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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED

11/29/2022 4:52 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Language used for co-insureds in personal property and casualty policies

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/22/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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350 Winter St. NE
Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/15/2022

TIME: 10:00 AM - 10:45 AM

OFFICER: Cassie Soucy

ADDRESS: Labor & Industries Building

350 Winter St. NE

Basement, Conf Rm E

Salem, OR 97301

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams:

Join on your computer, mobile app or room device

Meeting ID: 248 749 546 964

Passcode: J4Vi84

Or call in (audio only)

+1 503-446-4951,,672110173# United States, Portland

Phone Conference ID: 672 110 173#

NEED FOR THE RULE(S)

Exclusions for intentional acts are common among various types of property and casualty insurance policies. These exclusions preclude recovery for losses purposefully caused by the insured and have long been approved by the Division of Financial Regulation (DFR).

Recently, the division has received policy filings applying new, more expansive language to intentional acts exclusions.

The scope of intentional acts exclusions also may be misleading depending on whether the exclusionary language applies to acts committed by “the insured,” as opposed to “an insured” or “any insured.” Such language might preclude a policyholder who was not involved in the intentional act from recovering for a loss caused by the act of a co-insured.

The division has decided to engage in rulemaking to clarify the use of vague language regarding the application of the exclusion to co-insureds within personal lines of property and casualty insurance. These clarifications will strengthen consumer protections by requiring clear language used in policy forms describing an intentional acts exclusion for a named co-insured who does not cause, does not contribute to, and is not aware of the intentional act before it is committed.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division’s website:
<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The rules will have the greatest impact on insurance companies to ensure language within policy forms is clear and not uncertain, ambiguous, or likely to mislead a person whom the policy is offered, delivered, or issued. Clarity in policy forms positively impacts all consumers, including communities of color. It is not anticipated that one group of consumers would be impacted different than others. These rule changes will help consumers understand their personal property and casualty policies, such as a homeowners or renters policy, with language more clearly describing certain exclusions and their application.

The division sought input from the rulemaking advisory committee about potential racial equity impacts that are implicated directly by the proposed changes to the rules. None were identified.

FISCAL AND ECONOMIC IMPACT:

There is likely is some administrative impact for insurers to adjust forms, however, most of this work was already accomplished when DFR issued a bulletin on intentional acts in 2022. Insurers were required to submit updated forms to DFR were provided an extension to the deadline giving carriers and third party insurance form creators more time to come into compliance.

Based on financial filings made to DFR, no insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) DCBS does not expect a fiscal impact resulting from these rules. Other state agencies, units of local government, and the general public are not expected to incur a fiscal impact from these rules.

(2)(a) Based on financial filings made to DFR, no insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated.

(2)(b) Based on financial filings made to DFR, no insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated. There may be reporting, recordkeeping, and administrative activities that insurers may incur to comply with the rules. However, most insurers should be in compliance with DFR bulletin 2022-2 which required changes to be made to the policy forms.

(2)(c) Based on current information, including feedback from the RAC, the proposed rules do not impose additional costs for professional services, equipment supplies, labor, and increased administration to small businesses.

Based on financial filings made to DFR, no insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Rulemaking Advisory Committee (RAC) was comprised of insurers, consumers, and an organization representing attorneys. Some attorneys may work for a practice considered to be a small business.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

836-080-0900, 836-080-0905

ADOPT: 836-080-0900

RULE SUMMARY: To define covered loss and innocent person.

CHANGES TO RULE:

836-080-0900

Definitions

As used in OAR 836-080-0900 to 836-080-0905:

(1) "Covered loss" means any loss, damage, or injury that would be covered by a property and casualty personal lines policy unless arising out of an act or omission of a person insured under such policy.

(2) "Innocent person" means, with respect to any covered loss, a person:

(a) Who did not cause such covered loss;

(b) Who did not materially contribute to such covered loss, and

(c) Who did not know that such covered loss was reasonably likely to occur or undertook reasonable efforts to prevent or limit such covered loss.

Statutory/Other Authority: ORS 742.005

Statutes/Other Implemented: ORS 731.244

ADOPT: 836-080-0905

RULE SUMMARY: Language used for co-insureds in personal property and casualty policies.

CHANGES TO RULE:

836-080-0905

Language used for co-insureds on property and casualty personal lines policies

No property and casualty personal lines policy may contain any provision or other language that would deny coverage to any innocent person insured under such policy for any covered loss arising out of any act or omission of any other person insured under such policy.

Statutory/Other Authority: ORS 742.005

Statutes/Other Implemented: ORS 731.244