



Oregon

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Oregon Insurance Division Bulletin INS 2008-2

DATE: February 5, 2008
TO: All Insurers Transacting Insurance in Oregon
RE: Application of HB 2007, Oregon's Domestic Partnership Legislation

Oregon Insurance Division Bulletin INS 2007-6 is withdrawn.

The purpose of this bulletin is to guide insurers in applying HB 2007 to the transaction and regulation of insurance in Oregon, because the Insurance Code as affected by that legislation imposes new responsibilities on insurers and on the Department of Consumer and Business Services. HB 2007 (now ch. 99, Oregon Laws 2007) recognizes and authorizes domestic partnerships in Oregon. This legislation was to take effect January 1, 2008. A subsequent legal challenge stayed the application of this statute until it was heard and reviewed by the Federal District Court. The court upheld the legislation. A domestic partnership is defined in section 3, ch. 99, Oregon Laws 2007 to mean "a civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon."

This bulletin explains how ch. 99, Oregon Laws 2007 affects the Insurance Code and is not intended as either an independent statement of policy or as an extension of the legislation. [Examples](#) of application of the legislation to the Insurance Code are available on the website of the Insurance Division (insurance.oregon.gov). These examples are intended to answer practical and specific questions that have arisen and will continue to arise as ch. 99, Oregon Laws 2007 is implemented.

Section 9, ch. 99, Oregon Laws 2007 states the general scope of legal rights and responsibilities to which domestic partnerships are subject. In summary, section 9 provides that a privilege, immunity, right or benefit granted to an individual by a statute, administrative or court rule, policy, common law or any other law because of the marital relationship is granted on equivalent terms to an individual because the individual is or was in a domestic partnership or because of a specific relation between the individual and another because of the domestic partnership. In addition, Senate Bill 2 (ch. 100, Oregon Laws 2007) prohibits discrimination in providing employment benefits, public accommodations and housing, as well as in other specific situations, based upon race, religion, color, sex, national origin, sexual orientation or familial status.

The Director will apply the following principles to implement ch. 99, Oregon Laws 2007:

1. Terms and provisions in the Insurance Code and in rules adopted under the Code that refer to or indicate the marital relationship, its dissolution and dependents in a marital relationship will apply in the same manner to domestic partnerships, to their dissolution and to dependents in the partnership. These references appear in the Code and rules with respect to a class or line of insurance in some cases and in other cases in connection with the regulation of insurance generally, such as in connection with credit scoring.
2. When provisions in the Insurance Code or related rules described in the preceding paragraph specifically apply to terms of a policy form, the Code provisions must be applied generally to other provisions in the policy form as well. The same is true with respect to a privilege, immunity, right or benefit under provisions of the Code or rules that apply to an individual by virtue of the marital relationship.
3. Chapter 99, Oregon Laws 2007 applies to forms filed for approval on or after February 4, 2008, but the Department does not consider ch. 99, Oregon Laws 2007 to apply to a group life or health policy issued or renewed before April 1, 2008, when the policy form was filed and approved for use prior to February 4, 2008.
4. An insurer must rate the members of a domestic partnership according to the same standards that the insurer uses to rate a husband and wife. If the insurer uses a “married” rate for a husband and wife, the insurer may not apply the “named insured” classification to each member of a domestic partnership. The insurer may use appropriate rating methods that reflect the composition of a domestic partnership, in the same way that the insurer uses rating methods to reflect the composition of a marriage. For example, if a married rate is determined by using or otherwise taking into account the age and sex of each member of the married couple, the insurer may apply a comparable rate that takes into account the fact that the members of a domestic partnership are both men or both women.
5. Ch. 99, Oregon Laws 2007 does not alter federal law, which confers marriage rights and privileges only to opposite-sex married couples. (See 1 U.S.C.A. sec. 7, defining marriage, under Federal Defense of Marriage Act, as a “legal union between one man and one woman.”)
6. Ch. 99, Oregon Laws 2007 does not affect stop-loss policies for self-insured group health plans.
7. An insurer may issue a policy to an employer only if the employer’s health plan is compliant with ch. 99, Oregon Laws 2007.
8. For the purpose of policy coverage, discounts and other matters provided in connection with marriage, an insurer must require and apply the same level of proof for existence of a domestic partnership that the insurer requires and applies for existence of a marriage.
9. Ch. 99, Oregon Laws 2007 does not prevent insurers from using actuarial data relating to gender, for both underwriting and rating decisions. If loss results experience is different for same sex couples, underwriting rules and rates may therefore reflect the differences without

conflict with ch. 99, Oregon Laws 2007, whether the data relate to a marriage, a male-male partnership or a female-female partnership.

10. Regarding commercially insured ERISA plans, the Insurance Division will carry out its authority under the Insurance Code without distinction between commercial insurance plans sold to employers subject to ERISA and commercial insurance plans sold to employers not subject to ERISA. The savings provision in ERISA for state regulation of insurance authorizes the Director to apply provisions of the Insurance Code affected by ch. 99, Oregon Laws 2007 to all group health insurance policies, regardless of whether the policyholder is otherwise an ERISA employer. Consequently:

- Commercially insured employee benefit plans that are currently subject to state regulation remain subject to the Insurance Code; and
- The exception in section 9(7), ch. 99, Oregon Laws 2007 applies to self-insured plans.

11. Regarding credit scoring, Insurance Code provisions prohibiting an insurer from rerating an existing policy or rerating a customer based on a customer's credit history when the marital status of the customer changes due to death or divorce applies with the same force to a customer who belongs to a domestic partnership that ends because of death or dissolution. Concern has been expressed that this application of ch. 99, Oregon Laws 2007 will conflict with federal law such as the Fair Credit Reporting Act and will otherwise cause inconvenience and confusion for consumers. In response, there should be no conflict because ch. 99, Oregon Laws 2007 applies only to matters of Oregon law. To the extent that a federal law applies in credit scoring or any other matter, then that federal law would apply. For example, if the federal Fair Credit Reporting Act (FCRA) governs the use of credit information with respect to a divorced husband and wife, then ch. 99, Oregon Laws 2007 could not require application of the FCRA provision to members of a domestic partnership that has been dissolved. Of course, if Oregon law independently applies in the circumstance, the fact that federal law applies as well would not prevent application of the state law.

This bulletin is intended as a general statement of principles for enforcing and applying the Insurance Code in light of ch. 99, Oregon Laws 2007, and is not meant to answer all questions that may arise because of that legislation. Consequently, specific questions should be directed toward the Insurance Division for resolution.

This bulletin is dated February 5, 2008, at Salem, Oregon.

(Signed)

Scott J. Kipper
Insurance Administrator