



Oregon

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OREGON INSURANCE DIVISION BULLETIN INS 2005-4

DATE: December 16, 2005
TO: All Insurers Providing Homeowner Insurance
RE: New Legislation—SB 118

Introduction

The 2005 Oregon Legislature passed Senate Bill 118 (chapter 489, Oregon Laws 2005), which has an effective date of January 1, 2006. This legislation imposes new limits on the use of claim experience and inquiries in homeowner insurance underwriting and rating.

This bulletin:

- Summarizes the key features of SB 118, and
- Explains the filing requirements insurers must meet concerning their underwriting guidelines and rating plans.

The Division has also developed a [Q&A](#) in the form of scenarios, to provide some initial examples of the bill's application to specific situations. The [Q&A](#) will be updated as new issues emerge.

Insurers and other interested parties should also be aware of restrictions on the use of credit history and insurance scores, especially as those restrictions have been amended in SB 573 (chapter 464, Oregon Laws 2005). Issues arising from this legislation will be addressed in a bulletin that will also incorporate the matters relating to credit scoring that were addressed in Bulletin 2003-8.

Applicability

SB 118 applies only to homeowner insurance, a package policy consisting of property and casualty insurance that covers risks of owning or occupying a dwelling and that is not intended to cover an owner's interest in rental property or commercial exposures.

Underwriting and Rating

1. SB 118 allows an insurer:
 - To consider the last five years of claims history when rating a policy. However, an insurer can use a longer claim history for the purpose of providing a discount.
 - To consider the second or any subsequent claims that have occurred in the last five years to determine whether to issue a policy.
 - To consider the second or any subsequent claims that have occurred in the last five years to determine whether to renew a policy.

2. SB 118 does not allow an insurer:
 - To consider prior claims history that is greater than five years from the policy inception date either to determine whether to issue a policy, or as a rating consideration for a policy. This restriction does not apply to long-term claim-free discounts.
 - To consider prior claims history greater than five years from the upcoming renewal date to determine whether to renew a policy.
 - To consider the first claim in the five year period preceding the application date to determine whether to issue a policy.
 - To consider the first claim in the five year period before the upcoming renewal date to determine whether to renew a policy.
 - To consider a prior loss on newly purchased property either to determine the rates for a policy or as deciding factor about whether to issue a policy if the applicant has demonstrated to the insurer's satisfaction, using reasonable and consistent criteria, that the cause of loss has been mitigated.
 - To consider any inquiries about the coverage, terms and conditions of the policy to determine whether to issue the policy, or as a rating consideration for a policy.
 - To consider any inquiries about the coverage, terms and conditions of the policy to determine whether to renew a policy.

The bill also provides that the limitations on the use of claims and inquiries do not prohibit an insurer from taking underwriting or rating action that is based on the known use or condition of the property or on fraudulent acts of the consumer or that is otherwise allowed by law.

What is the difference between an inquiry and a claim?

As explained above, an insurer or insurance producer may not consider inquiries by a consumer in connection with issuance, renewal or rating of a policy. Specifically, section 4(3) of SB 118 prohibits an insurer or insurance producer from using an inquiry by a consumer “regarding the terms, conditions or coverage of an insurance policy, including an inquiry about an actual loss or claim filing process, to determine whether to issue or renew a policy or to determine rates or other terms and conditions of a policy if the consumer is not making a claim as part of the inquiry.” It is important to understand the difference between a claim and an inquiry in this connection. A claim is a demand on the policy: the insured demands payment according to the terms of the contract or policy. An inquiry is a request for information; an inquiry could be hypothetical or it could relate to an actual loss to the insured. A simple question, such as "Is it covered under the policy?" is not a demand.

When dealing with a question, if an insurer or insurance producer is uncertain whether the consumer is making a claim as part of the inquiry, the insurer or producer should ask the consumer whether the consumer is making a claim. This will help ensure that the consumer's rights are properly considered and protected. If the consumer affirms that the inquiry is not a claim, the insurer or insurance producer may rely on that affirmation should the consumer later assert that a claim was made. Finally, insurers, insurance producers, consumers and other interested parties should be aware that the restrictions on the use of inquiries do not apply to an inquiry about a possible third party claim.

Refiling Requirements

Each property and casualty insurer writing homeowner insurance and using claim history as a rating or underwriting consideration must ensure that its underwriting eligibility guidelines and rating plans properly implement the requirements of SB 118. Filing requirements for rating plans and rating systems are governed by ORS 737.205 and ORS 737.310, and OAR 836-010-0021(2).

- If the homeowner rating plan and rating system previously filed with the Insurance Division comply with SB 118, please notify us by letter, stating that the insurer rating plan is in compliance.
- If a rating plan and rating system (including underwriting eligibility guidelines) do not comply with SB 118, please file a compliant rating plan and rating system with the Insurance Division. A noncompliant rating plan and rating system may not be used after January 1, 2006, the effective date of SB 118.

This bulletin is dated the 16th day of December 2005, at Salem, Oregon.

_____(Signed)_____
Joel Ario, Insurance Administrator