

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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