

House Bill 3038

Sponsored by Representative WHISNANT; Representatives GILLIAM, THATCHER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Director of the Department of Consumer and Business Services to adopt rules that ensure adequate representation of businesses on all workers' compensation rating system advisory committees.

A BILL FOR AN ACT

1
2 Relating to business representation on workers' compensation system advisory committees; amending
3 ORS 737.310.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 737.310 is amended to read:

6 737.310. The following standards shall apply to the making and use of rates:

7 (1) Rates shall not be excessive, inadequate or unfairly discriminatory.

8 (2) As to all classes of insurance, other than workers' compensation and title insurance:

9 (a) No rate shall be held to be excessive unless:

10 (A) Such rate is unreasonably high for the insurance provided; and

11 (B) A reasonable degree of competition does not exist in the area with respect to the classi-
12 fication to which such rate is applicable.

13 (b) No rate shall be held inadequate unless such rate is unreasonably low for the insurance
14 provided and:

15 (A) Use or continued use of such rate endangers the solvency of the insurer; or

16 (B) The use of such rate by the insurer has, or if continued will have, the effect of destroying
17 competition or creating a monopoly.

18 (3) Rates for each classification of coverage shall be based on the claims experience of insurers
19 within Oregon on that classification of coverage unless that experience provides an insufficient base
20 for actuarially sound rates.

21 (4) Due consideration shall be given to past and prospective loss experience within this state,
22 to the hazards of conflagration and catastrophe, to a reasonable margin for profit and to contin-
23 gencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to
24 their policyholders, members or subscribers, to past and prospective expenses specially applicable
25 to this state, and to all other relevant factors, including judgment factors deemed relevant, within
26 this state.

27 (5) In addition to subsection (4) of this section, rates for home protection insurance may include
28 provision for unreimbursed costs of risk inspection and for loss costs under policies which are ter-
29 minated without premium because the related home sale is not made.

30 (6) In the case of fire insurance rates, consideration may be given to the experience of the fire
31 insurance business during the most recent five-year period for which such experience is available.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (7) The systems of expense provisions included in the rates for use by any insurer or group of
2 insurers may differ from those of other insurers or groups of insurers to reflect the requirements
3 of the operating methods of any such insurer or group of insurers with respect to any class of in-
4 surance, or with respect to any subdivision or combination thereof for which subdivision or combi-
5 nation separate expenses are applicable.

6 (8) Risks may be grouped by classifications for the establishment of rates and minimum premi-
7 ums. Classification rates for casualty, surety or inland marine risks may be modified to produce
8 rates for individual risks in accordance with rating plans which establish standards for measuring
9 variations in hazards or expense provisions or both. Such standards may measure any differences
10 among risks that can be demonstrated to have a probable effect upon losses or expenses.

11 (9) Due consideration shall be given, in the making and use of rates for all insurance, to in-
12 vestment income earned by the insurer, to insurer profits and to accumulated reserves for vocational
13 rehabilitation services and for claim costs related to orders or awards made pursuant to ORS
14 656.278.

15 (10) The Director of the Department of Consumer and Business Services, by rule, shall prescribe
16 the conditions under which a division of payroll between different manual classifications is permit-
17 ted for purposes of computing workers' compensation premiums.

18 (11)(a) The director shall not approve any workers' compensation rating system that does not
19 include a plan for rewarding employers, however small, that have good loss experience or programs
20 likely to improve accident prevention. However, this paragraph is not intended to require that all
21 employers be experience rated.

22 (b) The director shall not approve any workers' compensation rating system that does not allow
23 the insurer to include potential third party recovery as one of the variables in the claims reserving
24 process.

25 (12) At the time an insurer issues a workers' compensation insurance policy to an insured for
26 the first time, the insurer shall give written notice to the insured of the rating classifications to
27 which the insured's employees are to be assigned and shall provide an adequate description of work
28 activities in each classification. In the event an insurer recommences coverage following its termi-
29 nation, the notice required under this subsection must be given only if the gap in coverage exceeds
30 six months.

31 (13) If an insurer determines the workers' compensation insurance policy of an insured needs
32 reclassification, the insurer:

33 (a) May bill an additional premium for the revised classification after the insurer has provided
34 the insured at least 60 days' written notice of the reclassification.

35 (b) Shall bill retroactively to policy inception or date of change in insured's operations for any
36 reclassification that results in a net reduction of premium.

37 (c) May, notwithstanding paragraph (a) of this subsection, retroactively bill an insured for re-
38 classification during the policy year without prior notice of reclassification if the insurer shows by
39 a preponderance of the evidence that:

40 (A) The insured knew that the employees were misclassified, or the insured was adequately in-
41 formed by the insurer of the proper classification for the insured's employees;

42 (B) The insured provided improper or inaccurate information concerning its operations; or

43 (C) The insured's operations changed after the date information on the employees was obtained
44 from the insured.

45 (14) In consultation with system participants, the director shall analyze the rating classification

1 system to investigate changes that simplify the system and reduce costs for employers and insurers
 2 while preserving rate equity and minimizing the potential for abuse. The director shall give partic-
 3 ular emphasis to the method of allocating payroll to rating classifications and to alternatives to
 4 methods that require verifiable payroll records. Upon completion of this analysis, the director shall
 5 implement appropriate changes to the system.

6 (15) The director shall adopt rules to carry out the provisions of this section and may by rule
 7 specify procedures relating to rating and ratemaking by workers' compensation insurers.

8 **(16)(a) Every workers' compensation rating system advisory committee established by**
 9 **the director by rule or appointed by the director shall have adequate representation of busi-**
 10 **nesses that have workers' compensation coverage in this state.**

11 **(b) As used in this subsection:**

12 **(A) "Adequate representation" means at least one-third of the membership of the advi-**
 13 **sory committee.**

14 **(B) "Businesses" means small businesses as defined by the United States Small Business**
 15 **Administration in 13 C.F.R. part 121, in effect on January 1, 2006, and large businesses that**
 16 **do not provide workers' compensation insurance in this state.**

17 [(16)] (17) A rate increase based solely upon an insured's attaining or exceeding 65 years of age
 18 shall be presumed to be unfairly discriminatory unless the increase is clearly based on sound
 19 actuarial principles or is related to actual or reasonably anticipated experience.

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