

**REVENUE:**

**FISCAL:**

**SUBSEQUENT REFERRAL TO:**

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**Action:**

**Vote:**

**Yeas:**

**Nays:**

**Exc.:**

**Prepared By:** James LaBar, Administrator

**Meeting Dates:** 4/13

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**WHAT THE MEASURE DOES:** Prohibits insurers from offering policy that provides the insurer a right that is superior to the right of insured to interpret terms of policy or that specifies a standard for interpreting that is inconsistent with state laws. Requires insurance policy to include clause asserting conformance to Oregon Insurance code, to state that the Insurance Code is incorporated in policy by reference, and declare any policy provisions in conflict are superseded by Insurance Code. Declares emergency, effective on passage. Becomes operative 91 days after effective date of Act.

**ISSUES DISCUSSED:**

**EFFECT OF COMMITTEE AMENDMENT:**

(- 2 amendment) Provides an additional enforcement tool for Oregon Insurance Division by ensuring violations of the health insurance coverage mandates in ORS Chapter 743A into “unfair claim settlement practices” under ORS 746.230.

(-3 Amendment) Modifies operative date from 91 days after passage to January 1, 2016.

(-5 amendment) makes violations of Chapter 743A (the health insurance coverage mandates, i.e. mental health parity) into “unfair claim settlement practices.” Removes all of the previous language regarding discretionary clauses.

**BACKGROUND:** “Discretionary clauses” are clauses in insurance contracts that give the insurer the “discretion” to decide how to interpret their contract and to determine what benefits are due to the consumer. Oregon’s Insurance Division has prohibited such clauses for more than 10 years. However, some insurers include such clauses, and once a form with such a clause is approved, it is legally binding. Because the Insurance Division’s prohibition is by policy rather than statute, it is a challenge for the Insurance Division to take action against such clauses. The National Association of Insurance Commissioners (NAIC) has developed model legislation to prohibit discretionary clauses, and it has been adopted by several states, including Colorado, Maine, Minnesota, and Wyoming. SB317, is based on the NAIC model bill, with tailoring for compatibility with existing Oregon Insurance Division policy.

Consumers go to federal court to enforce their health insurance contracts, under the Employee Retirement Income Security Act (ERISA), based on the language and terms of the contract. If the contract itself contains provisions that conflict with Oregon’s insurance code, the consumer’s ability to challenge illegal clauses may be impaired, since the ERISA review is focused on the language of the contract.

In one recent court case, *AF v Providence*, the insurer argued that the consumers had no right to challenge the legality of contract provisions in Federal court – only whether the insurer had complied with the text of the contract. U.S. District Court responded that “It is a general principle of insurance law that all insurance plans include all applicable requirements and restrictions imposed by state law. . . . when such a conflict exists, ‘the statutory requirements supersede the conflicting policy provisions and become part of the insurance policy itself.’” SB 317 makes it explicit that it is the insurer’s responsibility to comply with Oregon law, not the Insurance Division’s responsibility to identify illegal contract language.

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***This summary has not been adopted or officially endorsed by action of the committee.***

