

D R A F T

SUMMARY

Provides that insurer that has duty to defend insured against claim has fiduciary duty toward insured if insurer does defend against claim. Provides that if insurer defends claim under reservation of rights or if insured has potential liability that exceeds policy limits, insurer shall provide independent counsel that represents only insured. Prevents insurer from participating in defense, controlling settlement and contesting coverage if insurer breaches insurer's duty to defend. Specifies insurer's liability for damages if insurer breaches duty to defend.

Prohibits insurer from taking position in action brought on insurance policy that is inconsistent with statement or representation insurer made to Director of the Department of Consumer and Business Services when seeking approval for language in insurance policy. Requires director to keep record of insurer's statements and representations and make record available as public record.

Includes tractor or equipment designed for and ordinarily used on farm within uninsured motorist coverage unless tractor or equipment is used on public highway.

Requires Department of Consumer and Business Services to make information available about complaints against insurer for unfair claim settlement practices.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the duties of insurers; creating new provisions; amending ORS
3 31.825, 742.504 and 746.230; and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2016 Act are added to and made**
6 **a part of ORS chapter 742.**

7 **SECTION 2. (1) If, under a policy of casualty insurance or com-**

1 **mercial liability insurance, an insurer has a duty to defend an insured**
2 **against a claim and the insurer does defend the insured against the**
3 **claim, the insurer has a fiduciary relationship with respect to the in-**
4 **ured. If the insurer defends against the claim under a reservation of**
5 **rights or if the insured has potential liability with respect to the claim**
6 **that exceeds the limits of the insurance policy, the insurer shall pro-**
7 **vide independent counsel to defend the insured. The independent**
8 **counsel shall represent only the insured and not the insurer.**

9 **(2) If an insurer breaches the insurer's duty to defend against a**
10 **claim, the insurer may not thereafter defend or participate in a de-**
11 **fense against the claim, may not control a settlement of the claim and**
12 **may not contest coverage of the claim.**

13 **(3) An insurer is liable for damages for breaching the insurer's duty**
14 **to defend against a claim in the amount of any judgment entered**
15 **against an insured or the reasonable portion of a settlement by or on**
16 **behalf of the insured after the insurer's breach, subject to limits set**
17 **forth in the insurance policy, plus reasonable defense costs incurred**
18 **by or on behalf of the insured and any other damages available for**
19 **breaching an insurance contract. In any subsequent proceeding to**
20 **contest the terms of a settlement, the insurer bears the burden of**
21 **proving that the amount of the settlement is unreasonable.**

22 **(4) An insured may assign all or any part of the insured's cause of**
23 **action for damages against an insurer for breaching the insurer's duty**
24 **to defend a claim, notwithstanding any provision of the insurance**
25 **policy to the contrary.**

26 **SECTION 3. (1) An insurer may not take a position in any action**
27 **brought on an insurance policy issued in or for delivery in this state**
28 **that is inconsistent with any written or oral statement or represen-**
29 **tation the insurer or the insurer's agent made to the Director of the**
30 **Department of Consumer and Business Services concerning any lan-**
31 **guage in the insurance policy that the insurer or the insurer's agent**

1 **submitted to the director for approval.**

2 **(2) The director shall maintain a record of all written or oral**
3 **statements or representations an insurer or the insurer's agent makes**
4 **in connection with any review and approval of language for insurance**
5 **policies issued in or for delivery in this state. The record is a public**
6 **record that the director shall make available in accordance with ORS**
7 **192.410 to 192.505.**

8 **SECTION 4.** ORS 31.825 is amended to read:

9 31.825. (1) A defendant in a tort action against whom a judgment has been
10 rendered may assign any cause of action [*that*] **the** defendant has against the
11 defendant's insurer as a result of the judgment to the plaintiff in whose favor
12 the judgment has been entered. [*That*] **The** assignment and any release or
13 covenant given for the assignment [*shall*] **does** not extinguish the cause of
14 action against the insurer unless the assignment specifically so provides.

15 **(2) A provision in an insurance policy against liability that requires**
16 **the insurer's consent before rights under the insurance policy may be**
17 **assigned does not prohibit an assignment, without the insurer's con-**
18 **sent, of a claim for payment under the insurance policy for losses or**
19 **damages that arose before the assignment.**

20 **SECTION 5.** ORS 742.504 is amended to read:

21 742.504. Every policy [*required to*] **that must** provide the coverage speci-
22 fied in ORS 742.502 [*shall*] **must** provide uninsured motorist coverage that
23 in each instance is no less favorable in any respect to the insured or the
24 beneficiary than if the following provisions were set forth in the policy.
25 However, nothing contained in this section requires the insurer to reproduce
26 in the policy the particular language of any of the following provisions:

27 (1)(a) Notwithstanding ORS 30.260 to 30.300, the insurer will pay all sums
28 that the insured or the heirs or legal representative of the insured is legally
29 entitled to recover as damages from the owner or operator of an uninsured
30 vehicle because of bodily injury sustained by the insured caused by accident
31 and arising out of the ownership, maintenance or use of the uninsured ve-

1 hicle. Determination as to whether the insured, the insured's heirs or the
2 insured's legal representative is legally entitled to recover such damages, and
3 if so, the amount thereof, shall be made by agreement between the insured
4 and the insurer, or, in the event of disagreement, may be determined by ar-
5 bitration as provided in subsection (10) of this section.

6 (b) [No] A judgment against any person or organization alleged to be le-
7 gally responsible for bodily injury, except for proceedings instituted against
8 the insurer as provided in this policy, [shall be] **is not** conclusive, as between
9 the insured and the insurer, on the issues of liability of the person or or-
10 ganization or of the amount of damages to which the insured is legally en-
11 titled.

12 (2) As used in this policy:

13 (a) "Bodily injury" means bodily injury, sickness or disease, including
14 death resulting therefrom.

15 (b) "Hit-and-run vehicle" means a vehicle that causes bodily injury to an
16 insured arising out of physical contact of the vehicle with the insured or
17 with a vehicle the insured is occupying at the time of the accident, provided:

18 (A) The identity of either the operator or the owner of the hit-and-run
19 vehicle cannot be ascertained;

20 (B) The insured or someone on behalf of the insured reported the accident
21 within 72 hours to a police, peace or judicial officer, to the Department of
22 Transportation or to the equivalent department in the state where the acci-
23 dent occurred, and filed with the insurer within 30 days thereafter a state-
24 ment under oath that the insured or the legal representative of the insured
25 has a cause or causes of action arising out of the accident for damages
26 against a person or persons whose identities are unascertainable, and setting
27 forth the facts in support thereof; and

28 (C) At the insurer's request, the insured or the legal representative of the
29 insured makes available for inspection the vehicle the insured was occupying
30 at the time of the accident.

31 (c) "Insured," when unqualified and when applied to uninsured motorist

1 coverage, means:

2 (A) The named insured as stated in the policy and any person designated
3 as named insured in the schedule and, while residents of the same household,
4 the spouse of any named insured and relatives of either, provided that nei-
5 ther the relative nor the spouse is the owner of a vehicle not described in
6 the policy and that, if the named insured as stated in the policy is other than
7 an individual or spouses in a marriage who are residents of the same
8 household, the named insured shall be only a person so designated in the
9 schedule;

10 (B) Any child residing in the household of the named insured if the in-
11 sured has performed the duties of a parent to the child by rearing the child
12 as the insured's own although the child is not related to the insured by
13 blood, marriage or adoption; and

14 (C) Any other person while occupying an insured vehicle, provided the
15 actual use thereof is with the permission of the named insured.

16 (d) "Insured vehicle," except as provided in paragraph (e) of this pro-
17 vision, means:

18 (A) The vehicle described in the policy or a newly acquired or substitute
19 vehicle, as each of those terms is defined in the public liability coverage of
20 the policy, insured under the public liability provisions of the policy; or

21 (B) A nonowned vehicle operated by the named insured or spouse if a
22 resident of the same household, provided that the actual use thereof is with
23 the permission of the owner of the vehicle and the vehicle is not owned by
24 nor furnished for the regular or frequent use of the insured or any member
25 of the same household.

26 (e) "Insured vehicle" does not include a trailer of any type unless the
27 trailer is a described vehicle in the policy.

28 (f) "Occupying" means in or upon or entering into or alighting from.

29 (g) "Phantom vehicle" means a vehicle that causes bodily injury to an
30 insured arising out of a motor vehicle accident that is caused by a vehicle
31 that has no physical contact with the insured or the vehicle the insured is

1 occupying at the time of the accident, provided:

2 (A) The identity of either the operator or the owner of the phantom ve-
3 hicle cannot be ascertained;

4 (B) The facts of the accident can be corroborated by competent evidence
5 other than the testimony of the insured or any person having an uninsured
6 motorist claim resulting from the accident; and

7 (C) The insured or someone on behalf of the insured reported the accident
8 within 72 hours to a police, peace or judicial officer, to the Department of
9 Transportation or to the equivalent department in the state where the acci-
10 dent occurred, and filed with the insurer within 30 days thereafter a state-
11 ment under oath that the insured or the legal representative of the insured
12 has a cause or causes of action arising out of the accident for damages
13 against a person or persons whose identities are unascertainable, and setting
14 forth the facts in support thereof.

15 (h) "State" [*includes*] **means a state of the United States**, the District
16 of Columbia, a territory or possession of the United States [*and*] **or** a prov-
17 ince of Canada.

18 (i) "Stolen vehicle" means an insured vehicle that causes bodily injury to
19 the insured arising out of a motor vehicle accident if:

20 (A) The vehicle is operated without the consent of the insured;

21 (B) The operator of the vehicle does not have collectible motor vehicle
22 bodily injury liability insurance;

23 (C) The insured or someone on behalf of the insured reported the accident
24 within 72 hours to a police, peace or judicial officer or to the equivalent
25 department in the state where the accident occurred; and

26 (D) The insured or someone on behalf of the insured cooperates with the
27 appropriate law enforcement agency in the prosecution of the theft of the
28 vehicle.

29 (j) "Sums that the insured or the heirs or legal representative of the in-
30 sured is legally entitled to recover as damages" means the amount of dam-
31 ages that:

1 (A) A claimant could have recovered in a civil action from the owner or
2 operator at the time of the injury after determination of fault or comparative
3 fault and resolution of any applicable defenses;

4 (B) Are calculated without regard to the tort claims limitations of ORS
5 30.260 to 30.300; and

6 (C) Are no larger than benefits payable under the terms of the policy as
7 provided in subsection (7) of this section.

8 (k) "Uninsured vehicle," except as provided in paragraph (L) of this pro-
9 vision, means:

10 (A) A vehicle with respect to the ownership, maintenance or use of which
11 there is no collectible motor vehicle bodily injury liability insurance, in at
12 least the amounts or limits prescribed for bodily injury or death under ORS
13 806.070 applicable at the time of the accident with respect to any person or
14 organization legally responsible for the use of the vehicle, or with respect
15 to which there is collectible bodily injury liability insurance applicable at
16 the time of the accident but the insurance company writing the insurance
17 denies coverage or the company writing the insurance becomes voluntarily
18 or involuntarily declared bankrupt or for which a receiver is appointed or
19 becomes insolvent. It shall be a disputable presumption that a vehicle is
20 uninsured in the event the insured and the insurer, after reasonable efforts,
21 fail to discover within 90 days from the date of the accident, the existence
22 of a valid and collectible motor vehicle bodily injury liability insurance ap-
23 plicable at the time of the accident.

24 (B) A hit-and-run vehicle.

25 (C) A phantom vehicle.

26 (D) A stolen vehicle.

27 (E) A vehicle that is owned or operated by a self-insurer:

28 (i) That is not in compliance with ORS 806.130 (1)(c); or

29 (ii) That provides recovery to an insured in an amount that is less than
30 the sums that the insured or the heirs or legal representative of the insured
31 is legally entitled to recover as damages for bodily injury or death that is

1 caused by accident and that arises out of owning, maintaining or using an
2 uninsured vehicle.

3 **(F) A tractor or equipment designed for and ordinarily used on a**
4 **farm, unless the tractor or equipment is on a public road.**

5 (L) "Uninsured vehicle" does not include:

6 (A) An insured vehicle, unless the vehicle is a stolen vehicle;

7 (B) Except as provided in paragraph (k)(E) of this subsection, a vehicle
8 that is owned or operated by a self-insurer within the meaning of any motor
9 vehicle financial responsibility law, motor carrier law or any similar law;

10 (C) A vehicle that is owned by the United States of America, Canada, a
11 state, a political subdivision of any such government or an agency of any
12 such government;

13 (D) A land motor vehicle or trailer, if operated on rails or crawler-treads
14 or while located for use as a residence or premises and not as a vehicle; **or**

15 *[(E) A farm-type tractor or equipment designed for use principally off public*
16 *roads, except while actually upon public roads; or]*

17 *[(F)]* **(E)** A vehicle owned by or furnished for the regular or frequent use
18 of the insured or any member of the household of the insured.

19 *[(m) "Vehicle" means every device in, upon or by which any person or*
20 *property is or may be transported or drawn upon a public highway, but does*
21 *not include devices moved by human power or used exclusively upon stationary*
22 *rails or tracks.]*

23 **(m)(A) "Vehicle" means a device, including a tractor that is ordi-**
24 **narily used on a farm or another self-propelled device, that can draw**
25 **or transport a person or property on a public highway.**

26 **(B) "Vehicle" does not include:**

27 **(i) A device that relies upon human power to move;**

28 **(ii) A device that is used exclusively on stationary rails or tracks;**

29 **or**

30 **(iii) A motor truck, as defined in ORS 801.355, that has a registra-**
31 **tion weight, as described in ORS 803.430, of more than 8,000 pounds if**

1 **the insured has employees that operate the motor truck and that are**
2 **covered by a workers' compensation law, disability benefits law or**
3 **similar law.**

4 (3)(a) This coverage applies only to accidents that occur on and after the
5 effective date of the policy, during the policy period and within the United
6 States of America[, *its*] **or the territories or possessions of the United**
7 **States[,] or within** Canada.

8 (b) **This coverage applies to bodily injury to an insured, or to a**
9 **relative who resides in the same household, that occurs as the result**
10 **of an interaction with an uninsured vehicle while the insured or the**
11 **relative occupies a vehicle that the insured owns or has regular use**
12 **of, unless the vehicle that the insured or the relative occupies is an**
13 **uninsured vehicle.**

14 (4)(a) This coverage does not apply to bodily injury of an insured with
15 respect to which the insured or the legal representative of the insured
16 [*shall*], without the written consent of the insurer, [*make*] **makes** any
17 settlement with or [*prosecute*] **prosecutes** to judgment any action against
18 any person or organization who may be legally liable [*therefor*] **for the**
19 **bodily injury.**

20 [*(b) This coverage does not apply to bodily injury to an insured while oc-*
21 *cupying a vehicle, other than an insured vehicle, owned by, or furnished for*
22 *the regular use of, the named insured or any relative resident in the same*
23 *household, or through being struck by the vehicle.*]

24 [(c)] (b) This coverage does not apply so as to inure directly or indirectly
25 to the benefit of any workers' compensation carrier, any person or organ-
26 ization qualifying as a self-insurer under any workers' compensation or dis-
27 ability benefits law or any similar law or the State Accident Insurance Fund
28 Corporation.

29 [(d)] (c) This coverage does not apply with respect to underinsured mo-
30 torist benefits unless:

31 (A) The limits of liability under any bodily injury liability insurance ap-

1 plicable at the time of the accident regarding the injured person have been
2 exhausted by payment of judgments or settlements to the injured person or
3 other injured persons;

4 (B) The described limits have been offered in settlement, the insurer has
5 refused consent under paragraph (a) of this subsection and the insured pro-
6 tects the insurer's right of subrogation to the claim against the tortfeasor;

7 (C) The insured gives credit to the insurer for the unrealized portion of
8 the described liability limits as if the full limits had been received if less
9 than the described limits have been offered in settlement, and the insurer
10 has consented under paragraph (a) of this subsection; or

11 (D) The insured gives credit to the insurer for the unrealized portion of
12 the described liability limits as if the full limits had been received if less
13 than the described limits have been offered in settlement and, if the insurer
14 has refused consent under paragraph (a) of this subsection, the insured pro-
15 tects the insurer's right of subrogation to the claim against the tortfeasor.

16 [(e)] (d) When seeking consent under paragraph (a) or [(d)] (c) of this
17 subsection, the insured shall allow the insurer a reasonable time in which
18 to collect and evaluate information related to consent to the proposed offer
19 of settlement. The insured shall provide promptly to the insurer any infor-
20 mation that is reasonably requested by the insurer and that is within the
21 custody and control of the insured. Consent will be presumed to be given if
22 the insurer does not respond within a reasonable time. For purposes of this
23 paragraph, a "reasonable time" is no more than 30 days from the insurer's
24 receipt of a written request for consent, unless the insured and the insurer
25 agree otherwise.

26 (5)(a) As soon as practicable, the insured or other person making claim
27 shall give to the insurer written proof of claim, under oath if required, in-
28 cluding full particulars of the nature and extent of the injuries, treatment
29 and other details entering into the determination of the amount payable
30 hereunder. The insured and every other person making claim hereunder shall
31 submit to examinations under oath by any person named by the insurer and

1 subscribe the same, as often as may reasonably be required. Proof of claim
2 shall be made upon forms furnished by the insurer unless the insurer fails
3 to furnish the forms within 15 days after receiving notice of claim.

4 (b) Upon reasonable request of and at the expense of the insurer, the in-
5 jured person shall submit to physical examinations by physicians, physician
6 assistants or nurse practitioners selected by the insurer and shall, upon each
7 request from the insurer, execute authorization to enable the insurer to ob-
8 tain medical reports and copies of records.

9 (6) If, before the insurer makes payment of loss hereunder, the insured
10 or the legal representative of the insured institutes any legal action for
11 bodily injury against any person or organization legally responsible for the
12 use of a vehicle involved in the accident, a copy of the summons and com-
13 plaint or other process served in connection with the legal action shall be
14 forwarded immediately to the insurer by the insured or the legal represen-
15 tative of the insured.

16 (7)(a) The limit of liability stated in the declarations as applicable to
17 "each person" is the limit of the insurer's liability for all damages because
18 of bodily injury sustained by one person as the result of any one accident
19 and, subject to the above provision respecting each person, the limit of li-
20 ability stated in the declarations as applicable to "each accident" is the total
21 limit of the company's liability for all damages because of bodily injury
22 sustained by two or more persons as the result of any one accident.

23 (b) Any amount payable under the terms of this coverage because of
24 bodily injury sustained in an accident by a person who is an insured under
25 this coverage shall be reduced by the amount paid and the present value of
26 all amounts payable on account of the bodily injury under any workers'
27 compensation law, disability benefits law or any similar law.

28 (c) Any amount payable under the terms of this coverage because of bod-
29 ily injury sustained in an accident by a person who is an insured under this
30 coverage shall be reduced by the credit given to the insurer pursuant to
31 subsection [(4)(d)(C)] **(4)(c)(C)** or (D) of this section.

1 (d) The amount payable under the terms of this coverage may not be re-
2 duced by the amount of liability proceeds offered, described in subsection
3 [~~(4)(d)(B)~~] **(4)(c)(B)** or (D) of this section, that has not been paid to the in-
4 jured person. If liability proceeds have been offered and not paid, the amount
5 payable under the terms of the coverage shall include the amount of liability
6 limits offered but not accepted due to the insurer's refusal to consent. The
7 insured shall cooperate so as to permit the insurer to proceed by subrogation
8 or assignment to prosecute the claim against the uninsured motorist.

9 (8) No action shall lie against the insurer unless, as a condition precedent
10 thereto, the insured or the legal representative of the insured has fully
11 complied with all the terms of this policy.

12 (9)(a) With respect to bodily injury to an insured:

13 (A) While occupying a vehicle owned by a named insured under this
14 coverage, the insurance under this coverage is primary.

15 (B) While occupying a vehicle not owned by a named insured under this
16 coverage, the insurance under this coverage shall apply only as excess in-
17 surance over any primary insurance available to the occupant that is similar
18 to this coverage, and this excess insurance coverage shall then apply only
19 to the sums that the insured or the heirs or legal representative of the in-
20 sured is legally entitled to recover as damages for bodily injury or death that
21 is caused by accident and that arises out of owning, maintaining or using
22 an uninsured vehicle.

23 (b) With respect to bodily injury to an insured while occupying any motor
24 vehicle used as a public or livery conveyance, the insurance under this cov-
25 erage shall apply only as excess insurance over any other insurance available
26 to the insured that is similar to this coverage, and this excess insurance
27 coverage shall then apply only to the amount by which the applicable limit
28 of liability of this coverage exceeds the sum of the applicable limits of li-
29 ability of all other insurance.

30 (10) If any person making claim hereunder and the insurer do not agree
31 that the person is legally entitled to recover damages from the owner or

1 operator of an uninsured vehicle because of bodily injury to the insured, or
2 do not agree as to the amount of payment that may be owing under this
3 coverage, then, in the event the insured and the insurer elect by mutual
4 agreement at the time of the dispute to settle the matter by arbitration, the
5 arbitration shall take place as described in ORS 742.505. Any judgment upon
6 the award rendered by the arbitrators may be entered in any court having
7 jurisdiction thereof, provided, however, that the costs to the insured of the
8 arbitration proceeding do not exceed \$100 and that all other costs of arbi-
9 tration are borne by the insurer. "Costs" as used in this provision does not
10 include attorney fees or expenses incurred in the production of evidence or
11 witnesses or the making of transcripts of the arbitration proceedings. The
12 person and the insurer each agree to consider themselves bound and to be
13 bound by any award made by the arbitrators pursuant to this coverage in the
14 event of such election. At the election of the insured, the arbitration shall
15 be held:

16 (a) In the county and state of residence of the insured;

17 (b) In the county and state where the insured's cause of action against
18 the uninsured motorist arose; or

19 (c) At any other place mutually agreed upon by the insured and the
20 insurer.

21 (11) In the event of payment to any person under this coverage:

22 (a) The insurer shall be entitled to the extent of the payment to the pro-
23 ceeds of any settlement or judgment that may result from the exercise of any
24 rights of recovery of the person against any uninsured motorist legally re-
25 sponsible for the bodily injury because of which payment is made;

26 (b) The person shall hold in trust for the benefit of the insurer all rights
27 of recovery that the person shall have against such other uninsured person
28 or organization because of the damages that are the subject of claim made
29 under this coverage, but only to the extent that the claim is made or paid
30 herein;

31 (c) If the insured is injured by the joint or concurrent act or acts of two

1 or more persons, one or more of whom is uninsured, the insured shall have
2 the election to receive from the insurer any payment to which the insured
3 would be entitled under this coverage by reason of the act or acts of the
4 uninsured motorist, or the insured may, with the written consent of the
5 insurer, proceed with legal action against any or all persons claimed to be
6 liable to the insured for the injuries. If the insured elects to receive payment
7 from the insurer under this coverage, then the insured shall hold in trust for
8 the benefit of the insurer all rights of recovery the insured shall have
9 against any other person, firm or organization because of the damages that
10 are the subject of claim made under this coverage, but only to the extent of
11 the actual payment made by the insurer;

12 (d) The person shall do whatever is proper to secure and shall do nothing
13 after loss to prejudice such rights;

14 (e) If requested in writing by the insurer, the person shall take, through
15 any representative not in conflict in interest with the person, designated by
16 the insurer, such action as may be necessary or appropriate to recover pay-
17 ment as damages from such other uninsured person or organization, such
18 action to be taken in the name of the person, but only to the extent of the
19 payment made hereunder. In the event of a recovery, the insurer shall be
20 reimbursed out of the recovery for expenses, costs and attorney fees incurred
21 by the insurer in connection therewith; and

22 (f) The person shall execute and deliver to the insurer any instruments
23 and papers as may be appropriate to secure the rights and obligations of the
24 person and the insurer established by this provision.

25 (12)(a) The parties to this coverage agree that no cause of action shall
26 accrue to the insured under this coverage unless within two years from the
27 date of the accident:

28 (A) Agreement as to the amount due under the policy has been concluded;

29 (B) The insured or the insurer has formally instituted arbitration pro-
30 ceedings;

31 (C) The insured has filed an action against the insurer; or

1 (D) Suit for bodily injury has been filed against the uninsured motorist
2 and, within two years from the date of settlement or final judgment against
3 the uninsured motorist, the insured has formally instituted arbitration pro-
4 ceedings or filed an action against the insurer.

5 (b) For purposes of this subsection:

6 (A) "Date of settlement" means the date on which a written settlement
7 agreement or release is signed by an insured or, in the absence of these
8 documents, the date on which the insured or the attorney for the insured
9 receives payment of any sum required by the settlement agreement. An ad-
10 vance payment as defined in ORS 31.550 shall not be deemed a payment of
11 a settlement for purposes of the time limitation in this subsection.

12 (B) "Final judgment" means a judgment that has become final by lapse
13 of time for appeal or by entry in an appellate court of an appellate judgment.

14 **SECTION 6.** ORS 746.230 is amended to read:

15 746.230. (1) [*No*] **An** insurer or other person [*shall*] **may not** commit or
16 perform any of the following unfair claim settlement practices:

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

18 (b) Failing to acknowledge and act promptly upon communications relat-
19 ing to claims;

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

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

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

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

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

31 (h) Attempting to settle claims for less than the amount to which a rea-

1 sonable person would believe a reasonable person was entitled after referring
2 to written or printed advertising material accompanying or made part of an
3 application;

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

6 (j) Failing, after payment of a claim, to inform insureds or beneficiaries,
7 upon request by them, of the coverage under which payment has been made;

8 (k) Delaying investigation or payment of claims by requiring a claimant
9 or the claimant's physician, physician assistant or nurse practitioner to
10 submit a preliminary claim report and then requiring subsequent submission
11 of loss forms when both require essentially the same information;

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

15 (m) Failing to promptly provide the proper explanation of the basis relied
16 on in the insurance policy in relation to the facts or applicable law for the
17 denial of a claim.

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

22 (a) A substantial increase in the number of complaints against the insurer
23 received by the Department of Consumer and Business Services;

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

26 (c) Other relevant evidence.

27 (3)(a) [No] **A** health maintenance organization, as defined in ORS 750.005,
28 [shall] **may not** unreasonably withhold the granting of participating pro-
29 vider status from a class of statutorily authorized health care providers for
30 services rendered within the lawful scope of practice if the health care pro-
31 viders are licensed as [such] **health care providers** and reimbursement is

1 for services mandated by statute.

2 (b) Any health maintenance organization that fails to comply with para-
3 graph (a) of this subsection [*shall be*] **is** subject to discipline under ORS
4 746.015.

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

8 **(4) The department shall provide to any requester information**
9 **about complaints against an insurer for any of the unfair claim**
10 **settlement practices described in this section. Before providing the**
11 **information, the department shall remove any personal information**
12 **that could identify any individual.**

13 **SECTION 7.** ORS 746.230, as amended by section 6, chapter 59, Oregon
14 Laws 2015, is amended to read:

15 746.230. (1) [*No*] **An** insurer or other person [*shall*] **may not** commit or
16 perform any of the following unfair claim settlement practices:

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

18 (b) Failing to acknowledge and act promptly upon communications relat-
19 ing to claims;

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

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

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

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

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

31 (h) Attempting to settle claims for less than the amount to which a rea-

1 sonable person would believe a reasonable person was entitled after referring
2 to written or printed advertising material accompanying or made part of an
3 application;

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

6 (j) Failing, after payment of a claim, to inform insureds or beneficiaries,
7 upon request by them, of the coverage under which payment has been made;

8 (k) Delaying investigation or payment of claims by requiring a claimant
9 or the claimant's physician, physician assistant or nurse practitioner to
10 submit a preliminary claim report and then requiring subsequent submission
11 of loss forms when both require essentially the same information;

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

15 (m) Failing to promptly provide the proper explanation of the basis relied
16 on in the insurance policy in relation to the facts or applicable law for the
17 denial of a claim.

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

22 (a) A substantial increase in the number of complaints against the insurer
23 received by the Department of Consumer and Business Services;

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

26 (c) Other relevant evidence.

27 (3) **The department shall provide to any requester information**
28 **about complaints against an insurer for any of the unfair claim**
29 **settlement practices described in this section. Before providing the**
30 **information, the department shall remove any personal information**
31 **that could identify any individual.**

1 **SECTION 8.** (1) Sections 2 and 3 of this 2016 Act and the amend-
2 ments to ORS 31.825, 742.504 and 746.230 by sections 4 to 7 of this 2016
3 Act become operative 91 days after the effective date of this 2016 Act.

4 (2) The Director of the Department of Consumer and Business Ser-
5 vices may adopt rules and take any other action before the operative
6 date specified in subsection (1) of this section that is necessary to en-
7 able the director, on and after the operative date specified in sub-
8 section (1) of this section, to exercise all of the duties, functions and
9 powers conferred on the director by sections 2 and 3 of this 2016 Act
10 and the amendments to ORS 31.825, 742.504 and 746.230 by sections 4
11 to 7 of this 2016 Act.

12 **SECTION 9.** This 2016 Act being necessary for the immediate pres-
13 ervation of the public peace, health and safety, an emergency is de-
14 clared to exist, and this 2016 Act takes effect on its passage.

15
