Senate Bill 510

Sponsored by Senator ROSENBAUM

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 plaintiff to file action against insurer or other person for committing or performing unfair claim settlement practice. Permits plaintiff to recover greater of plaintiff's actual damages or statutory damages of $200. Permits court to enter judgment for three times amount of actual or statutory damages if court finds that insurer or other person acted willfully in committing unfair claim settlement practice and to award reasonable attorney fees to prevailing plaintiff.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to actions for unfair claim settlement practices; creating new provisions; amending ORS 746.230; and declaring an emergency.

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

SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS chapter 746.

SECTION 2. (1) A person that suffers an ascertainable injury or loss as a result of an insurer's or other person's committing or performing an unfair claim settlement practice under ORS 746.230 may bring an individual action in an appropriate court to recover actual damages or statutory damages of $200, whichever amount is greater. The court may provide equitable relief the court considers necessary or proper.

(2) If a court determines that a defendant in an action described in subsection (1) of this section acted willfully in violating ORS 746.230, the court shall enter a judgment for the plaintiff in the action that is three times the amount of statutory damages available under subsection (1) of this section or three times the amount of actual damages that the plaintiff alleges and proves.

(3) A person that brings an action under subsection (1) of this section shall at the same time mail a copy of the complaint or other initial pleading to the Director of the Department of Consumer and Business Services. Failing to mail a copy of complaint or pleading to the director is not a jurisdictional defect, but a court may not enter judgment for the person until the person proves to the court with an affidavit or a return receipt that the person mailed the complaint or pleading. The person shall also mail a copy of any judgment the court renders in the action to the director immediately after the court renders the judgment.

(4) A court may award reasonable attorney fees and costs at trial and on appeal to a prevailing plaintiff in an action under this section.

(5) Any civil or administrative penalty that the director imposes in a final order on an insurer or other person, or any judgment that a court enters against an insurer or other person, for a violation of ORS 746.230 is prima facie evidence in an action under this section that the insurer or other person committed or performed an unfair claim settlement practice under ORS 746.230. An insurer's or other person's assurance of voluntary compliance,

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.

whether or not a court approves the assurance, is not evidence of a violation.

(6)(a) Except as provided in paragraph (b) of this subsection, a plaintiff must bring an action under this section within two years after the date on which the plaintiff discovers the unfair claim settlement practice.

(b) The two-year period described in paragraph (a) of this subsection does not begin or run during any period in which an action that the director filed for a violation of ORS 746.230 is pending, if the plaintiff's action is based in whole or in part on a matter that is also the basis for the director's action.

SECTION 3. ORS 746.230, as amended by section 79, chapter 45, Oregon Laws 2014, is amended to read:

746.230. (1) [*No*] **An** insurer or other person [*shall*] **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*] **promptly investigating** 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 **that the claimants** ultimately [*recovered*] **recover** in actions [*brought by such claimants*];

(h) Attempting to settle claims for less than the amount to which a reasonable person would believe [*a*] **the** reasonable person was entitled after [*referring*] **the reasonable person referred** to written or printed advertising material [*accompanying or*] **that accompanied or was** 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*] **paying** a claim, to [*inform*] **respond to a request from** insureds or beneficiaries[*, upon request by them, of*] **for information about** the coverage under which **the insurer or other person made the** payment [*has been made*];

(k) Delaying investigation or payment of claims by requiring a claimant or the claimant's physician, physician assistant or nurse practitioner to submit a preliminary claim report and then requiring subsequent submission of loss forms [*when both*] **if the claim report and the loss forms** 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; or

(m) Failing to promptly [*provide the proper explanation of the basis*] **and properly explain how the insurer or other person** relied on [*in*] the insurance policy in relation to the facts or applicable law [*for the denial of*] **to deny** a claim.

(2) An insurer or other person that commits or performs an unfair claim settlement practice described in subsection (1) of this section, in addition to and not in lieu of any other

penalty provided by law, is subject to an action as provided in section 2 of this 2015 Act.

[*(2)*] **(3)** [*No*] **An** insurer [*shall*] **or other person may not** refuse, without just cause **and with a frequency that indicates a general business practice in this state**, to pay or settle claims [*arising*] **that arise** under coverages [*provided by its*] **the insurer's or other person's** policies **provide.** [*with such frequency as to indicate a general business practice in this state, which general business practice is evidenced by*] **For purposes of this section, the following are evidence that the insurer's or other person's refusals are a general business practice**:

(a) A substantial increase in the number of complaints against the insurer [*received by*] **or other person that** the Department of Consumer and Business Services **receives**;

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

(c) Other relevant evidence.

[*(3)(a)*] **(4)(a)** [*No*] **A** health maintenance organization, as defined in ORS 750.005, [*shall*] **may not** unreasonably withhold [*the*] granting [*of*] participating provider status [*from*] **to** a class of statutorily authorized health care providers for services [*rendered*] **the health care providers render** within the lawful scope of practice if the health care providers are licensed as [*such*] **health care providers** and reimbursement is for services mandated by statute.

(b) [*Any*] **A** health maintenance organization that fails to comply with paragraph (a) of this subsection [*shall be*] **is** subject to discipline under ORS 746.015.

(c) This subsection does not apply to group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Health Maintenance Organization Act.

SECTION 4. Section 2 of this 2015 Act and the amendments to ORS 746.230 by section 3 of this 2015 Act apply to actions for violations of ORS 746.230 that occur on or after the effective date of this 2015 Act.

SECTION 5. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.