

Enrolled Senate Bill 82

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CHAPTER

AN ACT

Relating to homeowner insurance for wildfire risk; creating new provisions; and amending ORS 737.310 and 742.270.

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

SECTION 1. (1) As used in this section:

(a) “Homeowner insurance” has the meaning given that term in ORS 746.600.

(b) “Wildfire risk mitigation action” means an action that reduces wildfire risk to property, including:

(A) A property-level action, such as establishing defensible space, hardening a building or receiving certification from the Insurance Institute for Business and Home Safety for a Wildfire Prepared Home or a similar entity.

(B) A community-level action, such as receiving recognition as a Firewise USA Site in Good Standing or recognition from a similar entity or participating in community risk reduction programs established by the State Fire Marshal.

(2) An insurer that cancels or decides not to renew a homeowner insurance policy for a property, or that increases a premium for a homeowner insurance policy for a property, for a reason that is not nonpayment of a premium and that is materially related to wildfire risk, shall send a notice of the cancellation, decision not to renew or premium increase to the insured that describes:

(a) Any property-specific characteristics related to wildfire risk that resulted in the cancellation, decision not to renew or premium increase.

(b) Wildfire risk mitigation actions the insured could undertake to improve the insurability of the property, if there are any.

(c) If the insurer used wildfire risk scores or classifications to assess the property, the following information:

(A) In plain language, a description of how wildfire risk scores and classifications are determined, including a description of any general variables the insurer considers.

(B) The range of wildfire risk scores or classifications that could potentially be assigned to a property.

(C) The relative position of the wildfire risk score or classification assigned to the property.

(D) Impacts, if there are any, that wildfire risk mitigation actions could have on a wildfire risk score or classification assigned to the property.

(d) General information about factors the insurer considers in order to classify, measure or otherwise determine the wildfire risk to a property.

(e) Any other information specified by rule by the Department of Consumer and Business Services.

(3) In addition to the requirements of subsection (2) of this section, a notice for a premium increase that is materially related to wildfire risk must describe:

(a) What wildfire risk mitigation actions the insured could undertake, if any, that would result in a discount, incentive or other premium adjustment.

(b) The amount of the potential discount, incentive or other premium adjustment.

SECTION 2. ORS 737.310 is amended to read:

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

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

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

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

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

(B) A reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) In consultation with system participants, the director shall analyze the rating classification system to investigate changes that simplify the system and reduce costs for employers and insurers while preserving rate equity and minimizing the potential for abuse. The director shall give particular emphasis to the method of allocating payroll to rating classifications and to alternatives to methods that require verifiable payroll records. Upon completion of this analysis, the director shall implement appropriate changes to the system.

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

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

(17) An insurer offering homeowner insurance, as defined in ORS 746.600, in this state shall:

(a) Make information on whether and how wildfire risk mitigation actions, as defined in section 1 of this 2023 Act, may impact the insurer's underwriting and rates publicly available on the insurer's website.

(b) Reflect in the insurer's underwriting guidelines and rate plans how the insurer addresses or considers wildfire risk mitigation actions, as defined in section 1 of this 2023 Act.

SECTION 3. ORS 742.270 is amended to read:

742.270. (1) As used in this section:

(a) "Homeowner insurance" has the meaning given that term in ORS 746.600.

(b) "Property" means structures and dwellings, and the contents of structures and dwellings, that are covered by a policy of homeowner insurance.

(2) If a policy of homeowner insurance requires an insured to repair, rebuild or replace damaged or lost property in order to collect the full replacement cost for the property, the insurer shall, subject to the policy limits:

(a) Allow an insured to repair, rebuild or replace damaged or lost property:

(A) In not fewer than 12 months after the date of the insurer's initial payment toward the cash value of the property that was damaged or lost; or

(B) In not fewer than 24 months after the date of the insurer's initial payment toward the cash value of the primary dwelling of the insured that was damaged or lost, if the damage or loss:

(i) Occurred in a location that was subject to a declaration of a state of emergency under ORS 401.165 and the damage or loss is directly related to the emergency that was the subject of the declaration[.]; or

(ii) **Was directly related to a fire that was the subject of an order under ORS 476.510 to 476.610.**

(b) Provide additional living expenses to an insured, subject to the policy limits for additional living expenses, for a period of 24 months after the date of the damage or loss to the insured's primary dwelling if the damage or loss occurred in a location that was subject to a declaration of a state of emergency under ORS 401.165 and the damage or loss is directly related to the emergency that was the subject of the declaration.

(c) Add time to each of the periods described in paragraphs (a) and (b) of this subsection in increments of six months for a total period of not more than 24 months under paragraph (a)(A) of this subsection and a total period of not more than 36 months under paragraphs (a)(B) and (b) of this subsection if an insured, acting in good faith and with reasonable diligence, encounters unavoidable delays in obtaining a construction permit, lacks necessary construction materials, lacks available contractors to perform necessary work or encounters other circumstances beyond the insured's control.

(3) Subsection (2) of this section does not prohibit an insurer from allowing an insured additional time to collect the full replacement cost for lost or damaged property or for additional living expenses.

(4) A policy of homeowner insurance may not limit or deny a payment of the replacement cost or building code upgrade cost, including a payment of any extended replacement cost available under the policy coverage, for an insured's structure that was a total loss on the basis that the insured decided to rebuild in a new location or to purchase an existing structure in a new location if the policy otherwise covers the replacement cost or building code upgrade cost, except that the measure of indemnity may not exceed the replacement cost, building code upgrade cost or extended replacement cost for repairing, rebuilding or replacing the structure at the original location of the loss.

SECTION 4. An insurance company may not use a map published by an agency of this state that identifies areas of wildfire risk or exposure as a basis for:

(1) Canceling or declining to renew a homeowner insurance policy; or

(2) Increasing a premium for a homeowner insurance policy.

Passed by Senate March 21, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House April 25, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

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Approved:

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Tina Kotek, Governor

Filed in Office of Secretary of State:

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