



OREGON INSURANCE DIVISION BULLETIN INS 2013-4

TO: All Auto Insurers and Auto Insurance Producers

RE: Permissible use of lapse in insurance coverage as a rating factor – Oregon Revised Statute (ORS) 742.449

State law does not allow insurance companies and producers to charge higher premiums for auto insurance based solely on a client's lapse in coverage. The Insurance Division has not changed its interpretation of this law (Oregon Revised Statute 742.449) since 1990 bulletin INS 90-5. We are expanding the clarification so insurers and producers understand how the division interprets the law.

ORS 742.449 prohibits the practice of assigning a person a high-risk category based solely on a lapse in coverage unless the person violates the law by driving uninsured (ORS 806.010). A conviction isn't required. For example, a consumer's statement that he or she drove while uninsured would be a violation.

When a lapse may be considered as a rating factor:

In determining an auto insurance rate, a lapse in coverage may be considered only in conjunction with other factors (e.g., credit history, not-at-fault accidents, driver's age). Additionally, the insurer must give customers the chance to state that they didn't break the law (806.010) while they were without coverage. Typically, insurers provide clients with a checklist so they can indicate why their coverage lapsed. For example, they were on a sabbatical or serving in the military, they didn't own a vehicle or they only drove a vehicle insured by others.

ORS 742.449 does not apply to an applicant who has never had auto insurance, since "lapse" presumes prior coverage.

Proof insurers can require from a client

1. Insurers can require a client to provide a prior declaration page or other documentation confirming prior coverage.
2. Insurers can require a client to state why there is a lapse in coverage or check the appropriate reason for a lapse in coverage on a checklist provided by the insurer.
3. Insurers can require a client to attest he or she was not driving in violation of ORS 806.010.
4. It is the insurer's responsibility to investigate compliance with ORS 806.010 (by requesting a copy of the motor vehicle record from DMV). It is not the client's responsibility to provide additional evidence that he or she was not driving while uninsured.

The statutes are below:

ORS 742.449 states:

742.449 Prohibition on assignment to high-risk category on certain grounds. An insurer issuing motor vehicle liability insurance policies in this state may not assign an insured or applicant for insurance to a higher risk category than the person would otherwise be assigned to solely because the person has:

(1) Let a prior motor vehicle liability policy lapse, unless the person was in violation of ORS 806.010 at any time after the prior policy lapsed; or

(2) Had driving privileges suspended pursuant to ORS 809.280 (6) or (8) if the suspension is based on a non-driving offense. [1989 c.419 §2; 1991 c.860 §6; 2011 c.355 §22]

ORS 806.010 states:

806.010 Driving uninsured prohibited: penalty.

(1) A person commits the offense of driving uninsured if the person operates a motor vehicle in this state on any highway or premises open to the public in this state without either:

(a) The person being insured while driving the vehicle under a motor vehicle liability insurance policy that meets the requirements described under ORS 806.080; or

(b) The person or the owner of the vehicle providing the Department of Transportation with other satisfactory proof of compliance with the financial responsibility requirements of this state.

(2) Exemptions from this section are established under ORS 806.020.

Note: A person can commit the offense of driving uninsured and be in violation of this section [see ORS 806.010(1)] without being convicted of a violation of the section – convictions are specifically mentioned in ORS 806.010(3) and (4), which state:

(3) In addition to other penalties under this section the following apply:

(a) A person who is involved in a motor vehicle accident at any time the person is in violation of this section is subject to suspension of the person's driving privileges under ORS 809.417.

(b) A person who is convicted of violating this section is subject to ORS 806.230, if the person does not make future responsibility filings as required by that section.

(4) A person convicted for violation of this section must file with the department, and thereafter maintain for a period of three years, proof of financial responsibility that complies with ORS 806.060. Failure to comply with this subsection is subject to ORS 809.415.

This bulletin takes effect immediately.

This bulletin is dated the 20th of August, 2013, at Salem, Oregon.

Laura N. Cali, FCAS, MAAA
Insurance Commissioner