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

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

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

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

SECTION 2. (1) If, under a policy of casualty insurance or com-
mmercial liability insurance, an insurer has a duty to defend an insured against a claim and the insurer does defend the insured against the claim, the insurer has a fiduciary relationship with respect to the insured. If the insurer defends against the claim under a reservation of rights or if the insured has potential liability with respect to the claim that exceeds the limits of the insurance policy, the insurer shall provide independent counsel to defend the insured. The independent counsel shall represent only the insured and not the insurer.

(2) If an insurer breaches the insurer's duty to defend against a claim, the insurer may not thereafter defend or participate in a defense against the claim, may not control a settlement of the claim and may not contest coverage of the claim.

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

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

SECTION 3. (1) An insurer may not take a position in any action brought on an insurance policy issued in or for delivery in this state that is inconsistent with any written or oral statement or representation the insurer or the insurer's agent made to the Director of the Department of Consumer and Business Services concerning any language in the insurance policy that the insurer or the insurer's agent
submitted to the director for approval.

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

SECTION 4. ORS 31.825 is amended to read:

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

(2) A provision in an insurance policy against liability that requires the insurer’s consent before rights under the insurance policy may be assigned does not prohibit an assignment, without the insurer’s consent, of a claim for payment under the insurance policy for losses or damages that arose before the assignment.

SECTION 5. ORS 742.504 is amended to read:

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

(1)(a) Notwithstanding ORS 30.260 to 30.300, the insurer will pay all sums that the insured or the heirs or legal representative of the insured is legally entitled to recover as damages from the owner or operator of an uninsured vehicle because of bodily injury sustained by the insured caused by accident and arising out of the ownership, maintenance or use of the uninsured ve-
hicle. Determination as to whether the insured, the insured’s heirs or the
insured’s legal representative is legally entitled to recover such damages, and
if so, the amount thereof, shall be made by agreement between the insured
and the insurer, or, in the event of disagreement, may be determined by ar-
bitration as provided in subsection (10) of this section.

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

(2) As used in this policy:

(a) “Bodily injury” means bodily injury, sickness or disease, including
death resulting therefrom.

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

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

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

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

(c) “Insured,” when unqualified and when applied to uninsured motorist
coverage, means:

(A) The named insured as stated in the policy and any person designated as named insured in the schedule and, while residents of the same household, the spouse of any named insured and relatives of either, provided that neither the relative nor the spouse is the owner of a vehicle not described in the policy and that, if the named insured as stated in the policy is other than an individual or spouses in a marriage who are residents of the same household, the named insured shall be only a person so designated in the schedule;

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

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

(d) “Insured vehicle,” except as provided in paragraph (e) of this provision, means:

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

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

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

(f) “Occupying” means in or upon or entering into or alighting from.

(g) “Phantom vehicle” means a vehicle that causes bodily injury to an insured arising out of a motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or the vehicle the insured is
occupying at the time of the accident, provided:

(A) The identity of either the operator or the owner of the phantom vehicle cannot be ascertained;

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

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

(h) “State” [includes] means a state of the United States, the District of Columbia, a territory or possession of the United States [and] or a province of Canada.

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

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

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

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

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

(j) “Sums that the insured or the heirs or legal representative of the insured is legally entitled to recover as damages” means the amount of damages that:

[6]
(A) A claimant could have recovered in a civil action from the owner or operator at the time of the injury after determination of fault or comparative fault and resolution of any applicable defenses;

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

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

(k) “Uninsured vehicle,” except as provided in paragraph (L) of this provision, means:

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

(B) A hit-and-run vehicle.

(C) A phantom vehicle.

(D) A stolen vehicle.

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

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

(ii) That provides recovery to an insured in an amount that is less than the sums that the insured or the heirs or legal representative of the insured is legally entitled to recover as damages for bodily injury or death that is
caused by accident and that arises out of owning, maintaining or using an uninsured vehicle.

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

(L) "Uninsured vehicle" does not include:

(A) An insured vehicle, unless the vehicle is a stolen vehicle;
(B) Except as provided in paragraph (k)(E) of this subsection, a vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
(C) A vehicle that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any such government;
(D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
(E) A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads; or

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

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

(m)(A) "Vehicle" means a device, including a tractor that is ordinarily used on a farm or another self-propelled device, that can draw or transport a person or property on a public highway.
(B) "Vehicle" does not include:
(i) A device that relies upon human power to move;
(ii) A device that is used exclusively on stationary rails or tracks;
or
(iii) A motor truck, as defined in ORS 801.355, that has a registration weight, as described in ORS 803.430, of more than 8,000 pounds if
the insured has employees that operate the motor truck and that are
covered by a workers’ compensation law, disability benefits law or
similar law.

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

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

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

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

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

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

(A) The limits of liability under any bodily injury liability insurance ap-
(B) The described limits have been offered in settlement, the insurer has refused consent under paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the claim against the tortfeasor; 

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

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

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

(5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable hereunder. The insured and every other person making claim hereunder shall submit to examinations under oath by any person named by the insurer and
subscribe the same, as often as may reasonably be required. Proof of claim
shall be made upon forms furnished by the insurer unless the insurer fails
to furnish the forms within 15 days after receiving notice of claim.
(b) Upon reasonable request of and at the expense of the insurer, the in-
jured person shall submit to physical examinations by physicians, physician
assistants or nurse practitioners selected by the insurer and shall, upon each
request from the insurer, execute authorization to enable the insurer to ob-
tain medical reports and copies of records.
(6) If, before the insurer makes payment of loss hereunder, the insured
or the legal representative of the insured institutes any legal action for
bodily injury against any person or organization legally responsible for the
use of a vehicle involved in the accident, a copy of the summons and com-
plaint or other process served in connection with the legal action shall be
forwarded immediately to the insurer by the insured or the legal represen-
tative of the insured.
(7)(a) The limit of liability stated in the declarations as applicable to
“each person” is the limit of the insurer’s liability for all damages because
of bodily injury sustained by one person as the result of any one accident
and, subject to the above provision respecting each person, the limit of li-
ability stated in the declarations as applicable to “each accident” is the total
limit of the company’s liability for all damages because of bodily injury
sustained by two or more persons as the result of any one accident.
(b) Any amount payable under the terms of this coverage because of
bodily injury sustained in an accident by a person who is an insured under
this coverage shall be reduced by the amount paid and the present value of
all amounts payable on account of the bodily injury under any workers’
compensation law, disability benefits law or any similar law.
(c) Any amount payable under the terms of this coverage because of bod-
ily injury sustained in an accident by a person who is an insured under this
coverage shall be reduced by the credit given to the insurer pursuant to
subsection [(4)(d)(C)] (4)(c)(C) or (D) of this section.
(d) The amount payable under the terms of this coverage may not be re-
duced by the amount of liability proceeds offered, described in subsection
[(4)(d)(B)] (4)(c)(B) or (D) of this section, that has not been paid to the in-
jured person. If liability proceeds have been offered and not paid, the amount
payable under the terms of the coverage shall include the amount of liability
limits offered but not accepted due to the insurer’s refusal to consent. The
insured shall cooperate so as to permit the insurer to proceed by subrogation
or assignment to prosecute the claim against the uninsured motorist.

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

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

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

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

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

(10) If any person making claim hereunder and the insurer do not agree
that the person is legally entitled to recover damages from the owner or
operator of an uninsured vehicle because of bodily injury to the insured, or
do not agree as to the amount of payment that may be owing under this
coverage, then, in the event the insured and the insurer elect by mutual
agreement at the time of the dispute to settle the matter by arbitration, the
arbitration shall take place as described in ORS 742.505. Any judgment upon
the award rendered by the arbitrators may be entered in any court having
jurisdiction thereof, provided, however, that the costs to the insured of the
arbitration proceeding do not exceed $100 and that all other costs of arbi-
tration are borne by the insurer. “Costs” as used in this provision does not
include attorney fees or expenses incurred in the production of evidence or
witnesses or the making of transcripts of the arbitration proceedings. The
person and the insurer each agree to consider themselves bound and to be
bound by any award made by the arbitrators pursuant to this coverage in the
event of such election. At the election of the insured, the arbitration shall
be held:
   (a) In the county and state of residence of the insured;
   (b) In the county and state where the insured’s cause of action against
       the uninsured motorist arose; or
   (c) At any other place mutually agreed upon by the insured and the
       insurer.
(11) In the event of payment to any person under this coverage:
   (a) The insurer shall be entitled to the extent of the payment to the pro-
       ceeds of any settlement or judgment that may result from the exercise of any
       rights of recovery of the person against any uninsured motorist legally re-
       sponsible for the bodily injury because of which payment is made;
   (b) The person shall hold in trust for the benefit of the insurer all rights
       of recovery that the person shall have against such other uninsured person
       or organization because of the damages that are the subject of claim made
       under this coverage, but only to the extent that the claim is made or paid
       herein;
   (c) If the insured is injured by the joint or concurrent act or acts of two
or more persons, one or more of whom is uninsured, the insured shall have
the election to receive from the insurer any payment to which the insured
would be entitled under this coverage by reason of the act or acts of the
uninsured motorist, or the insured may, with the written consent of the
insurer, proceed with legal action against any or all persons claimed to be
liable to the insured for the injuries. If the insured elects to receive payment
from the insurer under this coverage, then the insured shall hold in trust for
the benefit of the insurer all rights of recovery the insured shall have
against any other person, firm or organization because of the damages that
are the subject of claim made under this coverage, but only to the extent of
the actual payment made by the insurer;

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

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

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

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

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

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

(C) The insured has filed an action against the insurer; or
(D) Suit for bodily injury has been filed against the uninsured motorist and, within two years from the date of settlement or final judgment against the uninsured motorist, the insured has formally instituted arbitration proceedings or filed an action against the insurer.

(b) For purposes of this subsection:

(A) “Date of settlement” means the date on which a written settlement agreement or release is signed by an insured or, in the absence of these documents, the date on which the insured or the attorney for the insured receives payment of any sum required by the settlement agreement. An advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for purposes of the time limitation in this subsection.

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

SECTION 6. ORS 746.230 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 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 ultimately recovered in actions brought by such claimants;

(h) Attempting to settle claims for less than the amount to which a rea-
sonable person would believe a reasonable person was entitled after referring
to written or printed advertising material accompanying or 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 a claim, to inform insureds or beneficiaries,
upon request by them, of the coverage under which 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 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 relied
on in the insurance policy in relation to the facts or applicable law for the
denial of a claim.

(2) An insurer [shall] may not refuse, without just cause, to pay or
settle claims arising under coverages provided by [its] the insurer’s policies
with such frequency as to indicate a general business practice in this
state, which general business practice that is evidenced by:

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

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

(c) Other relevant evidence.

(3)(a) A health maintenance organization, as defined in ORS 750.005,
[shall] may not unreasonably withhold the granting of participating pro-
vider status from a class of statutorily authorized health care providers for
services rendered within the lawful scope of practice if the health care pro-
viders are licensed as [such] health care providers and reimbursement is
for services mandated by statute.

(b) Any 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.

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

SECTION 7. ORS 746.230, as amended by section 6, chapter 59, Oregon Laws 2015, 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 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 ultimately recovered in actions brought by such claimants;

(h) Attempting to settle claims for less than the amount to which a rea-
sonable person would believe a reasonable person was entitled after referring
to written or printed advertising material accompanying or 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 a claim, to inform insureds or beneficiaries,
upon request by them, of the coverage under which 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 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 relied
on in the insurance policy in relation to the facts or applicable law for the
denial of a claim.

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

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

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

(c) Other relevant evidence.

(3) The department shall provide to any requester information
about complaints against an insurer for any of the unfair claim
settlement practices described in this section. Before providing the
information, the department shall remove any personal information
that could identify any individual.
SECTION 8. (1) Sections 2 and 3 of this 2016 Act and the amendments to ORS 31.825, 742.504 and 746.230 by sections 4 to 7 of this 2016 Act become operative 91 days after the effective date of this 2016 Act.

(2) The Director of the Department of Consumer and Business Services may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the director, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the director by sections 2 and 3 of this 2016 Act and the amendments to ORS 31.825, 742.504 and 746.230 by sections 4 to 7 of this 2016 Act.

SECTION 9. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

[19]