



The Agents' Advocate

Oregon Government Relations News – Professional Insurance Agents of Oregon/Idaho
Prepared exclusively for PIAO/I Members by Lana Butterfield, CIC, PIAO/I Oregon Lobbyist
June 21, 2005

Fees and Borderline Policy Premiums: PIAO/I wants our members to be aware of a clarification on charging of fees. In considering the ability to charge fees in lieu of commissions on policies over \$100,000, the Division recently provided an answer regarding borderline policy premiums.

The hypothetical example is this: client has a policy with \$109,000 premium including a 10% agent commission. They would like to pursue a conversation regarding the producer charging a fee in lieu of commission. The producer calls the company and asks for quote net commissions. The company responds with a quote of $(\$109,000 - [10\% \text{ of } \$109,000] \$10,900 =) \$98,100$. Analysis says that \$98,100 is less than \$100,000 so by the rules, producer could not charge a fee.

The Division agrees with this analysis. Since the **premium paid** would be less than \$100,000, the producer could not sell the policy net of commission and collect a service fee instead. The applicable statutory provision, ORS 744.091(1)(c), appears to consider the premium actually paid as the relevant standard ("Insurance on a commercial or public entity paying combined annual premiums of less than \$100,000 for the insurance"). In the example above, the premium actually paid would be less than \$100,000.

Articles Feature Construction Defect Issue: A broad and balanced set of articles in *The Oregonian* on June 18, 19 and 20, 2005 has just been published regarding the construction defect issue. Go to www.oregonlive.com to find the stories, or email me at lanab@teleport.com for more information.

SB 1070, which sets up a Construction Contractors Risk Management Council similar to attorneys' Professional Liability Fund, has not yet received a hearing in Senate Rules. The bill by itself did not appear to be moving, but the newspaper articles have stirred up some controversy. A task force to study the broader subject may become a last-minute political maneuver. When we have more information we will notify you.

More Bills Signed: Below is a cumulative list of bills that PIAO/I is tracking that have been signed by the Governor. Legislative Counsel provides the effective date in its processing, and I've included that when it becomes available.

The asterisks marked are bills to which I'd like to call your attention.

- **SB 574-A** allows builders to present home warranties at the time a deed of sale is recorded. Any home warranty then applies to subsequent owners, both as benefit and burden.
- **SB 923-A** (UIM recovery), **SB 924-A** (stolen vehicle), **SB 925** (UIM coverage for occupants with similar UIM coverage) and **SB 926-A** (bankrupt insurers) are part of an Oregon Law Commission package that was heavily negotiated between trial lawyers and the insurance industry.
- **HB 2719-A** extends the nonrenewal notice period on commercial policies from 30 to 45 days.

The summaries provided (written by Legislative Counsel) should not be relied upon for operational decisions and do not constitute legal advice. If a bill appears to relate to your business interests, please evaluate it for yourself or seek legal counsel.

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Professional Insurance Agents of Oregon Oregon Legislative Bills Tracked by PIA/O Signed by Governor as of 6-18-05

SB 37-B Unemployment insurance tax liabilities

<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0037.b.pdf>

Business/Employment

Allows Director of Employment Department to transfer to and assess against reorganized business entity certain unemployment insurance tax liabilities. Defines "reorganized business entity."

SB 70 Impairment of drivers

<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0070.intro.pdf>

Transportation/Traffic Safety

Makes person ineligible for driving privileges if person is affected by mental or physical condition or impairment that affects person's ability to safely operate motor vehicle. Standardizes medical language related to driving privileges. Effective date, January 1, 2006.

SB 72 Protective headgear standards

<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0072.intro.pdf>

Transportation/Traffic Safety

Requires Department of Transportation to establish protective headgear standards and specifications that conform with national standards and specifications. Effective date, January 1, 2006.

SB 73 Reinstatement fee for suspended driving privileges

<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0073.intro.pdf>

Transportation/Traffic Safety

Waives reinstatement fee for suspended driving privileges when Department of Transportation determines that person was in compliance with requirements of court prior to effective date of suspension. Declares emergency, effective on passage. Effective date, May 31, 2005.

SB 74-A Replacement driver license
<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0074.a.pdf>
Transportation/Traffic Safety

Allows Department of Transportation to determine by rule when to issue replacement driver license, permit or identification card with different distinguishing number from license, permit or card being replaced.

SB 76-A Allows parent to request cancellation of underage driver's license
<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0076.a.pdf>
Transportation/Traffic Safety

Allows any parent or legal guardian of person under 18 years of age to request cancellation of driving privileges of person. Eliminates signatory authority of employer for purpose of making person under 18 years of age eligible for driving privileges. Effective date, January 1, 2006.

SB 78 Accident reports
<http://www.leg.state.or.us/05reg/measpdf/sb0001.dir/sb0078.intro.pdf>
Property/Casualty

Requires drivers to submit certain accident reports to Department of Transportation. Effective date, January 1, 2006.

SB 172 WC - Date for reconsideration period
<http://www.leg.state.or.us/05reg/measpdf/sb0100.dir/sb0172.intro.pdf>
Workers' Compensation

Changes date for beginning reconsideration period for workers' compensation claim when reconsideration is requested by insurer or self-insured employer. Authorizes Director of Department of Consumer and Business Services to impose civil penalty for violation of certain statutes. Repeals authority of employer to require preemployment physical by doctor designated by director.

SB 177-A Liability of forest fire fighters
<http://www.leg.state.or.us/05reg/measpdf/sb0100.dir/sb0177.a.pdf>
Property/Casualty

Specifies that employees of forest protective associations or persons acting as agents of forest protective associations, when fighting fires at direction of forester, are agents of public body for purposes of tort actions.

Effective date, January 1, 2006.

SB 178 Driver training
<http://www.leg.state.or.us/05reg/measpdf/sb0100.dir/sb0178.intro.pdf>
Transportation/Traffic Safety

Allows person to provide training or education in driving of motor vehicles without

commercial driver training school certificate or driver training instructor certificate if person provides limited education or training for specialized purpose.
Effective date, January 1, 2006.

SB 207 Cancellation return receipt for electronic records
<http://www.leg.state.or.us/05reg/measpdf/sb0200.dir/sb0207.intro.pdf>
Property/Casualty

Requires insurance company to receive return receipt when canceling or terminating certain types of insurance by electronic record.
Effective date, January 1, 2006.

SB 259 Nonprofit corp. electronic meetings
<http://www.leg.state.or.us/05reg/measpdf/sb0200.dir/sb0259.intro.pdf>
Business/Employment

Permits boards of directors of nonprofit corporations to use electronic means to meet and to make decisions.
Effective date, January 1, 2006.

SB 367-A Requires seat belts on some buses and vans
<http://www.leg.state.or.us/05reg/measpdf/sb0300.dir/sb0367.a.pdf>
Transportation/Traffic Safety

Requires drivers and passengers in privately owned commercial vehicles designed and used to transport 15 or fewer persons to use safety belts. Exempts taxicab operators from requirement. Places liability on passengers for failure to ensure proper use of child safety systems.

SB 448-A Exempts nonprofit vehicles from motor carrier laws
<http://www.leg.state.or.us/05reg/measpdf/sb0400.dir/sb0448.a.pdf>
Transportation/Traffic Safety

Exempts from motor carrier laws vehicles used for public transportation purposes approved by district school board, vehicles used in transportation of persons for hire by nonprofit entity regardless of distance traveled and government vehicles owned or operated as carriers of persons for hire. Declares emergency, effective on passage.

***SB 574-A** Construction contract warranties
<http://www.leg.state.or.us/05reg/measpdf/sb0500.dir/sb0574.a.pdf>
Property/Casualty

Authorizes contractor who builds new structure to present for recording written warranty agreement between contractor and original owner to facilitate handling of construction defects and express warranties.
Effective date, January 1, 2006

SB 837-A Requirements for public body self-insurance

<http://www.leg.state.or.us/05reg/measpdf/sb0800.dir/sb0837.a.pdf>

Property/Casualty

Establishes requirements for public bodies self-insuring for tort liability or property damage.

Effective date, January 1, 2006.

***SB 923-A** OR Law Commission - UIM recovery

<http://www.leg.state.or.us/05reg/measpdf/sb0900.dir/sb0923.a.pdf>

Property/Casualty

Permits recovery under insured's uninsured motorist coverage when insured's uninsured motorist coverage limits equal liability coverage limits of person at fault for bodily injury or death and insured recovers less than amount of insured's uninsured motorist coverage benefits under applicable liability insurance policy.

***SB 924-A** OR Law Commission - stolen vehicle

<http://www.leg.state.or.us/05reg/measpdf/sb0900.dir/sb0924.a.pdf>

Property/Casualty

Modifies definition of "uninsured vehicle" for uninsured motorist coverage to include stolen vehicle.

***SB 925** OR Law Commission - UIM coverage for occupants with similar UIM coverage

<http://www.leg.state.or.us/05reg/measpdf/sb0900.dir/sb0925.intro.pdf>

Property/Casualty

Provides that when insured is injured while occupying vehicle not owned by named insured, uninsured motorist coverage of insured is excess coverage.

***SB 926-A** OR Law Commission - bankrupt insurers

<http://www.leg.state.or.us/05reg/measpdf/sb0900.dir/sb0926.a.pdf>

Property/Casualty

Modifies definition of "uninsured vehicle" for uninsured motorist coverage to include vehicle for which insurance company writing liability coverage at time of accident becomes bankrupt more than two years after accident giving rise to claim.

HB 2063 Clarifies certain health insurance statutes.

<http://www.leg.state.or.us/05reg/measpdf/hb2000.dir/hb2063.intro.pdf>

Life/Health

Deletes obsolete references to medical savings accounts. Clarifies certain health insurance statutes.

HB 2091-A WC claims review process

<http://www.leg.state.or.us/05reg/measpdf/hb2000.dir/hb2091.a.pdf>

Workers' Compensation

Modifies review process of certain decisions by Director of Department of Consumer and Business Services in workers' compensation claims.

Effective date January 1, 2006.

HB 2094-A Extended term license renewal

<http://www.leg.state.or.us/05reg/measpdf/hb2000.dir/hb2094.a.pdf>

Business/Employment

Authorizes agencies to offer extended-term licenses with terms of two, three, four or five years. Requires adjustment to license fee to prevent loss of revenue. Requires that agency offering extended term increase continuing education requirements as necessary to ensure no reduction in those requirements by reason of extended term.

Effective date January 1, 2006.

HB 2106-A Replacement driver licenses

<http://www.leg.state.or.us/05reg/measpdf/hb2100.dir/hb2106.a.pdf>

Transportation/Traffic Safety

Allows Department of Transportation to establish by rule reasons for issuing replacement driver license, driver permit or identification card. Declares emergency, effective on passage.

Effective date May 18, 2005.

HB 2116 Highway speed establishment

<http://www.leg.state.or.us/05reg/measpdf/hb2100.dir/hb2116.intro.pdf>

Transportation/Traffic Safety

Allows Department of Transportation to establish, or delegate authority to establish, designated speed on highways by process established by rule. Declares emergency, effective on passage.

Effective date May 25, 2005.

HB 2294 WC claims procedures for new or omitted medical conditions

<http://www.leg.state.or.us/05reg/measpdf/hb2200.dir/hb2294.intro.pdf>

Workers' Compensation

Clarifies procedures related to workers' compensation claims for new or omitted medical conditions. Establishes hearing rights for orders issued under own motion authority of Workers' Compensation Board.

HB 2405-A WC aggravation claims forms

<http://www.leg.state.or.us/05reg/measpdf/hb2400.dir/hb2405.a.pdf>

Workers' Compensation

Requires aggravation claims for workers' compensation injuries to be established by submission of form signed by worker or worker's representative and by attending physician.

Effective date January 1, 2006.

HB 2497 Mandate on gynecological-related exams

<http://www.leg.state.or.us/05reg/measpdf/hb2400.dir/hb2497.intro.pdf>

Life/Health

Continues required health insurance coverage for pregnancy and childbirth expenses, mammograms, pelvic examinations and Pap smear examinations. Declares emergency, effective on passage.

Effective date May 18, 2006.

HB 2718 Public utility WC coverage in surplus market

<http://www.leg.state.or.us/05reg/measpdf/hb2700.dir/hb2718.intro.pdf>

Workers' Compensation

Authorizes certain public utilities to obtain workers' compensation excess insurance coverage from eligible surplus lines insurers.

***HB 2719-A** Commercial nonrenewal period

<http://www.leg.state.or.us/05reg/measpdf/hb2700.dir/hb2719.a.pdf>

Property/Casualty

Modifies notice requirements for insurers prior to renewal or nonrenewal of commercial liability policies.

Effective date January 1, 2006.

Questions? Contact Lana Butterfield, 503/682-3839 or lanab@teleport.com

Request paper copy of bills from Legislature's Publications and Distribution: (503) 986-1187