



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services

Insurance Division
350 Winter St. NE, Room 440
PO Box 14480
Salem, OR 97301-0405
(503) 947-7980
FAX (503) 378-4351
TTY (503) 947-7280
www.oregoninsurance.org

OREGON INSURANCE DIVISION BULLETIN INS 2003-4

DATE September 9, 2003
TO All Insurers, Rating Bureaus, Advisory Organizations and other Interested Persons
SUBJECT: 2003 Oregon Legislation Affecting Insurance

During the recent regular legislative session, the Insurance Division followed a large number of bills affecting the insurance industry. Enclosed is a summary of enacted insurance legislation that may affect your business. I hope you will find the summary useful. As you know, the summary is not intended to be a complete and detailed statement of all applicable legislation.

Unless otherwise specified, the effective date of a bill is January 1, 2004. A bill may also have one or more operative dates that apply to one or more sections of the bill, in addition to its effective date. An operative date is the date on which the affected section or sections first apply.

For each bill, reference is made to its 2003 Oregon Laws chapter number if the chapter number is available when this bulletin is completed. The chapter number is indicated in parentheses following the bill number in the outline and in the heading for the bill in the text.

Notice

This bulletin is withdrawn as of September 1, 2005.

Signed this 10th day of September 2003.

_____(Signed)_____

Joel S. Ario, Insurance Administrator

2003 Insurance Legislation

- I. Introduction
- II. Insurance regulation generally
 - A. SB 235 (ch 363) Transaction of insurance by depository institutions
 - B. SB 253 (ch 364) Insurance producers
 - C. HB 2278 (ch) Insurance regulation
 - D. HB 2623 (ch 123) Security deposits
 - E. HB 2908 (ch 249) Interpretation of policy when advertisement is in Language other than English
 - F. HB 3051 (ch 568) Oregon Insurance Guaranty Association; recoupment of assessments
 - G. HB 3145 (ch 283) Home service agreements
- III. Life and health insurance
 - A. SB 74 (ch 263) Inborn errors of metabolism
 - B. SB 646 (ch 446) Physicians' assistants
 - C. SB 734 (ch 370) Individual deferred annuities, nonforfeiture
 - D. HB 2306 (ch 87) Privacy of health insurance information
 - E. HB 2987 (ch 599) Individual and small group health insurance market changes
 - F. HB 3431 (ch 590) Individual health insurance market changes
 - G. HB 3648 (ch) Local governments; health insurance for active and retired employees
- IV. Casualty insurance
 - A. SB 246 (ch 174) Filing of certificate of insurance under Motor Vehicle Code
 - B. SB 260 (ch) Credit scoring
 - C. SB 297 (ch) Environmental clean-up insurance claims
 - D. SB 602 (ch 331) Motor vehicle insurance; liability of lender and borrower of car
 - E. HB 2043 (ch 545) Motor vehicle insurance; mile- and time-based rating plans
 - F. HB 2925 (ch 220) Motor vehicle insurance; limits for uninsured motorist coverage
 - G. HB 3630 (ch) Reinsurance program for medical liability insurance sold to rural doctors
 - H. HB 3668 (ch) Personal injury protection, motor vehicle liability insurance

- V. Related matters
 - A. SB 943 (ch) Contractor Liability
 - B. HB 2080 (ch) Statute of limitations on product liability civil actions

I. Introduction

The 2003 legislative session was an especially active session for insurance issues. These issues included credit scoring, privacy of personal health information, rating and underwriting of health insurance, regulation of insurance transactions by depository institutions, professional liability and tort reform and environmental cleanup.

In this bulletin, for economy, the Director of the Department of Consumer and Business Affairs is referred to as the Director.

II. Insurance Regulation Generally

A. SB 235 (ch 363) Transaction of Insurance by Depository Institutions

SB 235 conforms existing state regulation of insurance trade practices by depository institutions to guidelines and limitations of the federal Gramm-Leach-Bliley Act, furthering the federal law’s purpose of integrating banking, insurance and securities services. The federal law allows depository institutions to transact insurance but also authorizes a state to impose specific consumer protections that govern depository institutions when they transact insurance, and shields the state protections from challenge as long as they are substantially the same as the protections in the federal law. A state may establish additional protections as well as long as they do not prevent or significantly interfere with the ability of a depository institution to transact insurance. The specific restrictions protect consumers against coercive lending practices and require appropriate disclosures to consumers. Regulation of insurance activities by depository institutions is retained in the Insurance Code.

B. SB 253 (ch 364) Insurance Producers

SB 253 further facilitates interstate licensing of insurance agents and otherwise updates Oregon’s laws governing their compensation. The bill eliminates the “agent” terminology and replaces it with “insurance producer,” and authorizes an insurance producer to represent the insurance company or the purchaser of insurance. Most of the rest of the bill conforms terminology throughout the Oregon statutes.

The bill also allows an insurance producer to charge a full or reduced commission, a service fee or a combination of the two when transacting commercial insurance. In order to charge a fee, an insurance producer must have a written agreement with the prospective insured that meets conditions established by the Director by rule. Commercial insurance is defined as insurance other than:

1. Insurance that covers an individual’s person, property or liability.
2. Life or health insurance for groups of fewer than 51 lives.
3. Insurance on a commercial or public entity that pays combined annual premiums of less than \$100,000 for the insurance.

The bill makes similar changes relating to compensation for transactions between a wholesale insurance producer and a retail insurance producer, and between a surplus lines licensee and an insurance customer or a producing agent.

This bill does not require insurers to amend their contracts, policy forms and other documents to conform them to the change to “insurance producer” in statutory terminology.

C. HB 2278 (ch) Insurance Regulation

HB 2278 makes miscellaneous changes to the implementation and enforcement of insurance laws by the Department of Consumer and Business Services, although the bulk of the bill deals with non-insurance issues. The insurance portion of this bill does the following:

1. Makes health care service contractors subject to the same regulatory review to which insurers are subject, for transactions involving insurers within an insurance holding company system and for extraordinary dividends by insurers.
2. Allows the Director to delegate the title of Insurance Commissioner, while retaining supervision and control of the person to whom the title and functions are delegated.
3. Directs the Insurance Division to record and maintain complaints regardless of the medium in which they are received.
4. Repeals the Director’s authority to grant a certificate of exemption from the Insurance Code to entities that transact certain limited types of insurance, but allows existing exempt companies to continue their existence and powers.
5. Makes other technical changes to the Insurance Code. These include applying the same timeline for review of all acquisitions and mergers within an insurance holding company system and replacing references to “general lines” insurance with “property and casualty” insurance for consistency of usage.

D. HB 2623 (ch 123) Security Deposits

HB 2623 changes the composition of the deposit that insurers are required to place with the State of Oregon, by allowing insurers to include in the deposit a larger proportion of amply secured corporate obligations. The bill increases the portion of a total deposit that may consist of amply secured obligations of a corporation rated by the National Association of Insurance Commissioners as Class 1. Under current law, an insurer may use the amply secured obligations for the portion of the deposit that exceeds \$100 million, and this bill will allow an insurer to use the obligations for the portion that exceeds \$50 million.

E. HB 2908 (ch 249) Interpretation of Policy When Advertisement Is In Language Other Than English

HB 2908 prohibits construing advertisements in languages other than English to modify the policy in the event of a dispute over the provisions of the policy. As under current

law, a contract of insurance must be construed according to the terms and conditions of the policy, except for binders of temporary insurance coverage and a written application that is part of the contract.

F. HB 3051 (ch 568) Oregon Insurance Guaranty Association; Recoupment of Assessments

HB 3051 changes the means by which insurers that are members of the Oregon Insurance Guaranty Association (OIGA) are recompensed when the OIGA assesses them. The OIGA is created by statute to provide a means for paying covered claims under insurance policies when a member insurer becomes insolvent. The OIGA assesses its members to pay those claims. Under current law, when an insurer has been assessed by the OIGA, the insurer may offset the assessment against any fire insurance gross premium tax owed, and against its corporate excise tax obligation. Under this legislation, an insurer will no longer offset the assessment against those tax obligations. Instead, each insurer will recoup the assessment by assessing each policyholder according to the amount of net premium owed by the policyholder. This bill applies to assessments imposed on or after January 1, 2003 and to assessments imposed prior to January 1, 2003 that have not been fully recouped.

Effective date: November 26, 2003

G. HB 3145 (ch 283) Home Service Agreements

HB 3145 excludes “home service agreements” from the definition of “home protection insurance” in the Insurance Code. A home service agreement is defined as a contract for a specific and limited duration to service, repair or replace the mechanical or appliance system of an existing home, or provide incidental service, repair or replacement to cover leaks and failures in roofing systems.

III. Life and Health Insurance

A. SB 74 (ch 263) Inborn Errors of Metabolism

SB 74 exempts from automatic repeal the statute mandating health insurance coverage for treatment of inborn errors of metabolism but specifies a 2009 repeal date for the statute.

Effective date: July 3, 2003

B. SB 646 (ch 446) Physicians’ Assistants

SB 646 exempts from automatic repeal the statute mandating health insurance coverage for a claim by a physician’s assistant under limited circumstances but specifies a 2009 repeal date for the statute.

Effective date: October 4, 2003

C. SB 734 (ch 370) Individual Deferred Annuities, Nonforfeiture

SB 734 amends provisions of the Insurance Code governing nonforfeiture of deferred annuities, which ensure a surrender value for a policy when the policyholder who has been making premium payments for a required period decides to discontinue further payments of premium. Current law provides that the minimum nonforfeiture amount at a given time equals the then accumulated value, according to a formula, at three-percent

interest. The bill provides that the minimum nonforfeiture amount at a given time equals the then accumulated value, according to a formula using a minimum interest rate of three percent or a calculation based on five year treasury notes, whichever is less, but not less than one percent. The bill also authorizes the Director to adopt rules for equity indexed products.

D. HB 2306 (ch 87) Privacy of Health Insurance Information

This bill provides for reconciliation of three sets of privacy requirements relating to personal records in the hands of health insurance companies and other licensees transacting health insurance under the Insurance Code. The privacy requirements are those established:

1. Under the Insurance Code, relating to personal information generally;
2. Under the federal Gramm-Leach-Bliley Act, relating to personal financial information; and
3. Under the federal Health Insurance Portability and Accountability Act, relating to personal health information.

The Director is given extensive rulemaking authority in this bill to establish the requirements applicable to health insurers and others transacting health insurance so that the requirements of the three sets of laws are coordinated.

Effective date: May 24, 2003

E. HB 2987 (ch 599) Individual and Small Group Health Insurance Market Changes

HB 2987 authorizes health insurance carriers in the individual market to impose waivers of coverage on preexisting conditions for up to 24 months. Under current law, exclusions for preexisting conditions are limited to six months. The bill provides that individuals who are offered the longer waiver periods for individual coverage will be eligible for coverage under the Oregon Medical Insurance Pool.

The bill also authorizes carriers in the small group market to charge the highest rated group up to 2.5 times as much as they charge the lowest rated group. Under current law, carriers may charge the highest rated group up to twice as much as the lowest rated group.

The bill authorizes carriers in the small group market to give groups a five-percent credit if all eligible employees enroll for coverage, as long as the carriers give the credit to all groups that qualify. Current law does not provide for such credits.

Finally, the bill authorizes the Director to obtain data from health insurance carriers in order to assess the effects of this bill on the individual and small group markets, and places a four-year sunset on the changes in this bill.

F. HB 3431 (ch 590) Individual Health Insurance Market Changes

HB 3431 authorizes a health insurance carrier offering individual health benefit plans to limit the choice of plans in which an individual may enroll. Under current law, if a carrier accepts an individual for a specific plan, the individual can choose among all of the plans

offered by the carrier. The bill also provides that an individual who is denied coverage under the initial plan elected by the individual may apply for coverage under the Oregon Medical Insurance Pool.

Finally, the bill authorizes the Director to obtain data from health insurance carriers in order to assess the effects of this bill on the individual market, and places a four-year sunset on the changes in this bill.

G. HB 3648 (ch) Local Governments; Health Insurance for Active and Retired Employees

HB 3648 amends a statutory prohibition against a local government and a health insurer creating a group solely for the purpose of rating or of establishing a premium for health insurance coverage of retired employees. Another bill enacted this session (HB 2031) also prohibited a health insurer from establishing a higher premium for retired employees than for active employees, but that prohibition conflicted with longstanding agreements between local governments and their employees. The bill eliminates the prohibition against an insurer establishing a higher premium for retired employees than for active employees and clarifies the point that active and retired employees must be pooled together for the purpose of rating or establishing a premium and that local governments may then allocate the premium differently among active and retired employees.

Effective date: Upon passage

IV. Casualty Insurance

A. SB 246 (ch 174) Filing of Certificate of Insurance Under Motor Vehicle Code

SB 246 clarifies the Oregon Department of Transportation's responsibilities under the Motor Vehicle Code relating to the filing of a certificate of insurance to satisfy future responsibility requirements. These requirements apply when a driver is convicted of DUII, failure to carry insurance or other driving infractions. A filing must cover all vehicles that are registered in the name of the individual filing the certificate or that are operated by the individual. The point clarified is that the Department of Transportation does not make the determination whether the certificate covers all such vehicles and contains the required coverage.

B. SB 260 (ch) Credit Scoring

SB 260 establishes limitations on the use of credit scoring in personal lines property and casualty insurance used primarily for personal, family or household purposes. The bill prohibits an insurer from canceling or nonrenewing a policy if the cancellation or nonrenewal is based in whole or part on a consumer's credit history or credit score. The bill allows use of credit history to decline coverage only in combination with other substantive underwriting factors. The bill prohibits an insurer from using specified types of credit history to decline coverage, to calculate an insurance score or to determine premium or rates and provides that if insurer assigns a consumer to a less favorable rating category based in whole or part on the consumer's credit history or insurance score, the consumer may request not more than once annually that the insurer re-rate the consumer as if the consumer were initially applying for the same insurance.

The bill requires correction of premium and policy terms that are based on disputed credit history. Section 4 applies to applications for issuance of insurance policies made on or after the effective date of this bill. Section 7, which contains comparable provisions, applies to policies of personal insurance issued before the effective date of this bill. Finally, the bill prohibits the insurer from using credit history unless the insurer has filed the insurance scoring models with the Department of Consumer and Business Services, and excludes insurance scoring models from disclosure under the public records law.

C. SB 297 (ch) Environmental Clean-up Insurance Claims

SB 297 requires an insurer that is under a duty to pay defense or indemnity costs for an environmental claim under a general liability insurance policy to pay all sums arising from the risk covered by the policy according to its applicable terms. The bill also requires a policyholder to give a notice of claim to each insurer when the policyholder is insured by two or more general liability insurance insurers, and provides for the policyholder's choice among those insurers. The bill establishes standard claims practices for insurers relating to notice and reconstruction of a lost policy and places regulatory and enforcement authority with the Director under the Insurance Code.

D. SB 602 (ch 331) Motor Vehicle Insurance; Liability of Lender and Borrower of Car

SB 602 removes the liability of the lender of a motor vehicle when the lender is in a business that involves lending vehicles, such as a business that sells, lends, rents or repairs motor vehicles or makes motor vehicles available for test drives, except when the lender is negligent. Current law allocates primary responsibility to the borrower for providing coverage under the borrower's motor vehicle liability policy and secondary responsibility to the lender, and requires for this limitation on liability a written agreement between the lender and the borrower that specifically indicates the borrower is liable.

E. HB 2043 (ch 545) Motor Vehicle Insurance; Mile- and Time-based Rating Plans

HB 2043 allows a motor vehicle insurer to claim a credit against corporation excise taxes or corporation income taxes otherwise owing, when the insurer provides motor vehicle insurance policies in this state that are at least 70 percent based on a mile-based rating plan or a time-based rating plan. These rating plans are defined as plans for which risk exposure is based on the mileage or time traveled by the insured motor vehicle. The credit equals \$100 for each vehicle insured under a policy offering such a rating plan, not to exceed \$300 for each policy issued by the taxpayer. The total allowable tax credit is limited to \$1 million. This program applies to tax years 2005 through 2009.

Effective date: November 26, 2003

F. HB 2925 (ch 220) Motor Vehicle Insurance; Limits for Uninsured Motorist Coverage

HB 2925 requires a named insured to sign a statement electing lower limits for uninsured motorist coverage within 60 days of the time a named insured elects lower limits. Oregon law requires a motor vehicle liability policy to have the same limits for uninsured motorist coverage as for bodily injury liability coverage unless the named insured elects

lower limits in writing and currently requires the statement of election to be signed and dated at the time the named insured elects the lower limits.

G. HB 3630 (ch) Reinsurance Program for Medical Liability Insurance Sold to Rural Doctors

HB 3630 requires SAIF to establish a reinsurance program for medical liability insurance for policies issued by authorized insurance companies in 2004 through 2007 to eligible rural doctors. The purpose is to enable insurers to offer medical liability insurance to rural doctors at reduced rates.

The bill requires SAIF to adopt a plan for implementing the program. The plan is subject to approval by the Department of Consumer and Business Services and the Office of Rural Health. The bill establishes maximum premium reductions under the plan. The bill provides funding of the program through credits against the annual assessment owed by SAIF to DCBS, and imposes a limit on the maximum amount of credit that may be allowed. The bill requires a study and reports on the availability, costs and transaction of medical liability insurance.

Effective date: Upon passage

J. HB 3668 (ch) Personal Injury Protection Coverage, Motor Vehicle Liability Insurance

HB 3668 increases personal injury protection (PIP) benefits under motor vehicle liability insurance policies from \$10,000 to \$15,000. The bill also prohibits a health care provider who provides services to a person receiving PIP benefits from charging the person, or the person's insurer, an amount that exceeds the amount the provider charges the general public or an amount that exceeds the fee schedules for medical and other services established under the workers' compensation statutes.

The PIP benefits were last increased, from \$5,000 to \$10,000, in 1989.

V. Related Matters

A. SB 943 (ch) Contractor Liability

SB 943 authorizes the Construction Contractors Board by rule, in consultation with the Director, to allow a general or specialty contractor that is a residential-only contractor to provide an alternative form of security approved by the board, rather than an insurance policy covering public liability or personal injury and property damage. The bill authorizes the board to approve an alternative form of security if the board determines that the alternative form provides protection to the public that is equivalent in amount to the protection offered by insurance policies.

B. HB 2080 (ch) Statute of Limitations on Product Liability Civil Actions

HB 2080 amends the current eight-year statute of limitations to prohibit the bringing of a product liability civil action when the death, personal injury or property damage caused by a product occurs more than eight years after the date on which the product was purchased. The bill also amends the two year exception to the limitation to restrict its

applicability to personal injury or property damage and to require that an action be commenced not later than the earlier of:

1. Two years after the date on which the plaintiff discovered, or reasonably should have discovered, the personal injury or property damage and the causal relationship between the injury or damage and the property, or the causal relationship between the injury or damage and the conduct of the defendant; or
2. Ten years after the date on which the product was first purchased for use or consumption.

The bill limits applicability of amendments to deaths, personal injuries or property damage occurring on or after the effective date of this bill, rather than to all such events, regardless of when they occur, and provides for revival of a cause of action for which a civil action for death, personal injury or property damage was filed before the effective date of the bill, depending on specified conditions.