

# House Bill 3172

Sponsored by Representative HOLVEY

## 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**.

Permits insured or beneficiary who suffers ascertainable loss of money or property that results from insurer's commission or performance of unfair claim settlement practice to bring action to recover insured's or beneficiary's actual damages or statutory damages of \$200, whichever is greater. Specifies conditions that apply to action.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to private actions to remedy losses resulting from commission of unfair claim settlement  
3 practices; amending ORS 731.256 and 746.230; and prescribing an effective date.

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

5 **SECTION 1.** ORS 731.256 is amended to read:

6 731.256. (1) The Director of the Department of Consumer and Business Services may institute  
7 actions or other lawful proceedings that the director deems necessary to enforce a provision of the  
8 Insurance Code or any order or action the director makes or takes in [*pursuance of*] **accordance**  
9 **with** law.

10 (2) As part of or in addition to any action or proceeding the director institutes against an  
11 insurer under subsection (1) of this section, the director may:

12 (a) Seek restitution on a consumer's behalf for actual damages the consumer suffers as a result  
13 of the insurer's violation of a provision of the Insurance Code or applicable federal law or the  
14 insurer's breach of an insurance contract or policy the insurer has with the consumer; and

15 (b) Seek other equitable relief the director deems appropriate under the circumstances.

16 (3) If the director has reason to believe that a person has violated a provision of the Insurance  
17 Code or another law that applies to insurance operations, and if the violation is subject to criminal  
18 prosecution and in the opinion of the director criminal prosecution is warranted, the director shall  
19 give the information about the violation to the Attorney General or district attorney that has ju-  
20 risdiction over the violation. The Attorney General or district attorney promptly shall institute an  
21 action or a proceeding against the person as the information requires or justifies.

22 [*(4) An action or proceeding that the director institutes under subsection (1) of this section is an*  
23 *exercise of the director's regulatory authority and, except as otherwise provided in subsection (3) of this*  
24 *section, does not create a cause of action for any other person.*]

25 **(4) An action the director takes under this section does not preclude or prevent an in-**  
26 **sured or beneficiary from bringing an action to recover damages for an ascertainable loss**  
27 **of money or property that results from an insurer's commission or performance of an unfair**  
28 **claim settlement practice described in ORS 746.230.**

29 **SECTION 2.** ORS 746.230 is amended to read:

30 746.230. (1) An insurer or other person may not commit or perform any of the following unfair

**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 claim settlement practices:

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

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

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

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

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

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

11 (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially  
12 less than amounts **that claimants** ultimately *[recovered in actions brought by such claimants]* **re-**  
13 **cover from the litigation;**

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

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

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

21 **(j) Failing to inform an insured or beneficiary of the coverage under which an insurer**  
22 **paid a claim after receiving a request for the information from the insured or beneficiary;**

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

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

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

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

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

35 (a) A substantial increase in the number of complaints *[against the insurer received by]* the De-  
36 partment of Consumer and Business Services **receives against the insurer;**

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

39 (c) Other relevant evidence.

40 **(3)(a) An insured or beneficiary who suffers an ascertainable loss of money or of real or**  
41 **personal property as a result of an insurer's or other person's commission or performance**  
42 **of an unfair claim settlement practice described in subsection (1) of this section may bring**  
43 **an action in an appropriate court of this state to recover the insured's or beneficiary's actual**  
44 **damages or statutory damages of \$200, whichever is greater. A court or jury may award**  
45 **punitive damages and the court may provide any equitable relief the court considers neces-**

1 sary or proper.

2 (b) An insured or beneficiary that brings an action under paragraph (a) of this subsection  
 3 shall mail a copy of the complaint or other initial pleading to the Director of the Department  
 4 of Consumer and Business Services at the time the action commences and, upon entry of  
 5 any judgment in the action, shall mail a copy of the judgment to the director. A plaintiff's  
 6 failure to mail a copy of the complaint as required under this paragraph is not a jurisdic-  
 7 tional defect, but a court may not enter judgment for the plaintiff until the plaintiff proves  
 8 that the plaintiff complied with the mailing requirement. The plaintiff may prove compliance  
 9 by affidavit or by providing the court with a return receipt of mailing.

10 (c) A court may award reasonable attorney fees and costs at trial and on appeal to a  
 11 prevailing plaintiff in an action under paragraph (a) of this subsection. The court may award  
 12 reasonable attorney fees and costs at trial and on appeal to a prevailing defendant only if the  
 13 court finds that an objectively reasonable basis for bringing the action or asserting the  
 14 ground for appeal did not exist.

15 (d) A court may not award attorney fees to a prevailing defendant under the provisions  
 16 of paragraph (c) of this subsection if an action under this subsection is a class action in ac-  
 17 cordance with ORCP 32.

18 (e) An insured or beneficiary must commence an action under paragraph (a) of this  
 19 subsection within one year after the occurrence of, or the insured's or beneficiary's discov-  
 20 ery of, the unfair claim settlement practice, whichever is later. Notwithstanding this limi-  
 21 tation, if the director filed a complaint to prevent, restrain or punish a violation of  
 22 subsection (1) of this section, the complaint tolls the limitations described in this paragraph  
 23 with respect to every private right of action under this subsection that is based in whole or  
 24 in part on any matter set forth in the director's complaint for the period of time in which  
 25 the proceeding that the director initiated is pending.

26 (f) An insured or beneficiary may initiate a class action under this subsection. In any  
 27 class action under this subsection:

28 (A) Plaintiffs may recover statutory damages on behalf of class members under para-  
 29 graph (a) of this subsection only if the plaintiffs in the action establish that the class mem-  
 30 bers have sustained an ascertainable loss of money or property as a result of the defendant's  
 31 reckless or knowing commission or performance of an unfair claim settlement practice;

32 (B) The trier of fact may award punitive damages; and

33 (C) The court may award appropriate equitable relief.

34 **SECTION 3.** This 2021 Act takes effect on the 91st day after the date on which the 2021  
 35 regular session of the Eighty-first Legislative Assembly adjourns sine die.

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