

House Bill 2858

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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**.

Specifies procedures Director of Department of Consumer and Business Services may use to investigate violations of Insurance Code.

Permits complainant to submit complaint of violation to director and specifies required contents of complaint. Specifies procedures for director to investigate complaint and provides dates by which director must complete investigation.

Permits director to engage in negotiations to settle complaint or to enter into remediation agreement to remedy violation. Requires director to issue order to remedy violation if settlement negotiations or negotiations for remedial agreement fail.

Provides for person to bring action for violation of Insurance Code in specified circumstances.

Becomes operative January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to remedies for violations of the Insurance Code; creating new provisions; amending ORS
3 731.028, 731.988, 737.045, 744.992 and 746.675; repealing ORS 731.232, 731.236, 731.240, 731.248,
4 731.252 and 731.264; and declaring an emergency.

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

6 **SECTION 1. Sections 2 to 7 of this 2017 Act are added to and made a part of ORS 731.216**
7 **to 731.268.**

8 **SECTION 2. As used in ORS 731.216 to 731.268:**

9 (1) **"Complainant" means a person that submits a complaint to the Director of the De-**
10 **partment of Consumer and Business Services.**

11 (2) **"Complaint" means a written or oral statement that a person submits to the director**
12 **that:**

13 (a) **Alleges that another person violated or is about to violate a provision of the Insur-**
14 **ance Code;**

15 (b) **Alleges that the violation described in paragraph (a) of this subsection has or will**
16 **injure the person; and**

17 (c) **Seeks an administrative remedy from the director.**

18 (3) **"Petition" means a request to the director to enforce the provisions of a settlement**
19 **agreement or an order that the director issued.**

20 (4) **"Remedial agreement" means a written agreement with specific terms and conditions**
21 **in which a respondent agrees to remedy a violation of the Insurance Code that the director**
22 **found after an investigation that the director did not initiate as a response to a complaint.**

23 (5) **"Respondent" means a person that a complaint identifies as allegedly violating or**
24 **about to violate a provision of the Insurance Code.**

25 (6) **"Settlement agreement" means a written agreement with specific terms and condi-**
26 **tions into which the director and a respondent enter to settle a complaint.**

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 **SECTION 3. (1)(a) The Director of the Department of Consumer and Business Services**
 2 **shall enforce the Insurance Code in accordance with ORS 731.216 to 731.268 and in a manner**
 3 **that serves the public interest.**

4 **(b) Any enforcement action that the director takes under ORS 731.216 to 731.268 must**
 5 **be in addition to, and not in lieu of, any action the director takes to advocate for insurance**
 6 **consumers or to investigate and penalize unfair claim settlement practices listed in ORS**
 7 **746.230.**

8 **(2)(a) The director, in enforcing the Insurance Code, has all of the powers and authority**
 9 **that the Insurance Code and other applicable laws of this state expressly confer or reason-**
 10 **ably imply. The director’s power and authority includes but is not limited to administering**
 11 **oaths and affirmations, issuing subpoenas for witnesses and compelling the witnesses to at-**
 12 **tend, taking testimony and other evidence and requiring the production of books, papers,**
 13 **correspondence, memoranda, agreements and other documents and records, including elec-**
 14 **tronic documents and records, that the director considers relevant or material to the**
 15 **director’s investigation or enforcement action.**

16 **(b) A witness who appears before the director must receive fees and mileage in accord-**
 17 **ance with ORS 44.415 (2). The director may apply to a circuit court of this state to compel**
 18 **a witness to appear before the director or to give testimony and to punish a witness who fails**
 19 **to appear or testify by means of contempt proceedings.**

20 **(3) The director, at the director’s own initiative and without needing to respond to a**
 21 **complaint under section 4 of this 2017 Act, may examine and investigate any insurance**
 22 **matter and the books, records and operations of any insurer in order to determine whether**
 23 **a person has violated the Insurance Code or in order to obtain information that is useful for**
 24 **lawfully administering the Insurance Code. The Department of Consumer and Business Ser-**
 25 **vices shall pay the expenses of an examination or investigation under this subsection.**

26 **(4)(a) A person may not knowingly or wilfully:**

27 **(A) Impede the director in an enforcement action under ORS 731.216 to 731.268;**

28 **(B) Interfere with an investigation or enforcement action; or**

29 **(C) Fail to obey or violate the terms of an order the director issues under sections 731.216**
 30 **to 731.268.**

31 **(b) Appealing an order the director issued is not a failure to obey or a violation of the**
 32 **terms of the order.**

33 **SECTION 4. (1)(a) A complaint under ORS 731.216 to 731.268 must:**

34 **(A) Identify as a respondent the person that the complainant alleges has violated or will**
 35 **violate a provision of the Insurance Code, providing the respondent’s name, address and any**
 36 **other available contact information;**

37 **(B) Describe each act or omission that the complainant believes constitutes a violation**
 38 **of the Insurance Code; and**

39 **(C) Provide any other information that the director requires to investigate the complaint.**

40 **(b) If a complainant submits a written complaint, the complainant shall sign the com-**
 41 **plaint. If the complainant submits an oral complaint, the director shall record the substance**
 42 **of the complaint in writing and require the complainant to authenticate the record of the**
 43 **complaint in a manner that the director specifies by rule.**

44 **(c) The director shall provide forms, including electronic forms, for submitting a com-**
 45 **plaint under this section and may by rule give examples of or otherwise specify the type of**

1 information the director needs to investigate the complaint.

2 (2) The director shall dismiss a complaint if:

3 (a) The complainant submits the complaint more than one year after an alleged violation
4 of the Insurance Code occurred; or

5 (b) The complainant brings an action in a state or federal court that alleges the same
6 or substantially similar acts, omissions or violations that the complaint alleges and the
7 action commences:

8 (A) Before the complainant submits the complaint; or

9 (B) Before the director concludes an investigation or proceeding related to the complaint.

10 (3)(a) Within 10 business days after receiving a complaint under this section, the director
11 shall notify the respondent of the complaint.

12 (b) In a notice under paragraph (a) of this subsection, the director shall:

13 (A) Set forth the provision of the Insurance Code that the respondent allegedly violated
14 or is about to violate, a description of the alleged violation, the date or anticipated date of
15 the alleged violation and a description of the place and circumstances in which the alleged
16 violation occurred or is about to occur; and

17 (B) State that the respondent may submit to the director an answer to the complaint
18 within 30 days after the date of the notice.

19 (4)(a) Except as provided in paragraph (b) of this subsection and ORS 731.216 to 731.268,
20 a complaint under this section and any information the director obtains in an investigation
21 of the complaint are confidential. The director may not disclose the complaint or information
22 except as provided in ORS 705.137 and may not use the complaint or information in any
23 action, suit or court proceeding unless the director determines that the complaint or infor-
24 mation is necessary to enforce a violation of the Insurance Code by means of the action, suit
25 or court proceeding.

26 (b)(A) The director may use a complaint and the information described in paragraph (a)
27 of this subsection to:

28 (i) Compile and publish each year a statistical report with each insurer's name and
29 identifying number, the percentage of total complaints that the director receives that are
30 attributable to each insurer, the type and disposition of each complaint; and

31 (ii) Provide any requester with information about complaints that the director receives
32 against an insurer that allege that the insurer engaged in an unfair claim settlement practice
33 described in ORS 746.230.

34 (B) Before compiling and publishing a report or providing information to any person un-
35 der this paragraph, the director shall remove information that could identify a complainant.

36 (5) The director may investigate a complaint submitted under this section if the director
37 determines that the complaint alleges facts that constitute a prima facie violation of a pro-
38 vision of the Insurance Code. If the director determines during the course of the director's
39 investigation that evidence against another person warrants naming the other person as a
40 respondent in the complaint, the director shall amend the complaint to add the other person
41 as a respondent and shall:

42 (a) Serve each respondent with a copy of the amended complaint within 10 days after
43 making the amendment; and

44 (b) Notify each respondent of the respondent's procedural rights and obligations, includ-
45 ing the right to submit an answer to the amended complaint within 30 days after the date

1 of the amended complaint.

2 (6) If, after investigating, the director finds substantial evidence to support the
 3 allegations in a complaint, the director shall sign and issue a finding, with copies to the
 4 complainant and respondent, that:

5 (a) Names the complainant and the respondent;

6 (b) Summarizes the allegations in the complaint;

7 (c) Lists, describes or summarizes, as appropriate, facts that relate to the allegations in
 8 the complaint; and

9 (d) States that the director has found substantial evidence to support the allegations in
 10 the complaint.

11 (7)(a) Except as provided in paragraph (b) of this subsection, if the director does not be-
 12 gin an investigation of a complaint within one year after the date of the complaint, or if the
 13 director does not find substantial evidence of a violation of the Insurance Code within one
 14 year after beginning an investigation of a complaint, the director shall dismiss the complaint.

15 (b) If the director dismisses a complaint under paragraph (a) of this subsection, the di-
 16 rector shall on the same date as the date of the dismissal notify the complainant that the
 17 complainant has 90 days within which to bring an action under section 7 of this 2017 Act that
 18 alleges the same or substantially similar acts, omissions or violations. For purposes of this
 19 subsection, a notice is effective five days after the date on which the director sends the no-
 20 tice. The notice shall state that the complainant may not bring an action after the 90-day
 21 period expires.

22 (c) The director need not dismiss a complaint under paragraph (a) of this subsection and
 23 need not notify the complainant as provided in paragraph (b) of this subsection if the director
 24 notifies the complainant and each respondent that the director needs additional time to
 25 complete an investigation of the complaint. A notice under this paragraph must include an
 26 estimate the time remaining until the director completes the investigation.

27 (8)(a) A respondent named in a complaint under this section may not, with an intention
 28 of contravening a purpose of the Insurance Code, engage in conduct that deprives a
 29 complainant of any services or benefits to which the complainant is entitled under the terms
 30 of any contract or policy the complainant has with the respondent during a period that be-
 31 gins when the director notifies the respondent of the complaint and that ends with an order
 32 from the director or the settlement or dismissal of the complaint.

33 (b) A complainant may amend a complaint the complainant submitted under this section
 34 to allege that a respondent engaged in conduct prohibited under paragraph (a) of this sub-
 35 section, or may bring an action as provided in section 7 of this 2017 Act.

36 (c) A respondent may defend against an amended complaint or an action on the basis that
 37 the director dismissed the complaint on the merits or for a lack of substantial evidence to
 38 support the complaint after the occurrence of the conduct that the complainant alleges in
 39 paragraph (a) of this subsection.

40 **SECTION 5.** (1) Except as otherwise provided in this section, if the Director of the De-
 41 partment of Consumer and Business Services finds that substantial evidence exists to sup-
 42 port allegations in a complaint or if the director finds from the director's own investigation
 43 that substantial evidence exists that a violation of the Insurance Code has occurred, the di-
 44 rector may at any time after the date on which the director issues the finding negotiate with
 45 a respondent to attempt to settle the complaint or remedy the violation. If the complaint

1 names more than one respondent or the director's investigation finds that more than one
 2 person engaged in a violation of the Insurance Code, the director may negotiate with each
 3 respondent or person separately or with all respondents and persons at once.

4 (2) The director, at the director's sole discretion, may include a complainant in any ne-
 5 gotiations the director conducts with a respondent to settle a complaint.

6 (3)(a) Except as provided in paragraph (b) of this subsection, if the director reaches a
 7 settlement with a respondent or if the respondent agrees to the terms of a remedy for a vi-
 8 olation of the Insurance Code, the director shall record the terms and conditions of the
 9 settlement or a remedy in a written agreement signed by, as appropriate, the complainant,
 10 the respondent and the director or a designee of the director. The director shall issue the
 11 signed settlement agreement or remedial agreement as a final order. A settlement agree-
 12 ment or remedial agreement may include any terms and conditions that the director may
 13 include in an order the director issues after a hearing under section 6 of this 2017 Act.

14 (b) If the director has invited a complainant to participate in settlement negotiations
 15 with a respondent and the complainant objects to the terms of a settlement that the director
 16 reaches with a respondent, the director may, at the director's option:

17 (A) Continue negotiations until the settlement satisfies the complainant's objection; or

18 (B) Offer to terminate settlement negotiations and dismiss the complaint so that the
 19 complainant may bring an action against the respondent under section 7 of this 2017 Act.

20 (c) If a settlement agreement or remedial agreement will terminate after a specific time
 21 or as a consequence of the occurrence of specific conditions, the director shall specify the
 22 date on which the settlement agreement or remedial agreement will terminate or the con-
 23 ditions that will cause the settlement agreement or remedial agreement to terminate. The
 24 director shall also specify any time limitations or other limitations on the ability of any party
 25 to the settlement agreement or remedial agreement to enforce the terms and conditions of
 26 the settlement agreement or remedial agreement.

27 (d) The terms of a settlement agreement or remedial agreement under this section bind
 28 a respondent's agents and successors in interest.

29 (4)(a) Except as provided in any limitations the director specifies under subsection (3)(c)
 30 of this section, a complainant at any time after the date of a settlement agreement under
 31 subsection (3) of this section may seek to enforce the terms of the settlement agreement by:

32 (A) Submitting a petition to the director;

33 (B) Bringing an action to seek specific performance of the settlement agreement or an
 34 injunction against a violation of the terms and conditions of the settlement agreement; or

35 (C) Bringing an action to seek enforcement of the settlement agreement under a writ of
 36 mandamus.

37 (b) A complainant must submit a petition the director or bring an action under paragraph
 38 (a) of this subsection within one year after the date on which a respondent violated, or failed
 39 to perform in accordance with, a term or condition of the settlement agreement.

40 (c) The director shall investigate a petition in the same manner that the director inves-
 41 tigates a complaint under section 4 of this 2017 Act. The director by rule may specify a form
 42 and format for and the required contents of a petition under this subsection.

43 (5) Any statements or actions that are directly related to negotiations to settle a com-
 44 plaint are confidential. The director may not disclose any of the statements or actions under
 45 ORS 192.410 to 192.505 or in any other manner. A statement or action that is related to ne-

1 negotiations to settle a complaint may not be used in any action, suit or court proceeding
 2 without the written consent of the person that made the statement or took the action.

3 **SECTION 6.** (1) The Director of the Department of Consumer and Business Services shall
 4 take an action described in subsection (2) of this section if the director:

5 (a) Finds substantial evidence to support a complaint and the director and the respondent
 6 cannot agree to settle the complaint;

7 (b) Finds substantial evidence that a violation of the Insurance Code occurred after
 8 conducting an investigation independent of a complaint, and the respondent declines to enter
 9 into a remedial agreement; or

10 (c) Determines that the risk of actual or potential harm from a violation or the interests
 11 of justice require the director to resolve a complaint or impose a remedy for, or enjoin, a
 12 violation described in paragraph (b) of this subsection without first negotiating with the re-
 13 spondent.

14 (2) Under any of the circumstances described in subsection (1) of this section, the direc-
 15 tor, as circumstances warrant, shall, in writing:

16 (a) Order the respondent to cease and desist from a continuing violation of a provision
 17 of the Insurance Code;

18 (b) Order the respondent to perform a specific action that:

19 (A) Carries out the purposes of the Insurance Code;

20 (B) Reverses or eliminates the effects of the respondent's violation of a provision of the
 21 Insurance Code, such as:

22 (i) Paying restitution or actual damages to the complainant;

23 (ii) Complying with a cease and desist letter from the director or an injunction from a
 24 court; and

25 (iii) Protecting the complainant's rights and the rights of persons that are similarly sit-
 26 uated;

27 (c) Order the respondent to refrain from any action that would jeopardize the
 28 complainant's rights and the rights of other persons that are similar situated or that would
 29 otherwise frustrate the purposes of the Insurance Code; or

30 (d) Require the respondent to report to the director concerning the respondent's com-
 31 pliance with any of the other terms of the director's order.

32 (3)(a) The director shall notify each respondent named in the complaint of an order or
 33 requirement under subsection (2) of this section.

34 (b) The director shall provide notice under this subsection by delivering the notice to the
 35 respondent or by mailing the notice by certified or registered mail, return receipt requested
 36 and postage prepaid, to the respondent's residential or business address as the address ap-
 37 pears in the department's records. A notice the director mails under this paragraph is ef-
 38 fective on the date that the director deposits the notice in the United States mail.

39 (c) In a notice under paragraph (a) of this subsection, the director shall state that each
 40 respondent may request within 20 days after the date of the order a hearing that the director
 41 will conduct as a contested case hearing in accordance with ORS 183.413 to 183.470. If a re-
 42 spondent requests a hearing, the director shall schedule the hearing for a date that is not
 43 later than 30 days after the director receives the respondent's request.

44 (d) If a respondent does not request a contested case hearing within 20 days after the
 45 date of an order under subsection (2) of this section, the order becomes a final order 21 days

1 after the date of a notice under this subsection.

2 (4)(a) At the conclusion of a contested case proceeding under subsection (3) of this sec-
 3 tion, the director shall issue findings of fact and conclusions of law in a written final order
 4 that, as appropriate:

5 (A) Reiterates the terms and conditions of the order the director issued under subsection
 6 (2) of this section;

7 (B) Amends the order the director issued under subsection (2) of this section; or

8 (C) Dismisses the complaint or the director’s finding against the respondent in whole or
 9 in part if the respondent establishes to the hearing officer’s satisfaction that a violation did
 10 not occur.

11 (b) The director may reopen negotiations to settle the complaint or enter into a remedial
 12 agreement during the course of a hearing under this subsection.

13 (c) The director shall sign and date a final order the director issues under paragraph (a)
 14 of this subsection, file the final order with the Department of Consumer and Business Ser-
 15 vices and provide copies of the final order to the complainant and the respondent. In addition
 16 to any terms and conditions described in subsection (2) of this section that the director may
 17 specify, the director shall state in the order:

18 (A) The purpose and intent of the order;

19 (B) The factual grounds upon which the director bases the order; and

20 (C) The provisions of the Insurance Code that authorize the terms and conditions the
 21 director specifies in the order.

22 (d) A respondent may appeal the director’s final order as provided in ORS 183.480 to
 23 183.497.

24 (5) The terms of a final order under this section bind a respondent’s agents and succes-
 25 sors in interest.

26 (6) The director may amend the terms and conditions of a final order under this section
 27 or section 5 of this 2017 Act if the terms and conditions cause undue hardship for a re-
 28 spondent or another person and the amendment would not remove or alter terms and con-
 29 ditions that are essential for protecting a complainant’s rights.

30 (7) The director may not issue an order under subsection (2) of this section and shall
 31 dismiss the complaint as provided in section 7 (2) of this 2017 Act if a complainant brings an
 32 action in a state or federal court that begins before the director issues an order under sub-
 33 section (2) of this section and in the action alleges the same or substantially similar acts,
 34 omissions or violations that the complainant alleged in the complaint to the director.

35 (8) An order of the director under this section:

36 (a) Does not relieve or absolve any person of liability under any other law of this state;
 37 and

38 (b) Supplements and is not in lieu of any other power the director has to suspend or re-
 39 voke a license or certificate of authority or impose and enforce a penalty, fine or forfeiture.

40 **SECTION 7.** (1)(a) A person that suffers an ascertainable harm as a result of a violation
 41 of the Insurance Code, including a violation of section 4 (8) of this 2017 Act, may bring an
 42 action in a state or federal court to seek a remedy for the harm:

43 (A) Not later than one year after the date on which the alleged violation occurred, except
 44 as provided in paragraph (b) of this subsection; or

45 (B) Within 90 days after receiving a notice under section 4 (7)(b) of this 2017 Act.

1 (b) Filing a complaint under section 4 of this 2017 Act tolls the limitation set forth in
 2 paragraph (a)(A) of this subsection until the director dismisses the complaint under section
 3 4 of this 2017 Act, enters a settlement agreement with the respondent under section 5 of this
 4 2017 Act or issues an order related to the complaint under section 6 of this 2017 Act.

5 (2)(a) A person need not file a complaint under section 4 of this 2017 Act before bringing
 6 an action under subsection (1) of this section, but bringing an action precludes the person
 7 from submitting a complaint that alleges the same or substantially similar acts, omissions
 8 or violations.

9 (b) If a person has submitted a complaint before bringing an action under subsection (1)
 10 of this section, the Director of the Department of Consumer and Business Services shall
 11 dismiss the complaint without prejudice once a trial commences in the action. The person
 12 may submit a complaint again if the person discontinues the action or if a court dismisses
 13 the action other than on the merits.

14 (3) A respondent in a complaint under section 4 of this 2017 Act may elect to defend
 15 against the complaint in a state or federal court proceeding under this section. If the re-
 16 spondent elects to defend against the complaint under this subsection, the director shall
 17 bring an appropriate action without charge to the complainant that submitted the complaint.

18 (4) In an action under this section:

19 (a) A jury shall try the action at the request of any party to the action;

20 (b) The court may enjoin a violation of the Insurance Code and grant any other equitable
 21 relief the court deems appropriate; and

22 (c) The court may award actual damages or \$200, whichever is greater, and punitive
 23 damages.

24 (5) After approving an attorney fee agreement, the court may award reasonable attorney
 25 fees and costs to a prevailing plaintiff, including the director if the director brings an action
 26 under subsection (3) of this section. The court may award reasonable attorney fees and costs
 27 to a prevailing defendant in an action that the director brings under subsection (3) of this
 28 section only if the court determines that the director did not have an objectively reasonable
 29 basis for bringing the action.

30 (6) An award of actual damages as compensation for a defendant's failure to provide
 31 services or benefits is limited to an amount that is equivalent to the value of services and
 32 benefits the plaintiff did not receive in the period that begins two years before the plaintiff
 33 submitted a complaint under section 4 of this 2017 Act or brought an action under this sec-
 34 tion, whichever is later.

35 **SECTION 8.** ORS 731.028 is amended to read:

36 731.028. (1) The State Accident Insurance Fund Corporation is subject as a domestic insurer to
 37 ORS [731.248, 731.252,] 731.256, 731.258, 731.260, 731.296 to 731.316, 731.488, 731.574, 731.592, 731.594,
 38 731.730, 731.731, 731.735, 731.737, 731.870, 731.988, 731.992, 733.010 to 733.060, 733.140 to 733.170,
 39 733.210, 737.205, 737.215, 737.225, 737.235 to 737.340, 737.505 and 737.560, ORS chapters 742, 743,
 40 743A, 743B and 744 and ORS 746.015, 746.075, 746.110, 746.145 to 746.155, 746.230 and 746.240 **and**
 41 **sections 2 to 7 of this 2017 Act.** However:

42 (a) The requirements of the Director of the Department of Consumer and Business Services un-
 43 der ORS 733.010 to 733.060, 733.140 to 733.170 and 733.210 govern in the case of a conflict between
 44 those requirements and the requirements of any accounting system prescribed by the Oregon De-
 45 partment of Administrative Services.

1 (b) The filing requirements of ORS 737.205 to 737.340, 737.505 and 737.560 are in lieu of any
 2 similar filing requirements prescribed by any other law of this state.

3 (c) The requirements of ORS chapters 743, 743A and 743B are applicable only with respect to
 4 excess workers' compensation insurance furnished by the corporation.

5 (d) The provisions of ORS chapter 744 apply only with respect to the regulation of insurance
 6 producers.

7 (e) For each year that the Secretary of State conducts an audit of the State Accident Insurance
 8 Fund Corporation under ORS 297.210, the director may accept the audit and a copy of the Secretary
 9 of State's audit report in lieu of the requirements of ORS 731.488 if the director determines that the
 10 purposes of ORS 731.488 are adequately served by the Secretary of State's audit and report. The
 11 Secretary of State shall file a copy of *[its]* **the** audit report of the State Accident Insurance Fund
 12 Corporation with the director.

13 (2) The provisions of subsection (1) of this section govern in the case of a conflict between those
 14 provisions and the provisions of ORS chapter 656 that apply only to the State Accident Insurance
 15 Fund Corporation.

16 **SECTION 9.** ORS 731.988 is amended to read:

17 731.988. (1) **Except as provided in subsection (7) of this section**, a person that violates any
 18 provision of the Insurance Code, any lawful rule or final order of the Director of the Department
 19 of Consumer and Business Services or any judgment that a court makes in response to the director's
 20 application, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an
 21 amount determined by the director that does not exceed \$10,000 for each offense. The civil penalty
 22 for individual insurance producers, adjusters or insurance consultants may not exceed \$1,000 for
 23 each offense. Each violation is a separate offense.

24 (2) In addition to the civil penalty specified in subsection (1) of this section, a person that vio-
 25 lates any provision of the Insurance Code, any lawful rule or final order of the director or any
 26 judgment that a court makes in response to the director's application, may be required to forfeit and
 27 pay to the General Fund of the State Treasury a civil penalty in an amount determined by the di-
 28 rector that does not exceed the amount by which the person profited in any transaction that violates
 29 the provision, rule, order or judgment.

30 (3) In addition to the civil penalties specified in subsections (1) and (2) of this section, an insurer
 31 that must submit a report under ORS 742.400 and that fails to do so within the specified time may
 32 be required to pay to the General Fund of the State Treasury a civil penalty in an amount deter-
 33 mined by the director that does not exceed \$10,000.

34 (4) In addition to the penalties specified in *[subsection]* **subsections** (1), (2), (5) and (6) of this
 35 section, a director or officer of an insurance holding company system who engages in a transaction
 36 or makes an investment that has not been properly reported under, or does not otherwise comply
 37 with, ORS 732.517 to 732.592, who knowingly participates in or assents to the transaction or in-
 38 vestment, or who permits another officer or an agent of the insurance holding company system to
 39 engage in the transaction or make the investment, shall pay, in the director or officer's individual
 40 capacity, a civil penalty in an amount determined by the Director **of the Department of Consumer**
 41 **and Business Services** that does not exceed \$10,000.

42 (5) In addition to the penalties specified in subsections (1), (2), (4) and (6) of this section, an
 43 insurer or other person that fails to make a required filing or demonstrate a good faith effort to
 44 comply with a filing requirement under ORS 732.527, 732.537, 732.539, 732.542 or 732.544 shall pay
 45 a civil penalty in an amount determined by the director that does not exceed \$50,000.

1 (6) In addition to the penalties specified in subsections (1), (2), (4) and (5) of this section, an
 2 insurer or other person that violates [*a cease and desist*] **an** order the director has issued under
 3 [*ORS 731.252*] **section 6 of this 2017 Act** in connection with a violation of a provision of ORS
 4 732.517 to 732.592 may be subject to a civil penalty in an amount determined by the director that
 5 does not exceed \$10,000 for each day of the violation.

6 (7) **A civil penalty imposed for a violation of sections 2 to 7 of this 2017 Act must be ap-**
 7 **plied first toward reimbursing the costs the director incurred in investigating and deter-**
 8 **mining that a violation occurred, in conducting hearings and in assessing and collecting the**
 9 **civil penalty. The director shall pay the remainder to the General Fund of the State Treasury**
 10 **as provided in subsection (1) of this section.**

11 (8) **If the director or the Attorney General finds that an insurer or other person is en-**
 12 **gaged in a pattern or practice of resistance to the rights that the Insurance Code protects**
 13 **or that an insurer or other person has denied rights that the Insurance Code protects to a**
 14 **group of persons, the director or the Attorney General, in addition to any other applicable**
 15 **civil penalties under this section, may recover an amount that does not exceed:**

16 (a) **\$50,000 for a first violation; or**

17 (b) **\$100,000 for a second or subsequent violation.**

18 [(7)] (9) A civil penalty imposed under this section may be recovered either as provided in sub-
 19 section [(8)] (10) of this section or in an action brought in the name of the State of Oregon in any
 20 court of appropriate jurisdiction.

21 [(8)] (10) Civil penalties under this section must be imposed and enforced in accordance with
 22 ORS 183.745.

23 [(9)] (11) The provisions of this section are in addition to and not in lieu of any other enforce-
 24 ment provisions specified in the Insurance Code.

25 **SECTION 10.** ORS 737.045 is amended to read:

26 737.045. (1) If the Director of the Department of Consumer and Business Services has reason to
 27 believe that a rate, rating plan or rating system filed or used by an insurer or filed by a rating or
 28 advisory organization on behalf of an insurer does not comply with the requirements and standards
 29 of this chapter, the director may issue an order directing the insurer or the rating or advisory or-
 30 ganization to discontinue or desist from the noncompliance. An order issued under this subsection
 31 is subject to the provisions of [*ORS 731.252*] **section 6 of this 2017 Act.**

32 (2) If the director holds a hearing on an order issued pursuant to subsection (1) of this section,
 33 the insurer or rating or advisory organization filing or using the rate, rating plan or rating system
 34 shall pay to the director the just and legitimate costs of the hearing, including actual necessary
 35 expenses.

36 (3) If the director finds after a hearing under ORS 737.340 that any rate, rating plan or rating
 37 system violates the provisions of this chapter, the director may issue an order specifying the vio-
 38 lation and stating when, within a reasonable period of time, the further use of such rate, rating plan
 39 or rating system by an insurer or rating or advisory organization shall be prohibited.

40 (4) If the director finds after a hearing under ORS 737.215 or 737.340 that an insurer or rating
 41 or advisory organization is in violation of any provision of this chapter other than the provisions
 42 dealing with rates, rating plans or rating systems, the director may issue an order specifying the
 43 violation and requiring compliance within a reasonable time.

44 (5) If the director finds after a hearing under ORS 737.215 that the violation of any of the pro-
 45 visions of this chapter applicable to it by any insurer or rating organization that has been the sub-

1 ject of a hearing was willful, the director may suspend or revoke the certificate of authority of such
2 insurer or the license of such rating organization.

3 (6) If the director finds after a hearing that any rating organization has willfully engaged in any
4 fraudulent or dishonest act or practices, the director may suspend or revoke the license of such
5 organization.

6 **SECTION 11.** ORS 744.992 is amended to read:

7 744.992. (1) A person who violates any provision of ORS 744.318 to 744.384, 744.991 and 744.992
8 is subject to civil penalties under ORS 731.988 and [*cease and desist orders under ORS 731.252*] **an**
9 **order under section 6 of this 2017 Act.**

10 (2) If a person violates any provision of ORS 744.318 to 744.384, 744.991 and 744.992, the Director
11 of the Department of Consumer and Business Services may seek an injunction in a court of compe-
12 tent jurisdiction and may apply for temporary and permanent orders that the director determines
13 are necessary to restrain the person from committing the violation.

14 (3) A person damaged by the acts of a person in violation of any provision of ORS 744.318 to
15 744.384, 744.991 and 744.992 may bring a civil action against the person committing the violation in
16 a court of competent jurisdiction. [*Nothing in*] This subsection [*shall be construed to*] **does not** alter
17 the provisions of ORS 743.168 or 743.171 relating to the period of incontestability of a policy of life
18 insurance.

19 (4) A violation of any provision of ORS 744.318 to 744.384, 744.991 and 744.992 attendant to the
20 execution of a life settlement purchase agreement renders the life settlement purchase agreement
21 voidable and subject to rescission by the life settlement purchaser, upon return of the policy re-
22 ceived to the life settlement provider. Suit for rescission may be brought in a court of competent
23 jurisdiction or where the alleged violator resides or has a principal place of business or where the
24 alleged violation occurred.

25 (5) Except for an act under ORS 744.369 (8) to (16), the enforcement provisions and penalties of
26 this section do not apply to an owner.

27 **SECTION 12.** ORS 746.675 is amended to read:

28 746.675. For the purpose of ORS 746.600 to 746.690 and 750.055, an insurance-support organiza-
29 tion transacting business outside this state [*which*] **that** has an effect on a person residing in this
30 state [*shall be considered to have*] **has** appointed the Director of the Department of Consumer and
31 Business Services to accept service of process on [*its*] **the organization's** behalf. [*Notice of such*
32 *service shall be given forthwith by the director as provided for orders and notices under ORS 731.248*
33 (3).] **The director shall give notice of service to the organization in the same manner provided**
34 **for notice under section 6 (3)(b) of this 2017 Act.**

35 **SECTION 13.** ORS 731.232, 731.236, 731.240, 731.248, 731.252 and 731.264 are repealed.

36 **SECTION 14.** Sections 2 to 7 of this 2017 Act and the amendments to ORS 731.028, 731.988,
37 737.045, 744.992 and 746.675 by sections 8 to 12 of this 2017 Act apply to violations of the In-
38 surance Code that occur on or after the operative date specified in section 15 of this 2017
39 Act.

40 **SECTION 15.** (1) Sections 2 to 7 of this 2017 Act, the amendments to ORS 731.028, 731.988,
41 737.045, 744.992 and 746.675 by sections 8 to 12 of this 2017 Act and the repeal of ORS 731.232,
42 731.236, 731.240, 731.248, 731.252 and 731.264 by section 13 of this 2017 Act become operative
43 on January 1, 2018.

44 (2) The Director of the Department of Consumer and Business Services may adopt rules
45 and take any other action before the operative date specified in subsection (1) of this section

1 that is necessary to enable the director, on and after the operative date specified in sub-
2 section (1) of this section, to exercise all of the duties, functions and powers conferred on
3 the director by sections 2 to 7 of this 2017 Act and the amendments to ORS 731.028, 731.988,
4 737.045, 744.992 and 746.675 by sections 8 to 12 of this 2017 Act.

5 SECTION 16. This 2017 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
7 on its passage.

8
