer's unfair claim settlement practices.  
Creates duty of reasonable due care for insurance producer toward insured.

## 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 may not commit or perform any of the following unfair  
7 claim settlement practices:

8 (a) Misrepresenting facts or policy provisions in settling claims;

9 (b) Failing to acknowledge and act promptly upon communications relating to claims;

10 (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;

11 (d) Refusing to pay claims without conducting a reasonable investigation based on all available  
12 information;

13 (e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof  
14 of loss statements have been submitted;

15 (f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has  
16 become reasonably clear;

17 (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially  
18 less than amounts ultimately recovered in actions brought by such claimants;

19 (h) Attempting to settle claims for less than the amount to which a reasonable person would  
20 believe a reasonable person was entitled after referring to written or printed advertising material  
21 accompanying or made part of an application;

22 (i) Attempting to settle claims on the basis of an application altered without notice to or consent  
23 of the applicant;

24 (j) Failing, after payment of a claim, to inform insureds or beneficiaries, [*upon request by them*]  
25 **at the insureds' or beneficiaries' request**, of the coverage under which payment has been made;

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

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

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

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

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

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

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

11 (c) Other relevant evidence.

12 **(3)(a) An insured may bring an individual action in the circuit court in which the insured**  
 13 **resides, or another court of competent jurisdiction, to recover the insured's actual damages**  
 14 **that result from an unfair claim settlement practice prohibited by this section, together with**  
 15 **the costs of the action, including reasonable attorney fees and litigation costs.**

16 **(b) Not less than 20 days before commencing an action described in paragraph (a) of this**  
 17 **subsection an insured shall notify the insurer and the Director of the Department of Con-**  
 18 **sumer and Business Services of the basis for the action in writing and by regular mail, reg-**  
 19 **istered mail or certified mail with return receipt requested. The notice is effective three**  
 20 **business days after the date of the insured's mailing.**

21 **(c) If an insurer does not resolve the claim that is the subject of an action described in**  
 22 **paragraph (a) of this subsection within 20 days after the date of the insured's notice under**  
 23 **paragraph (b) of this subsection, the insured may bring the action as plaintiff without further**  
 24 **notice. The time limit within which a plaintiff must bring an action under subsection (5) of**  
 25 **this section is tolled during the 20-day period.**

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

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

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

37 **SECTION 2. Section 3 of this 2023 Act is added to and made a part of ORS 744.052 to**  
 38 **744.089.**

39 **SECTION 3. An insurance producer licensed under ORS 744.052 to 744.089 owes a duty**  
 40 **of reasonable due care to an insured or other person to which the insurance producer solici-**  
 41 **its, negotiates or sells insurance. The insurance producer shall at all times act toward the**  
 42 **insured or other person as would a reasonably prudent insurance producer and may not en-**  
 43 **gage in any unreasonable act or omission with respect to the insured or other person.**

44 **SECTION 4. Section 3 of this 2023 Act and the amendments to ORS 746.230 by section 1**  
 45 **of this 2023 Act apply to policies of property insurance and casualty insurance that an**

1 **insurer issues or renews on or after the effective date of this 2023 Act.**

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