

REPORT OF THE  
LEGISLATIVE INTERIM COMMITTEE ON  
THE JUDICIARY:  
INSURANCE AND ARSON



SUBMITTED TO  
MEMBERS OF THE SIXTY-FIRST LEGISLATIVE ASSEMBLY  
  
IN ACCORDANCE WITH HOUSE JOINT RESOLUTION 52  
SIXTIETH LEGISLATIVE ASSEMBLY

DECEMBER 1980

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December 1980

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ACQUISITIONS

TO: The Presiding Officers and Members of the  
Sixty-First Legislative Assembly

It is with pleasure that I forward for your consideration the Report of the Joint Interim Committee on the Judiciary. This report reflects the combined work of the Subcommittees on Insurance and on Arson. The recommendations are the result of careful deliberation, first by the appropriate subcommittee and then by the full interim committee.

On behalf of the committee, I want to thank the Legislative Counsel and the Legislative Research offices for their valuable assistance to the committee, and to thank all those members of the public, too numerous to mention individually, who helped the committee identify the problems and develop the solutions discussed in this report. I also want to thank the members of the committee for their diligent, patient and competent work.

Sincerely,

Vern Cook  
Chairperson

U.S. Department of Justice  
National Institute of Justice

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INTRODUCTION

Introduction

The Joint Interim Committee on the Judiciary concentrated its efforts in two major areas, the evidence code and insurance practices. The study of insurance practices grew out of increased legislative concern regarding rising premiums, policy cancellations and other consumer related problems coming to the Legislature's attention during the past several years.

In the course of its study, specific problems came to the attention of the Subcommittee on Insurance and the Subcommittee on Arson. Their resolution and findings produced five legislative proposals and the findings of fact. The bills developed by the Subcommittee on Insurance address the issues of (1) consumer information services, (2) products liability reporting requirements, (3) personal injury protection insurance for motorcycles and (4) underinsurance. The Subcommittee on Arson that was formed to address the special problems of insurance companies with respect to their arson reporting requirements produced a bill that streamlines that area of the law.

Findings of Fact

The Subcommittee on Insurance focused on the factual determination of whether the automobile insurance market is competitive and whether underwriting and rating practices are reasonable and adequately based on statistical data. The subcommittee examined the way that different companies use rating factors such as age, sex, marital status, extent of driving experience, driving record and minor factors such as whether the driver smokes. Testimony showed that the predictive accuracy in ratemaking is enhanced by the use of as many factors as possible. Taken to its logical, theoretical extreme, a risk category for each individual would yield the most accurate assessment of each individual's risk and therefore the proper premium that should be charged. In the absence of prohibitively expensive individual risk rating, insurance companies take the major, easily verifiable factors and develop a formula that will reasonably predict their expected losses with a minimum of administrative costs. Insurance companies vary in how they weigh the rating factors. That, coupled with the differences in clientele that the companies seek through their underwriting policies, produces significantly different prices for premiums. The competitiveness of the insurance companies does not appear to be matched by consumer awareness of price differentials. While consumer information services may be feasible, they are not presently offered by the Insurance Division.

Oregon's file and use system of reporting costs and coverages to the Insurance Division enhances the responsiveness of insurance companies to the market and to their developing data by reducing the time needed to adjust rates. That responsiveness, in turn, bolsters competition among insurance providers. After reviewing the testimony and evidence, the Joint Interim Committee on the Judiciary adopted the following Findings of Fact:

Findings of Fact

After reviewing the automobile insurance underwriting and rating practices in Oregon, we find that there is significant competition among insurance companies. It is encouraged by Oregon's file and use system but limited by consumer knowledge and awareness. Underwriting and rating practices appear to be statistically accurate in terms of the risks posed by different categories of purchasers. There was no evidence that the

FINDINGS OF FACT

criteria used were not based on a reasonable, mathematical analysis of the market. As rating criteria, age, sex and marital status as used in current practice appear to be reasonably accurate indicators of risk. The Subcommittee on Insurance did not address the issue of insurance companies' investment income.

CONSUMER INFORMATION

Consumer Information

The consumer information bill adds to the Insurance Commissioner's duties the duty to provide information to consumers that will encourage comparative shopping. A heightened awareness on the part of the consumer public would enhance the competitiveness of the market, which is a fundamental, general goal of the Insurance Division. Testimony was heard indicating that a computerized system of comparing rates for specific risk categories may be feasible. Other strategies may also be feasible. This bill gives the Insurance Commissioner the discretion to determine the most practical way to inform the public and to improve the competitiveness of the marketplace.

A BILL FOR

AN ACT

Relating to insurance.

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

Section 1. Section 2 of this Act is added to and made a part of ORS 743.003 to 743.930.

SECTION 2. The commissioner shall provide consumer information to purchasers of motor vehicle insurance that will enable them to compare rates, underwriting practices and services of insurers.

Product Liability Insurance Reporting Requirements

The product liability insurance reporting bill makes the collection of product liability insurance data easier and more rational. Instead of having the Insurance Commissioner provide reporting forms, the statute calls for the commissioner to prescribe forms (subsection (1)).

Instead of requiring certain data that would have to be collated and aggregated by the commissioner, the statute requires summary data (subsections (3) and (4)).

Other changes in the bill remove redundancies in sources of information (subsections (1) and (5)) and expand the data base to include claims made against residents of the state but are disposed of elsewhere (subsection (2)).

A BILL FOR

AN ACT

Relating to product liability insurance reporting requirements; amending

ORS 743.723.

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

Section 1. ORS 743.723 is amended to read:

743.723. (1) Every insurer authorized to transact business in this state and providing product liability insurance shall, on or before the first day of [January] May of each year [or within 60 days thereafter], file with the commissioner a report containing the information specified in this section. Such report shall be made upon forms [provided] prescribed by the commissioner and shall contain the name of the insurance company and the name of all other companies associated with the company submitting the report, either as a holding company, parent company, wholly owned subsidiary [,] or division [or through interlocking directorates].

PRODUCT LIABILITY INSURANCE

(2) When filing the report required under subsection (1) of this section, each insurer shall provide, for the period January 1 to December 31 of the year next preceding the filing of the report, information relating to any claim or action for damages for personal injury, death or property damage claimed to have been caused by a defect in an insured's product under a product liability policy, if the claim resulted in a final judgment in any amount, a settlement in any amount or a final disposition not resulting in payment on behalf of the insured. Every insurer authorized to transact business in this state shall be subject to the provisions of this subsection in regard to claims adjudicated, settled or [disposition made] disposed of pursuant to the laws of this state or against residents of this state.

(3) When a claim described in subsection (2) of this section has been made against an insurer, the report of that insurer required under subsection (1) of this section shall contain:

- (a) The name and address of the insured or the insurer's claim number or file number;
- (b) The type of product;
- (c) Rating classification code of [products] product liability coverage;
- (d) The date of occurrence which created the claim, including the state or other jurisdiction under whose jurisdiction the claim was adjudicated, settled or [disposition made] disposed of;
- (e) Date of suit, if filed;
- (f) Date and amount of judgment or settlement, if any, and the number of parties involved in the distribution of such judgment or settlement and the amount received by each;

PRODUCT LIABILITY INSURANCE

(g) Date and reason for final disposition if no judgment or settlement;

(h) A summary of the occurrence which created the claim; and

[(i) Total number of claims;]

[(j) Total claims closed without payment;]

[(k) Total claims closed with payment;]

[(L) Total number of payments;]

[(m) Total number of suits filed;]

[(n) Total number of verdicts or judgments for defendants;]

[(o) Total number of verdicts or judgments for plaintiffs;]

[(p) Total amounts for plaintiffs; and]

[(q)] (i) Such other information as the commissioner may require.

[(4) With respect to amounts paid in claims for the year next preceding the filing of each annual report required under subsection (1) of this section, each shall provide the following information:]

[(a) Total amounts reserved with respect to those claims;]

[(b) The year in which the reserves were set; and]

[(c) The amounts set in each year.]

(4) The insurer shall also report in summary form the reserves established initially for the claims reported under subsection (3) of this section and, separately for each subsequent year, the reserves subsequently established for such claims.

[(5) Any published annual reports to shareholders or policyholders shall be submitted with the report required under subsection (1) of this section.]

PRODUCT LIABILITY INSURANCE

[(6)] (5) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer reporting under ORS 30.115, 30.920, 30.925, 743.720 and this section, its agents or employees, the commissioner or the commissioner's employees for any action taken under ORS 30.115, 30.920, 30.925, 743.720 and this section.

[(7)] (6) The commissioner shall make the reports required under ORS 30.115, 30.920, 30.925, 743.720 and this section available to the public in a manner which will not reveal the names of any person, manufacturer or seller involved.

[(8)] (7) The reports required by this section shall not be admissible in evidence in any trial of a [products] product liability civil action.

MOTORCYCLE PIP COVERAGE

Motorcycle Personal Injury Protection Insurance

Personal injury protection insurance pays for first person hospital, medical, disability and funeral benefits. ORS 743.800 requires that every motor vehicle liability policy issued in Oregon that covers any motor vehicle other than motorcycles, off-road vehicles or farm machinery must include PIP coverage. The Oregon Supreme Court ruled in Garrow v. Pennsylvania General Insurance Co., 40 Or App 23, 288 Or 215 (1979), that a family household member injured in a motorcycle accident is entitled to PIP benefits from an automobile insurance policy in the household. This means that insurance companies must now anticipate their liability associated with motorcycle usage by all their automobile insureds and raise their rates to cover those costs. A household having only motorcycle vehicles is unaffected by the court decisions and PIP coverage for them remains optional. In the present situation, automobile insureds will be absorbing other people's motorcycle PIP costs while many motorcycles, which need PIP coverage more than other vehicles, will remain uncovered. This bill amends ORS 743.800 to delete motorcycles' exemption from being required to purchase PIP coverage.

The committee proposed the elimination of motorcycles' exemption from mandatory PIP coverage after reviewing exhibits and testimony concerning the frequency and causes of motorcycle accidents and the manner in which the costs of those accidents are borne. The committee found that motorcycle usage is precisely the type of activity that ought to be insured: a high risk venture associated with catastrophic losses that few responsible individuals could financially bear by themselves.

Oregon has about 100,000 registered motorcycles, or 5% of all motor vehicles. Motorcycles are driven proportionally fewer miles, 1 to 1.2%, but produce roughly 10% of all fatalities. Over the last 10 years, motorcycle registration has risen 11%, the accident rate has grown 13% and the death rate has gone up 18%. The losses that these figures represent are made more obvious by comparison with automobile accident rates. Approximately 42.2% of all passenger cars involved in accidents produce an injury, compared with 87.7% for motorcycles. Automobile accidents produce a fatality 0.8% of the time, compared with 5.3% for motorcycles. Of all incapacitating injuries in Oregon, 12.8% are suffered in motorcycle accidents.

The high frequency of motorcycle accidents and injuries is matched by the severity of the injuries. Of motorcycle accident injuries in 1978, 38% were Class A injuries, compared with 13.7% for all accident injuries. The rate of severe or incapacitating injuries would have been higher but for the fact that the repeal of the helmet law led to fewer people surviving motorcycle accidents. The Motor Vehicles Division reports that most motorcycle accidents involving a motor vehicle were the fault of the motor



vehicle but a high percentage of accidents were single motorcycle accidents.

The costs associated with motorcycle accident injuries in Oregon are difficult to gauge because no comprehensive data has been collected. Hospitals, various health plans, human resource agencies and the Motor Vehicle Accident Fund all absorb direct costs and the human resource agencies absorb the continuing costs of rehabilitation and support. The loss of productivity is impossible to measure but is certainly high, given the clientele group. Using the methodology of the U.S. Department of Transportation, the annual societal costs of motorcycle accidents in Oregon is \$26,857,222, based on an estimated societal cost per incapacitating injury of just under \$40,000.

Public Assistance does not directly provide insurance for needy motorcyclists but does cover a large proportion of their hospitalization costs. It is estimated that 40% go to welfare for assistance following a motorcycle accident. Of those victims receiving public assistance, 72% are on General Assistance, which is entirely paid for with state funds and 95% of those on GA are there because of the motorcycle accident. The other 28% of those receiving assistance receive Aid to Dependent Children. The Welfare Recovery Unit analyzed 12 cases and found that the costs to Adult and Family Services ranged for \$0 to \$12,681 for a total of \$33,602. If there had been PIP coverage of \$5,000, the state would have saved, in medical care alone, approximately \$1,658/case for a total direct cost of \$414,000. PIP wage loss benefits would have saved the state even more.

The Motor Vehicle Accident Fund theoretically pays the first \$3,000 for indigent accident victims but is seriously backlogged. It is estimated that 13% of their claims related to motorcycles in 1978-79 with a projected cost of \$105,307. PIP resources would significantly reduce their backlog.

Data on hospital's costs are not collected separately by vehicle type and therefore only the roughest guesses can be made about what proportion of the costs are absorbed by various sources. An estimate is that 80% of the hospitalization cost is borne by health plans and 20% is covered by the Motor Vehicle Accident Fund. Blue Cross admitted that they pick up a large portion of motorcycle costs because their no-fault exclusion does not apply to motorcycles. Present PIP usage is minimal for motorcycles. St. Vincent's Hospital reports that only 2 out of 1,600 motorcyclists have had PIP coverage. Emanuel reported an average of one motorcyclist a year with PIP.

A BILL FOR

AN ACT

Relating to insurance; and amending ORS 743.800.

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

Section 1. ORS 743.800 is amended to read:

743.800. Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle [other than a moped or motorcycle] shall provide to the person insured thereunder and members of that person's family residing in the same household injured in a motor vehicle accident, passengers injured while occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle, the following hospital, medical, disability and funeral benefits for each accident:

(1) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the accident, in the amount of \$5,000 per person; and

(2) All reasonable and necessary funeral expenses incurred within one year after the date of the accident, in the amount of \$1,000 per person; and

(3) If the injured person is usually engaged in a remunerative occupation, 70 percent of the loss of income from work during the period of disability if the disability continues for at least 14 days and ending on the date the injured person is able to return to the person's usual occupation; or

(4) If the injured person is not usually engaged in a remunerative occupation, the expenses reasonably incurred for essential services in lieu of those the injured person would have performed without income during the period of disability if the disability continues for at least 14 days and

MOTORCYCLE PIP COVERAGE

ending on the date the injured person is reasonably able to perform such essential services.

(5) As used in ORS 743.800 to 743.835:

(a) "Income" includes, but is not limited to, salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm.

(b) "Motor vehicle" means a self-propelled land motor vehicle or trailer, other than:

(A) A farm type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads;

(B) A vehicle operated on rails or crawler-treads; or

(C) A vehicle located for use as a residence or premises.

(c) "Occupying" means in, or upon, or entering into or alighting from.

(d) "Pedestrian" means a person while not occupying a self-propelled vehicle.

(e) "Personal injury protection benefits" means the benefits required by this section and ORS 743.805.

(f) "Private passenger motor vehicle" means a two-wheel, three-wheel or four-wheel passenger or station wagon type motor vehicle not used as a public or livery conveyance, and includes any [other] four-wheel motor vehicle of the utility, pickup body, sedan delivery or panel truck type not used for wholesale or retail delivery other than farming, a self-propelled mobile home, and a farm truck.

UNDERINSURANCE

Underinsurance

The underinsurance bill is designed to fill a potential gap in insurance coverage, where a defendant's insurance is insufficient to cover the verdict and the plaintiff's uninsured motorist coverage is barred by the fact that the defendant had some (but not enough) insurance coverage.

Underinsurance would be included in those uninsured motorist coverages that are larger than what is required by law and would provide benefits above what is available from the defendant's policy, up to the limits of the uninsured motorist policy.

A BILL FOR

AN ACT

Relating to insurance; amending ORS 743.789.

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

Section 1. ORS 743.789 is amended to read:

743.789. (1) Every motor vehicle liability policy insuring against loss suffered by any natural person resulting from liability imposed by law for bodily injury or death arising out of the ownership, maintenance or use of a motor vehicle shall provide uninsured motorist coverage therein or by indorsement thereon when such policy is either:

(a) Issued for delivery in this state; or

(b) Issued or delivered by an insurer doing business in this state with respect to any motor vehicle then principally used or principally garaged in this state.

(2) The insurer issuing such policy shall offer one or more options of uninsured motorist coverage larger than the amounts prescribed to meet the requirements of ORS chapter 486, up to the limits provided under the policy for motor vehicle bodily injury liability insurance. Offers of uninsured

UNDERINSURANCE

motorist coverage larger than the amounts required by ORS chapter 486 shall include underinsurance coverage for damages or death caused by accident and arising out of the ownership, maintenance or use of a motor vehicle that is insured for an amount that is less than the insured's uninsured motorist coverage. Underinsurance benefits shall be equal to uninsured motorist coverage benefits less the amount recovered from other automobile liability insurance policies.

ARSON REPORTING LAW

Arson Reporting Law

The arson reporting bill restates arson reporting requirements of insurance companies, assures their immunity for actions taken in complying with the reporting requirements, grants the Insurance Commissioner enforcement powers and revises the Fire Marshal's record keeping requirements. The purpose of the bill is to enhance the free flow of relevant information concerning suspected arson that would help state agencies reduce the incidence of arson. The confidentiality of investigatory materials in the Fire Marshal's records remains neither greater nor lesser than that of a district attorney's investigative files.

Section 1 of the bill cleans up the language concerning the Fire Marshal's record keeping, eliminating the requirement of issuing a daily report, broadening the scope of the records to include nontestimonial evidence and explicitly stating that the Fire Marshal's discretion to withhold information does not extend to obstructing legal discovery procedures.

Section 2 simplifies insurance companies' reporting requirements by limiting it to cases where arson is suspected by an insurance company or where a public entity that is authorized to investigate suspected arson requests relevant information pertaining to a suspicious fire loss. Subsection (4) of the section grants immunity from civil or criminal action to an insurance company or its representatives for actions taken in good faith compliance with the statute's reporting requirements in subsections (1), (2) and (3).

Section 3 gives the Insurance Commissioner enforcement power to compel insurance companies to comply with the bill's reporting requirements.

A BILL FOR

AN ACT

Relating to reports of property fire losses; amending ORS 476.090, 476.270 and 731.418.

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

Section 1. ORS 476.090 is amended to read:

476.090. (1) The State Fire Marshal shall keep [in his office] a record of all fires occurring in this state and of all facts concerning

ARSON REPORTING LAW

the same, including statistics as to the extent of such fires and the damage caused, whether such losses were covered by insurance, and if so, in what amount. [The record shall be made daily from the reports made to him by his assistants.] All such records shall be public, except any testimony, information or other evidence taken in an investigation under [the provisions of] ORS 476.010 to 476.100, 476.210 to 476.270 and 479.180, which [the State Fire Marshal, in his discretion, may withhold from the public] shall be considered investigatory information as described in ORS 192.500(1)(c).

(2) This section shall not apply to forest lands under the jurisdiction of the State Forester.

Section 2. ORS 476.270 is amended to read:

476.270. (1) [Every fire insurance company transacting business in this state must file with the State Fire Marshal, on forms furnished or approved by the State Fire Marshal, a monthly record of fire losses showing the name of the assured, location of the property burned, and the probable cause of fire, the name of the insurer, the name of the adjuster, the date and time of the fire, the occupancy of property burned, construction of building or structure burned, sound value of property involved, actual loss, insurance carried, insurance paid, apportionment of loss where more than one company was on the risk, and, where an automotive vehicle is involved in any fire loss, a description of such machine and, where applicable, like information required as in the case of fires in buildings. In case of a fire of suspicious origin, a preliminary report shall be made immediately through some officer or representative of the insurance company, showing the name of the assured, the date of fire, location, occupancy and facts and circumstances coming to their knowledge tending to establish the cause or origin of the fire.]

ARSON REPORTING LAW

If an insurance company has reason to believe that a fire loss to its assured's real or personal property was caused by incendiary means, the company shall immediately make a report to the office of the State Fire Marshal. The report shall indicate the name of the assured, the date of the fire, location, occupancy, and facts and circumstances coming to the company's knowledge, tending to establish the cause or origin of the fire.

(2) All persons making an adjustment occasioned by any fire loss in this state shall send to the State Fire Marshal, on a form prescribed by the State Fire Marshal, a report of [a copy of] the final adjustment, immediately after the same has been made, signed by the person making such adjustment [, and on a form prescribed by the State Fire Marshal].

(3) Any federal, state or local public official or authorized agent thereof having legal authority to investigate a fire loss of real or personal property may request any insurance company to provide relevant information in its possession pertaining to that loss. Upon request, the company shall release such information to the official who requests it. For purposes of this subsection, "relevant information" means information having any tendency to make the existence of any fact that is of consequence to the investigation more probable or less probable.

(4) In the absence of fraud or malice, no insurance company or its authorized representative shall be liable for damages in a civil action or subject to criminal prosecution for the release of information required by subsections (1), (2) and (3) of this section.

Section 3. ORS 731.418 is amended to read:

731.418. (1) The commissioner may refuse to continue or may suspend or revoke an insurer's certificate of authority if [he] the commissioner finds after a hearing that the insurer:

ARSON REPORTING LAW

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(a) Has violated or failed to comply with any lawful order of the commissioner, or any provision of the Insurance Code other than those for which suspension or revocation is mandatory.

(b) Is in unsound condition, or in such condition or using such methods and practices in the conduct of its business, as to render its further transaction of insurance in this state hazardous or injurious to its policyholders or to the public.

(c) Has failed, after written request by the commissioner, to remove or discharge an officer or director who has been convicted in any jurisdiction of an offense which, if committed in this state, constitutes a misdemeanor involving moral turpitude or a felony, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of [his] the conviction shall be conclusive evidence.

(d) Is affiliated with and under the same general management, interlocking directorate or ownership as another insurer that transacts direct insurance in this state without having a certificate of authority therefor, except as permitted under the Insurance Code.

(e) Refuses to be examined; or its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(f) Has failed to pay any final judgment rendered against it in this state upon any policy, bond, recognizance or undertaking issued or guaranteed by it, within 30 days after the judgment became final, or within 30 days after time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

ARSON REPORTING LAW

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(g) Fails to comply with subsection (1) of ORS 743.925.

(h) Has failed to comply with subsection (1) of ORS 656.451 or subsections (1), (2) or (3) of ORS 476.270.

(2) Without advance notice or a hearing thereon, the commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state.

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Fire Marshal's report form . . . . . Exhibit L, 3/15/80  
Arson statistics . . . . . Exhibits C & J,  
3/15/80  
Staff Memo . . . . . Exhibit A, 5/16/80

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**END**