



Report to Agency on Public Comment Period

Date: October 28, 2019

To: Dept. of Consumer and Business Services

From: Raven Collins, Policy Analyst

Subject: Oregon Division of Financial Regulation Proposed Bulletin on Arbitration Clauses, Choice of Law, and Choice of Venue Provisions in Insurance Policies

Comment Period Start September 20, 2019

Comment Period End: October 11, 2019

Background

This proposed bulletin is a reminder to all insurers that pre-dispute mandatory arbitration clauses, choice of law, and choice of venue provisions in policies are prohibited under Oregon law.

DFR is adopting the 2018 NAIC model bulletin regarding arbitration clauses and is reiterating existing DFR policy and product standards.

Summary of Written Comments

DFR received comments from industry, consumer advocate stakeholders, and the general public. All supported the proposed bulletin, and some comments recommended minor wording changes:

- Peter Kochenburger, Amy Bach, Brendan M. Bridgeland, Erica L. Eversman, Karrol A. Kitt, Kenneth S. Klein, Jackson Williams; NAIC Consumer Representatives, supported the proposed bulletin and recommended wording changes to make clear that the guidance applied to all lines of insurance, and that parties may mutually agree to arbitrate after a dispute arises. They emphasized that “pre-dispute mandatory arbitration provisions interfere with core state and federal constitutional rights,” are restricted by Oregon Supreme Court rulings, and are “inconsistent with insurers’ legal obligations to treat their

policyholders in good faith and to consider their policyholders' interests on equal footing to their own."

- Brad Vincent, Vincent Properties, Inc., identified himself as a long time member of the business community. He stated that he heartily approves the message, and applauds DFR's continuing efforts to help protect consumers. He indicated that without this oversight, businesses would "run rampant over the rights of consumers."
- Mark Summers, PBC Insurance, submitted comment stating that the bulletin "reminds insurance carriers that our state is fully engaged to protect the rights of the insured public." He highlighted the guidance regarding choice of venue provisions as particularly important for protecting consumers that "would not have the finances and/or time to travel elsewhere in order to receive a fair outcome."
- Edward Davis, Maps Insurance Services, recommended a grammatical edit to delete the word "that" in the sentence "The Oregon Supreme Court has found that the use of pre-dispute mandatory arbitration clauses in insurance policies to be unconstitutional."

Discussion

The wording changes recommended in the public comments would help clarify the guidance in the proposed bulletin.

Summary

Having fully considered all submissions, I recommend the following:

- Modify the third footnote citation to read 744 P.2d 992, rather than 714 P.2d.
- Delete the word "that" in the sentence "The Oregon Supreme Court has found that the use of pre-dispute mandatory arbitration clauses in insurance policies to be unconstitutional."
- Under "Purpose," add another sentence emphasizing that the bulletin applies to all insurance lines thereby protecting both personal lines and commercial policyholders.
- Alter language in the last sentence of the second paragraph under "Pre-dispute Mandatory Arbitration Clauses" to specify that parties may still *mutually* elect to arbitrate after the dispute arises.

Raven Collins
Policy Analyst