

SENATE AMENDMENTS TO SENATE BILL 118

By COMMITTEE ON COMMERCE

April 6

- 1 On page 1 of the printed bill, line 2, delete "742.260,".
- 2 Delete lines 5 through 28 and delete pages 2 through 18 and insert:
- 3 "**SECTION 1.** ORS 746.600 is amended to read:
- 4 "746.600. As used in ORS 746.600 to 746.690:
- 5 "(1)(a) 'Adverse underwriting decision' means any of the following actions with respect to in-
- 6 surance transactions involving insurance coverage that is individually underwritten:
- 7 "(A) A declination of insurance coverage.
- 8 "(B) A termination of insurance coverage.
- 9 "(C) Failure of an insurance producer to apply for insurance coverage with a specific insurer
- 10 that the insurance producer represents and that is requested by an applicant.
- 11 "(D) In the case of life or health insurance coverage, an offer to insure at higher than standard
- 12 rates.
- 13 "(E) In the case of individual health insurance coverage, an offer to insure the applicant under
- 14 a health benefit plan other than the health benefit plan initially elected by the applicant.
- 15 "(F) In the case of individual health insurance coverage, an offer to insure the applicant under
- 16 a health benefit plan that imposes a waiver of coverage for one or more preexisting conditions for
- 17 a period of time that is greater than six months and less than 24 months following the applicant's
- 18 effective date of coverage.
- 19 "(G) In the case of [*other kinds of*] insurance coverage **other than life or health insurance**
- 20 **coverage:**
- 21 "(i) Placement by an insurer or insurance producer of a risk with a residual market mechanism,
- 22 an unauthorized insurer or an insurer that specializes in substandard risks.
- 23 "(ii) The charging of a higher rate on the basis of information that differs from that which the
- 24 applicant or policyholder furnished.
- 25 "(iii) An increase in any charge imposed by the insurer for any personal insurance in connection
- 26 with the underwriting of insurance. For purposes of this sub-subparagraph, the imposition of a ser-
- 27 vice fee is not a charge.
- 28 "(b) 'Adverse underwriting decision' does not mean any of the following actions, but the insurer
- 29 or insurance producer responsible for the occurrence of the action must nevertheless provide the
- 30 applicant or policyholder with the specific reason or reasons for the occurrence:
- 31 "(A) The termination of an individual policy form on a class or statewide basis.
- 32 "(B) A declination of insurance coverage solely because the coverage is not available on a class
- 33 or statewide basis.
- 34 "(C) The rescission of a policy.
- 35 "(2) 'Affiliate of' a specified person or 'person affiliated with' a specified person means a person

1 who directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is
2 under common control with, the person specified.

3 “(3) ‘Applicant’ means a person who seeks to contract for insurance coverage, other than a
4 person seeking group insurance coverage that is not individually underwritten.

5 “(4) ‘Consumer’ means an individual, or the personal representative of the individual, who seeks
6 to obtain, obtains or has obtained one or more insurance products or services from a licensee that
7 are to be used primarily for personal, family or household purposes, and about whom the licensee
8 has personal information.

9 “(5) ‘Consumer report’ means any written, oral or other communication of information bearing
10 on a natural person’s creditworthiness, credit standing, credit capacity, character, general reputa-
11 tion, personal characteristics or mode of living that is used or expected to be used in connection
12 with an insurance transaction.

13 “(6) ‘Consumer reporting agency’ means a person that, for monetary fees or dues, or on a co-
14 operative or nonprofit basis:

15 “(a) Regularly engages, in whole or in part, in assembling or preparing consumer reports;

16 “(b) Obtains information primarily from sources other than insurers; and

17 “(c) Furnishes consumer reports to other persons.

18 “(7) ‘Control’ means, and the terms ‘controlled by’ or ‘under common control with’ refer to, the
19 possession, directly or indirectly, of the power to direct or cause the direction of the management
20 and policies of a person, whether through the ownership of voting securities, by contract other than
21 a commercial contract for goods or nonmanagement services, or otherwise, unless the power of the
22 person is the result of a corporate office held in, or an official position held with, the controlled
23 person.

24 “(8) ‘Covered entity’ means:

25 “(a) A health insurer;

26 “(b) A health care provider that transmits any health information in electronic form to carry
27 out financial or administrative activities in connection with a transaction covered by ORS 746.607
28 or by rules adopted under ORS 746.608; or

29 “(c) A health care clearinghouse.

30 “(9) ‘Credit history’ means any written or other communication of any information by a con-
31 sumer reporting agency that:

32 “(a) Bears on a consumer’s creditworthiness, credit standing or credit capacity; and

33 “(b) Is used or expected to be used, or collected in whole or in part, as a factor in determining
34 eligibility, premiums or rates for personal insurance.

35 “(10) ‘Customer’ means a consumer who has a continuing relationship with a licensee under
36 which the licensee provides one or more insurance products or services to the consumer that are
37 to be used primarily for personal, family or household purposes.

38 “(11) ‘Declination of insurance coverage’ or ‘decline coverage’ means a denial, in whole or in
39 part, by an insurer or insurance producer of an application for requested insurance coverage.

40 “(12) ‘Health care’ means care, services or supplies related to the health of an individual.

41 “(13) ‘Health care operations’ includes but is not limited to:

42 “(a) Quality assessment, accreditation, auditing and improvement activities;

43 “(b) Case management and care coordination;

44 “(c) Reviewing the competence, qualifications or performance of health care providers or health
45 insurers;

1 “(d) Underwriting activities;
2 “(e) Arranging for legal services;
3 “(f) Business planning;
4 “(g) Customer services;
5 “(h) Resolving internal grievances;
6 “(i) Creating de-identified information; and
7 “(j) Fundraising.
8 “(14) ‘Health care provider’ includes but is not limited to:
9 “(a) A psychologist, occupational therapist, clinical social worker, professional counselor or
10 marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist,
11 occupational therapist, clinical social worker, professional counselor or marriage and family thera-
12 pist;
13 “(b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed
14 under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician
15 assistant or acupuncturist;
16 “(c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of
17 the nurse or nursing home administrator;
18 “(d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
19 “(e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the
20 dental hygienist or denturist;
21 “(f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an em-
22 ployee of the speech-language pathologist or audiologist;
23 “(g) An emergency medical technician certified under ORS chapter 682;
24 “(h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
25 “(i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
26 physician;
27 “(j) A naturopathic physician licensed under ORS chapter 685 or an employee of the
28 naturopathic physician;
29 “(k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
30 therapist;
31 “(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
32 entry midwife;
33 “(m) A physical therapist licensed under ORS 688.010 to 688.220 or an employee of the physical
34 therapist;
35 “(n) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the
36 radiologic technologist;
37 “(o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the
38 respiratory care practitioner;
39 “(p) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
40 “(q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;
41 “(r) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
42 service practitioner;
43 “(s) A health care facility as defined in ORS 442.015;
44 “(t) A home health agency as defined in ORS 443.005;
45 “(u) A hospice program as defined in ORS 443.850;

1 “(v) A clinical laboratory as defined in ORS 438.010;
2 “(w) A pharmacy as defined in ORS 689.005;
3 “(x) A diabetes self-management program as defined in ORS 743.694; and
4 “(y) Any other person or entity that furnishes, bills for or is paid for health care in the normal
5 course of business.
6 “(15) ‘Health information’ means any oral or written information in any form or medium that:
7 “(a) Is created or received by a covered entity, a public health authority, a life insurer, a school,
8 a university or a health care provider that is not a covered entity; and
9 “(b) Relates to:
10 “(A) The past, present or future physical or mental health or condition of an individual;
11 “(B) The provision of health care to an individual; or
12 “(C) The past, present or future payment for the provision of health care to an individual.
13 “(16) ‘Health insurer’ means:
14 “(a) An insurer who offers:
15 “(A) A health benefit plan as defined in ORS 743.730;
16 “(B) A short term health insurance policy, the duration of which does not exceed six months
17 including renewals;
18 “(C) A student health insurance policy;
19 “(D) A medicare supplemental policy; or
20 “(E) A dental only policy.
21 “(b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board
22 under ORS 735.600 to 735.650.
23 “(17) **‘Homeowner insurance’ means insurance for residential property consisting of a**
24 **combination of property insurance and casualty insurance that provides coverage for the**
25 **risks of owning or occupying a dwelling.**
26 “[(17)] (18) ‘Individual’ means a natural person who:
27 “(a) In the case of life or health insurance, is a past, present or proposed principal insured or
28 certificate holder;
29 “(b) In the case of other kinds of insurance, is a past, present or proposed named insured or
30 certificate holder;
31 “(c) Is a past, present or proposed policyowner;
32 “(d) Is a past or present applicant;
33 “(e) Is a past or present claimant; or
34 “(f) Derived, derives or is proposed to derive insurance coverage under an insurance policy or
35 certificate that is subject to ORS 746.600 to 746.690.
36 “[(18)] (19) ‘Individually identifiable health information’ means any oral or written health infor-
37 mation that is:
38 “(a) Created or received by a covered entity or a health care provider that is not a covered
39 entity; and
40 “(b) Identifiable to an individual, including demographic information that identifies the individ-
41 ual, or for which there is a reasonable basis to believe the information can be used to identify an
42 individual, and that relates to:
43 “(A) The past, present or future physical or mental health or condition of an individual;
44 “(B) The provision of health care to an individual; or
45 “(C) The past, present or future payment for the provision of health care to an individual.

1 “[(19)] (20) ‘Institutional source’ means a person or governmental entity that provides informa-
2 tion about an individual to an insurer, insurance producer or insurance-support organization, other
3 than:

4 “(a) An insurance producer;

5 “(b) The individual who is the subject of the information; or

6 “(c) A natural person acting in a personal capacity rather than in a business or professional
7 capacity.

8 “[(20)] (21) ‘Insurance producer’ or ‘producer’ means a person licensed by the Director of the
9 Department of Consumer and Business Services as a resident or nonresident insurance producer.

10 “[(21)] (22) ‘Insurance score’ means a number or rating that is derived from an algorithm, com-
11 puter application, model or other process that is based in whole or in part on credit history.

12 “[(22)(a)] (23)(a) ‘Insurance-support organization’ means a person who regularly engages, in
13 whole or in part, in assembling or collecting information about natural persons for the primary
14 purpose of providing the information to an insurer or insurance producer for insurance transactions,
15 including:

16 “(A) The furnishing of consumer reports to an insurer or insurance producer for use in con-
17 nection with insurance transactions; and

18 “(B) The collection of personal information from insurers, insurance producers or other
19 insurance-support organizations for the purpose of detecting or preventing fraud, material misrep-
20 resentation or material nondisclosure in connection with insurance underwriting or insurance claim
21 activity.

22 “(b) ‘Insurance-support organization’ does not mean insurers, insurance producers, governmental
23 institutions or health care providers.

24 “[(23)] (24) ‘Insurance transaction’ means any transaction that involves insurance primarily for
25 personal, family or household needs rather than business or professional needs and that entails:

26 “(a) The determination of an individual’s eligibility for an insurance coverage, benefit or pay-
27 ment; or

28 “(b) The servicing of an insurance application, policy or certificate.

29 “[(24)] (25) ‘Insurer’ has the meaning given that term in ORS 731.106.

30 “[(25)] (26) ‘Investigative consumer report’ means a consumer report, or portion of a consumer
31 report, for which information about a natural person’s character, general reputation, personal
32 characteristics or mode of living is obtained through personal interviews with the person’s neigh-
33 bors, friends, associates, acquaintances or others who may have knowledge concerning such items
34 of information.

35 “[(26)] (27) ‘Licensee’ means an insurer, insurance producer or other person authorized or re-
36 quired to be authorized, or licensed or required to be licensed, pursuant to the Insurance Code.

37 “(28) **‘Loss history report’ means a report provided by, or a database maintained by, an**
38 **insurance-support organization or consumer reporting agency that contains information re-**
39 **garding the claims history of the individual property that is the subject of the application for**
40 **a homeowner insurance policy or the consumer applying for a homeowner insurance policy.**

41 “[(27)] (29) ‘Nonaffiliated third party’ means any person except:

42 “(a) An affiliate of a licensee;

43 “(b) A person that is employed jointly by a licensee and by a person that is not an affiliate of
44 the licensee; and

45 “(c) As designated by the director by rule.

1 “[28] (30) ‘Payment’ includes but is not limited to:
2 “(a) Efforts to obtain premiums or reimbursement;
3 “(b) Determining eligibility or coverage;
4 “(c) Billing activities;
5 “(d) Claims management;
6 “(e) Reviewing health care to determine medical necessity;
7 “(f) Utilization review; and
8 “(g) Disclosures to consumer reporting agencies.
9 “[29)(a)] (31)(a) ‘Personal financial information’ means:
10 “(A) Information that is identifiable with an individual, gathered in connection with an insur-
11 ance transaction from which judgments can be made about the individual’s character, habits,
12 avocations, finances, occupations, general reputation, credit or any other personal characteristics;
13 or
14 “(B) An individual’s name, address and policy number or similar form of access code for the in-
15 dividual’s policy.
16 “(b) ‘Personal financial information’ does not mean information that a licensee has a reasonable
17 basis to believe is lawfully made available to the general public from federal, state or local gov-
18 ernment records, widely distributed media or disclosures to the public that are required by federal,
19 state or local law.
20 “[30] (32) ‘Personal information’ means:
21 “(a) Personal financial information;
22 “(b) Individually identifiable health information; or
23 “(c) Protected health information.
24 “[31] (33) ‘Personal insurance’ means the following types of insurance products or services that
25 are to be used primarily for personal, family or household purposes:
26 “(a) Private passenger automobile coverage;
27 “(b) [Homeowners] **Homeowner**, mobile homeowners, manufactured homeowners, condominium
28 owners and renters coverage;
29 “(c) Personal dwelling property coverage;
30 “(d) Personal liability and theft coverage, including excess personal liability and theft coverage;
31 and
32 “(e) Personal inland marine coverage.
33 “[32] (34) ‘Personal representative’ includes but is not limited to:
34 “(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with
35 authority to make medical and health care decisions;
36 “(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or 127.700
37 to 127.737 to make health care decisions or mental health treatment decisions; and
38 “(c) A person appointed as a personal representative under ORS chapter 113.
39 “[33] (35) ‘Policyholder’ means a person who:
40 “(a) In the case of individual policies of life or health insurance, is a current policyowner;
41 “(b) In the case of individual policies of other kinds of insurance, is currently a named insured;
42 or
43 “(c) In the case of group policies of insurance under which coverage is individually underwrit-
44 ten, is a current certificate holder.
45 “[34] (36) ‘Pretext interview’ means an interview wherein the interviewer, in an attempt to

1 obtain personal information about a natural person, does one or more of the following:

2 “(a) Pretends to be someone the interviewer is not.

3 “(b) Pretends to represent a person the interviewer is not in fact representing.

4 “(c) Misrepresents the true purpose of the interview.

5 “(d) Refuses upon request to identify the interviewer.

6 “[35] (37) ‘Privileged information’ means information that is identifiable with an individual and
7 that:

8 “(a) Relates to a claim for insurance benefits or a civil or criminal proceeding involving the
9 individual; and

10 “(b) Is collected in connection with or in reasonable anticipation of a claim for insurance ben-
11 efits or a civil or criminal proceeding involving the individual.

12 “[36)(a)] (38)(a) ‘Protected health information’ means individually identifiable health information
13 that is transmitted or maintained in any form of electronic or other medium by a covered entity.

14 “(b) ‘Protected health information’ does not mean individually identifiable health information in:

15 “(A) Education records covered by the federal Family Educational Rights and Privacy Act (20
16 U.S.C. 1232g);

17 “(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

18 “(C) Employment records held by a covered entity in its role as employer.

19 “[37] (39) ‘Residual market mechanism’ means an association, organization or other entity in-
20 volved in the insuring of risks under ORS 735.005 to 735.145, 737.312 or other provisions of the In-
21 surance Code relating to insurance applicants who are unable to procure insurance through normal
22 insurance markets.

23 “[38] (40) ‘Termination of insurance coverage’ or ‘termination of an insurance policy’ means
24 either a cancellation or a nonrenewal of an insurance policy, in whole or in part, for any reason
25 other than the failure of a premium to be paid as required by the policy.

26 “[39] (41) ‘Treatment’ includes but is not limited to:

27 “(a) The provision, coordination or management of health care; and

28 “(b) Consultations and referrals between health care providers.

29 “**SECTION 2.** ORS 746.600, as amended by section 4, chapter 590, Oregon Laws 2003, and sec-
30 tion 7, chapter 599, Oregon Laws 2003, is amended to read:

31 “746.600. As used in ORS 746.600 to 746.690:

32 “(1)(a) ‘Adverse underwriting decision’ means any of the following actions with respect to in-
33 surance transactions involving insurance coverage that is individually underwritten:

34 “(A) A declination of insurance coverage.

35 “(B) A termination of insurance coverage.

36 “(C) Failure of an insurance producer to apply for insurance coverage with a specific insurer
37 that the insurance producer represents and that is requested by an applicant.

38 “(D) In the case of life or health insurance coverage, an offer to insure at higher than standard
39 rates.

40 “(E) In the case of [other kinds of] insurance coverage **other than life or health insurance**
41 **coverage:**

42 “(i) Placement by an insurer or insurance producer of a risk with a residual market mechanism,
43 an unauthorized insurer or an insurer that specializes in substandard risks.

44 “(ii) The charging of a higher rate on the basis of information that differs from that which the
45 applicant or policyholder furnished.

1 “(iii) An increase in any charge imposed by the insurer for any personal insurance in connection
2 with the underwriting of insurance. For purposes of this sub-subparagraph, the imposition of a ser-
3 vice fee is not a charge.

4 “(b) ‘Adverse underwriting decision’ does not mean any of the following actions, but the insurer
5 or insurance producer responsible for the occurrence of the action must nevertheless provide the
6 applicant or policyholder with the specific reason or reasons for the occurrence:

7 “(A) The termination of an individual policy form on a class or statewide basis.

8 “(B) A declination of insurance coverage solely because the coverage is not available on a class
9 or statewide basis.

10 “(C) The rescission of a policy.

11 “(2) ‘Affiliate of’ a specified person or ‘person affiliated with’ a specified person means a person
12 who directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is
13 under common control with, the person specified.

14 “(3) ‘Applicant’ means a person who seeks to contract for insurance coverage, other than a
15 person seeking group insurance coverage that is not individually underwritten.

16 “(4) ‘Consumer’ means an individual, or the personal representative of the individual, who seeks
17 to obtain, obtains or has obtained one or more insurance products or services from a licensee that
18 are to be used primarily for personal, family or household purposes, and about whom the licensee
19 has personal information.

20 “(5) ‘Consumer report’ means any written, oral or other communication of information bearing
21 on a natural person’s creditworthiness, credit standing, credit capacity, character, general reputa-
22 tion, personal characteristics or mode of living that is used or expected to be used in connection
23 with an insurance transaction.

24 “(6) ‘Consumer reporting agency’ means a person that, for monetary fees or dues, or on a co-
25 operative or nonprofit basis:

26 “(a) Regularly engages, in whole or in part, in assembling or preparing consumer reports;

27 “(b) Obtains information primarily from sources other than insurers; and

28 “(c) Furnishes consumer reports to other persons.

29 “(7) ‘Control’ means, and the terms ‘controlled by’ or ‘under common control with’ refer to, the
30 possession, directly or indirectly, of the power to direct or cause the direction of the management
31 and policies of a person, whether through the ownership of voting securities, by contract other than
32 a commercial contract for goods or nonmanagement services, or otherwise, unless the power of the
33 person is the result of a corporate office held in, or an official position held with, the controlled
34 person.

35 “(8) ‘Covered entity’ means:

36 “(a) A health insurer;

37 “(b) A health care provider that transmits any health information in electronic form to carry
38 out financial or administrative activities in connection with a transaction covered by ORS 746.607
39 or by rules adopted under ORS 746.608; or

40 “(c) A health care clearinghouse.

41 “(9) ‘Credit history’ means any written or other communication of any information by a con-
42 sumer reporting agency that:

43 “(a) Bears on a consumer’s creditworthiness, credit standing or credit capacity; and

44 “(b) Is used or expected to be used, or collected in whole or in part, as a factor in determining
45 eligibility, premiums or rates for personal insurance.

1 “(10) ‘Customer’ means a consumer who has a continuing relationship with a licensee under
2 which the licensee provides one or more insurance products or services to the consumer that are
3 to be used primarily for personal, family or household purposes.

4 “(11) ‘Declination of insurance coverage’ or ‘decline coverage’ means a denial, in whole or in
5 part, by an insurer or insurance producer of an application for requested insurance coverage.

6 “(12) ‘Health care’ means care, services or supplies related to the health of an individual.

7 “(13) ‘Health care operations’ includes but is not limited to:

8 “(a) Quality assessment, accreditation, auditing and improvement activities;

9 “(b) Case management and care coordination;

10 “(c) Reviewing the competence, qualifications or performance of health care providers or health
11 insurers;

12 “(d) Underwriting activities;

13 “(e) Arranging for legal services;

14 “(f) Business planning;

15 “(g) Customer services;

16 “(h) Resolving internal grievances;

17 “(i) Creating de-identified information; and

18 “(j) Fundraising.

19 “(14) ‘Health care provider’ includes but is not limited to:

20 “(a) A psychologist, occupational therapist, clinical social worker, professional counselor or
21 marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist,
22 occupational therapist, clinical social worker, professional counselor or marriage and family thera-
23 pist;

24 “(b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed
25 under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician
26 assistant or acupuncturist;

27 “(c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of
28 the nurse or nursing home administrator;

29 “(d) A dentist licensed under ORS chapter 679 or an employee of the dentist;

30 “(e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the
31 dental hygienist or denturist;

32 “(f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an em-
33 ployee of the speech-language pathologist or audiologist;

34 “(g) An emergency medical technician certified under ORS chapter 682;

35 “(h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

36 “(i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
37 physician;

38 “(j) A naturopathic physician licensed under ORS chapter 685 or an employee of the
39 naturopathic physician;

40 “(k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
41 therapist;

42 “(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
43 entry midwife;

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45 therapist;

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2 radiologic technologist;

3 “(o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the
4 respiratory care practitioner;

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8 service practitioner;

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16 course of business.

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19 a university or a health care provider that is not a covered entity; and

20 “(b) Relates to:

21 “(A) The past, present or future physical or mental health or condition of an individual;

22 “(B) The provision of health care to an individual; or

23 “(C) The past, present or future payment for the provision of health care to an individual.

24 “(16) ‘Health insurer’ means:

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33 under ORS 735.600 to 735.650.

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35 **combination of property insurance and casualty insurance that provides coverage for the**
36 **risks of owning or occupying a dwelling.**

37 “[17] (18) ‘Individual’ means a natural person who:

38 “(a) In the case of life or health insurance, is a past, present or proposed principal insured or
39 certificate holder;

40 “(b) In the case of other kinds of insurance, is a past, present or proposed named insured or
41 certificate holder;

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5 entity; and

6 “(b) Identifiable to an individual, including demographic information that identifies the individ-
7 ual, or for which there is a reasonable basis to believe the information can be used to identify an
8 individual, and that relates to:

9 “(A) The past, present or future physical or mental health or condition of an individual;

10 “(B) The provision of health care to an individual; or

11 “(C) The past, present or future payment for the provision of health care to an individual.

12 “[19] (20) ‘Institutional source’ means a person or governmental entity that provides informa-
13 tion about an individual to an insurer, insurance producer or insurance-support organization, other
14 than:

15 “(a) An insurance producer;

16 “(b) The individual who is the subject of the information; or

17 “(c) A natural person acting in a personal capacity rather than in a business or professional
18 capacity.

19 “[20] (21) ‘Insurance producer’ or ‘producer’ means a person licensed by the Director of the
20 Department of Consumer and Business Services as a resident or nonresident insurance producer.

21 “[21] (22) ‘Insurance score’ means a number or rating that is derived from an algorithm, com-
22 puter application, model or other process that is based in whole or in part on credit history.

23 “[22)(a)] (23)(a) ‘Insurance-support organization’ means a person who regularly engages, in
24 whole or in part, in assembling or collecting information about natural persons for the primary
25 purpose of providing the information to an insurer or insurance producer for insurance transactions,
26 including:

27 “(A) The furnishing of consumer reports to an insurer or insurance producer for use in con-
28 nection with insurance transactions; and

29 “(B) The collection of personal information from insurers, insurance producers or other
30 insurance-support organizations for the purpose of detecting or preventing fraud, material misrep-
31 resentation or material nondisclosure in connection with insurance underwriting or insurance claim
32 activity.

33 “(b) ‘Insurance-support organization’ does not mean insurers, insurance producers, governmental
34 institutions or health care providers.

35 “[23] (24) ‘Insurance transaction’ means any transaction that involves insurance primarily for
36 personal, family or household needs rather than business or professional needs and that entails:

37 “(a) The determination of an individual’s eligibility for an insurance coverage, benefit or pay-
38 ment; or

39 “(b) The servicing of an insurance application, policy or certificate.

40 “[24] (25) ‘Insurer’ has the meaning given that term in ORS 731.106.

41 “[25] (26) ‘Investigative consumer report’ means a consumer report, or portion of a consumer
42 report, for which information about a natural person’s character, general reputation, personal
43 characteristics or mode of living is obtained through personal interviews with the person’s neigh-
44 bors, friends, associates, acquaintances or others who may have knowledge concerning such items
45 of information.

1 “[26] (27) ‘Licensee’ means an insurer, insurance producer or other person authorized or re-
2 quired to be authorized, or licensed or required to be licensed, pursuant to the Insurance Code.

3 “(28) **‘Loss history report’ means a report provided by, or a database maintained by, an**
4 **insurance-support organization or consumer reporting agency that contains information re-**
5 **garding the claims history of the individual property that is the subject of the application for**
6 **a homeowner insurance policy or the consumer applying for a homeowner insurance policy.**

7 “[27] (29) ‘Nonaffiliated third party’ means any person except:

8 “(a) An affiliate of a licensee;

9 “(b) A person that is employed jointly by a licensee and by a person that is not an affiliate of
10 the licensee; and

11 “(c) As designated by the director by rule.

12 “[28] (30) ‘Payment’ includes but is not limited to:

13 “(a) Efforts to obtain premiums or reimbursement;

14 “(b) Determining eligibility or coverage;

15 “(c) Billing activities;

16 “(d) Claims management;

17 “(e) Reviewing health care to determine medical necessity;

18 “(f) Utilization review; and

19 “(g) Disclosures to consumer reporting agencies.

20 “[29)(a)] (31)(a) ‘Personal financial information’ means:

21 “(A) Information that is identifiable with an individual, gathered in connection with an insur-
22 ance transaction from which judgments can be made about the individual’s character, habits,
23 avocations, finances, occupations, general reputation, credit or any other personal characteristics;
24 or

25 “(B) An individual’s name, address and policy number or similar form of access code for the in-
26 dividual’s policy.

27 “(b) ‘Personal financial information’ does not mean information that a licensee has a reasonable
28 basis to believe is lawfully made available to the general public from federal, state or local gov-
29 ernment records, widely distributed media or disclosures to the public that are required by federal,
30 state or local law.

31 “[30] (32) ‘Personal information’ means:

32 “(a) Personal financial information;

33 “(b) Individually identifiable health information; or

34 “(c) Protected health information.

35 “[31] (33) ‘Personal insurance’ means the following types of insurance products or services that
36 are to be used primarily for personal, family or household purposes:

37 “(a) Private passenger automobile coverage;

38 “(b) [*Homeowners*] **Homeowner**, mobile homeowners, manufactured homeowners, condominium
39 owners and renters coverage;

40 “(c) Personal dwelling property coverage;

41 “(d) Personal liability and theft coverage, including excess personal liability and theft coverage;
42 and

43 “(e) Personal inland marine coverage.

44 “[32] (34) ‘Personal representative’ includes but is not limited to:

45 “(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with

1 authority to make medical and health care decisions;

2 “(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or 127.700
3 to 127.737 to make health care decisions or mental health treatment decisions; and

4 “(c) A person appointed as a personal representative under ORS chapter 113.

5 “[33] (35) ‘Policyholder’ means a person who:

6 “(a) In the case of individual policies of life or health insurance, is a current policyowner;

7 “(b) In the case of individual policies of other kinds of insurance, is currently a named insured;

8 or

9 “(c) In the case of group policies of insurance under which coverage is individually underwrit-
10 ten, is a current certificate holder.

11 “[34] (36) ‘Pretext interview’ means an interview wherein the interviewer, in an attempt to
12 obtain personal information about a natural person, does one or more of the following:

13 “(a) Pretends to be someone the interviewer is not.

14 “(b) Pretends to represent a person the interviewer is not in fact representing.

15 “(c) Misrepresents the true purpose of the interview.

16 “(d) Refuses upon request to identify the interviewer.

17 “[35] (37) ‘Privileged information’ means information that is identifiable with an individual and
18 that:

19 “(a) Relates to a claim for insurance benefits or a civil or criminal proceeding involving the
20 individual; and

21 “(b) Is collected in connection with or in reasonable anticipation of a claim for insurance ben-
22 efits or a civil or criminal proceeding involving the individual.

23 “[36)(a)] (38)(a) ‘Protected health information’ means individually identifiable health information
24 that is transmitted or maintained in any form of electronic or other medium by a covered entity.

25 “(b) ‘Protected health information’ does not mean individually identifiable health information in:

26 “(A) Education records covered by the federal Family Educational Rights and Privacy Act (20
27 U.S.C. 1232g);

28 “(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

29 “(C) Employment records held by a covered entity in its role as employer.

30 “[37] (39) ‘Residual market mechanism’ means an association, organization or other entity in-
31 volved in the insuring of risks under ORS 735.005 to 735.145, 737.312 or other provisions of the In-
32 surance Code relating to insurance applicants who are unable to procure insurance through normal
33 insurance markets.

34 “[38] (40) ‘Termination of insurance coverage’ or ‘termination of an insurance policy’ means
35 either a cancellation or a nonrenewal of an insurance policy, in whole or in part, for any reason
36 other than the failure of a premium to be paid as required by the policy.

37 “[39] (41) ‘Treatment’ includes but is not limited to:

38 “(a) The provision, coordination or management of health care; and

39 “(b) Consultations and referrals between health care providers.

40 “**SECTION 3. Sections 4 to 6 of this 2005 Act are added to and made a part of ORS 746.600
41 to 746.690.**

42 “**SECTION 4. (1) When a consumer applies for a homeowner insurance policy or the re-
43 newal of a homeowner insurance policy, an insurer may not use:**

44 “(a) **The prior claim experience of the consumer or of the insured property that occurred
45 more than five years preceding the date of application to determine whether to issue or re-**

1 new the policy or to determine rates or other terms and conditions of the policy. This para-
2 graph does not apply when the insurer uses the prior claim experience of the consumer or
3 of the insured property for the purpose of providing a discount to the consumer or for the
4 purpose of continuing coverage at the time of renewal.

5 “(b) The first claim of the consumer or of the insured property that occurred within five
6 years preceding the date of application to determine whether to issue or renew the policy.

7 “(c) Any claim experience of the insured property that occurred prior to purchase by the
8 consumer regarding a risk that the consumer demonstrates has been mitigated to determine
9 whether to issue or renew the policy or to determine rates or other terms and conditions
10 of the policy. For purposes of this paragraph, a risk is mitigated if the consumer has fully
11 restored the damaged property and has repaired, replaced, restored or eliminated the condi-
12 tion, system or use of the property that was the underlying cause of the loss.

13 “(d) An inquiry by any means by the consumer to the insurer or to an insurance pro-
14 ducer regarding the terms, conditions or coverage of an insurance policy, including an in-
15 quiry about an actual loss or claim filing process, to determine whether to issue or renew
16 the policy or to determine rates or other terms and conditions of the policy if the consumer
17 is not making a claim as part of the inquiry. An insurer or insurance producer may verify
18 whether the consumer is making a claim as part of the inquiry. If the consumer affirms that
19 the inquiry is not a claim, the insurer or insurance producer may rely on the affirmation to
20 rebut a later assertion to the contrary. This paragraph does not apply to an inquiry by a
21 consumer relating to the possibility of a third party claim against the consumer. The Direc-
22 tor of the Department of Consumer and Business Services may adopt rules establishing
23 procedures to implement this paragraph.

24 “(2) Subsection (1) of this section does not apply to a consumer who applies for a home-
25 owner insurance policy or the renewal of a homeowner insurance policy for property in which
26 the consumer does not reside.

27 “(3) Subsection (1) of this section does not prohibit an insurer from taking any under-
28 writing or rating action that is:

29 “(a) Based on the known condition or use of the property;

30 “(b) Based on fraudulent acts of the consumer; or

31 “(c) Otherwise allowed by law.

32 “SECTION 5. (1) Except as provided in subsection (6) of this section, an insurer may
33 cancel a homeowner insurance policy before the expiration of the policy only for one or more
34 of the following reasons:

35 “(a) Nonpayment of premium;

36 “(b) Fraud or material misrepresentation affecting the policy or in the presentation of a
37 claim under the policy;

38 “(c) Violation of any of the terms and conditions of the policy;

39 “(d) Substantial increase in the risk of loss after insurance coverage has been issued or
40 renewed, including but not limited to an increase in exposure to rules, legislation or court
41 decision; or

42 “(e) Determination by the Director of the Department of Consumer and Business Ser-
43 vices that the continuation of a line of insurance or class of business to which the policy
44 belongs will jeopardize an insurer’s solvency or place the insurer in violation of the insurance
45 laws of Oregon or any other state, whether because of a loss or decrease in reinsurance

1 covering the risk or other reason determined by the director.

2 “(2) The insurer shall give the policyholder written notice of the cancellation, including
3 the effective date of the cancellation and the reasons for the cancellation.

4 “(3) The insurer must mail or deliver a notice of cancellation to the policyholder at the
5 last known address of the policyholder:

6 “(a) At least 10 days prior to the effective date of cancellation, if the cancellation is for
7 the reason described in subsection (1)(a) or (b) of this section.

8 “(b) At least 30 days prior to the effective date of cancellation, if the cancellation is for
9 the reason described in subsection (1)(c), (d) or (e) of this section.

10 “(4) An insurer shall mail or deliver to a policyholder, at the address shown in the policy,
11 a notice of renewal or nonrenewal of a homeowner insurance policy at least 30 days prior to
12 the expiration of the policy period. This subsection does not apply when the policy is in lapse
13 status under the terms of the policy.

14 “(5) Proof of mailing notice of cancellation, renewal or nonrenewal to the policyholder
15 at the address shown in the policy is sufficient proof of notice under this section.

16 “(6) This section does not apply to a homeowner insurance policy that has been in effect
17 fewer than 60 days at the time the notice of cancellation is mailed or delivered by the insurer
18 unless it is a renewal policy. An insurer may not use the fact that a claim was filed on the
19 policy within the 60-day period as a basis for canceling the policy within the 60-day period,
20 for increasing the premium rate or for altering the terms of the policy during the current
21 policy term. An insurer may, within the 60-day period, use any other information consistent
22 with the insurer’s rating or underwriting program, including but not limited to, conditions
23 or uses of the property discovered by the insurer, as a basis for cancellation or for offering
24 to continue coverage at an increased rate or on different terms. At renewal of the policy, the
25 insurer may treat a claim that occurred within the 60-day period the same as any other
26 claim occurring during the policy period for the purposes of rating, nonrenewing and altering
27 the terms of the policy.

28 “SECTION 6. (1) An insurer or insurance producer shall notify a consumer that the
29 insurer or insurance producer will request a loss history report relating to the consumer or
30 property to be insured before the insurer or insurance producer may obtain the report. The
31 notice may be oral, in writing or in the same medium as the medium in which previous
32 communication between the consumer and the insurer or insurance producer has been con-
33 ducted.

34 “(2) An insurance producer may provide a single notice under subsection (1) of this sec-
35 tion to a consumer if the insurance producer makes loss history inquiries of one or more
36 insurers in response to a request by the consumer relating to a homeowner insurance policy.

37 “(3) An insurer that uses loss history reports for underwriting or rating homeowner in-
38 surance shall instruct the insurer’s insurance producers that an insurance producer must
39 notify the consumer that the insurance producer has requested a loss history report before
40 the insurance producer may obtain the report.

41 “(4) An insurer that uses a loss history report of a consumer when considering an ap-
42 plication for a homeowner insurance policy shall notify the consumer during the application
43 process that the consumer may request a free copy of the loss history report from the con-
44 sumer reporting agency and a written statement describing the insurer’s use of the report.
45 The notice to the applicant may be in writing or in the same medium as the medium in which

1 **the application is made. The written statement must contain the following explanations:**

2 **“(a) The ways in which the insurer uses loss history reports;**

3 **“(b) How often the insurer reviews a consumer’s loss history report; and**

4 **“(c) The procedures a consumer may use to obtain additional information.**

5 **“SECTION 7.** ORS 746.650 is amended to read:

6 **“746.650. (1)** In the event of an adverse underwriting decision, the insurer or insurance producer
7 responsible for the decision must:

8 **“(a)** Either provide the [*applicant, policyholder or individual*] **consumer** proposed for coverage
9 with the specific reason or reasons for the adverse underwriting decision in writing or advise the
10 [*person*] **consumer** that upon written request the [*person*] **consumer** may receive the specific reason
11 or reasons in writing; and

12 **“(b)** Provide the [*applicant, policyholder or individual*] **consumer** proposed for coverage with a
13 summary of the rights established under subsection (2) of this section and ORS 746.640 and 746.645.

14 **“(2)** Upon receipt of a written request within 90 business days from the date of the mailing of
15 notice or other communication of an adverse underwriting decision to [*an applicant, policyholder or*
16 *individual*] **a consumer** proposed for coverage, the insurer or insurance producer shall furnish to
17 the [*person*] **consumer** within 21 business days from the date of receipt of the written request:

18 **“(a)** The specific reason or reasons for the adverse underwriting decision, in writing, if this in-
19 formation was not initially furnished in writing pursuant to subsection (1) of this section;

20 **“(b)** The specific items of personal information and privileged information that support these
21 reasons, subject[, *however,*] to the following:

22 **“(A)** The insurer or insurance producer is not required to furnish specific items of privileged
23 information if [*it*] **the insurer or insurance producer** has a reasonable suspicion, based upon spe-
24 cific information available for review by the Director of the Department of Consumer and Business
25 Services, that the [*applicant, policyholder or individual*] **consumer** proposed for coverage has en-
26 gaged in criminal activity, fraud, material misrepresentation or material nondisclosure; and

27 **“(B)** Specific items of individually identifiable health information supplied by a health care pro-
28 vider shall be disclosed either directly to the [*individual*] **consumer** about whom the information
29 relates or to a health care provider designated by the [*individual*] **consumer** and licensed to provide
30 health care with respect to the condition to which the information relates, whichever the insurer
31 or insurance producer prefers; and

32 **“(c)** The names and addresses of the institutional sources that supplied the specific items of in-
33 formation described in paragraph (b) of this subsection. However, the identity of any health care
34 provider must be disclosed either directly to the [*individual*] **consumer** or to the designated health
35 care provider, whichever the insurer or insurance producer prefers.

36 **“(3)** The obligations imposed by this section upon an insurer or insurance producer may be
37 satisfied by another insurer or insurance producer authorized to act on its behalf.

38 **“(4)** When an adverse underwriting decision results solely from an oral request or inquiry, the
39 explanation of reasons and summary of rights required by subsection (1) of this section may be given
40 orally.

41 **“(5)** Notwithstanding subsection (1) of this section, when an adverse underwriting decision is
42 based in whole or in part on credit history or insurance score, the insurer or insurance producer
43 responsible for the decision must provide the [*applicant, policyholder or individual*] **consumer** pro-
44 posed for coverage with the specific reason or reasons for the adverse underwriting decision in
45 writing. The notice must include the following:

1 “(a) A summary of no more than four of the most significant credit reasons for the adverse
2 underwriting decision, listed in decreasing order of importance, that clearly identifies the specific
3 credit history or insurance score used to make the adverse underwriting decision. An insurer or
4 insurance producer may not use ‘poor credit history’ or a similar phrase as a reason for an adverse
5 underwriting decision.

6 “(b) The name, address and telephone number, including a toll-free telephone number, of the
7 consumer reporting agency that provided the information for the consumer report.

8 “(c) A statement that the consumer reporting agency used by the insurer or insurance producer
9 to obtain the credit history of the consumer did not make the adverse underwriting decision and is
10 unable to provide the consumer with specific reasons why the insurer or insurance producer made
11 an adverse underwriting decision.

12 “(d) Information on the right of the consumer:

13 “(A) To obtain a free copy of the consumer’s consumer report from the consumer reporting
14 agency described in paragraph (b) of this subsection, including the deadline, if any, for obtaining a
15 copy; and

16 “(B) To dispute the accuracy or completeness of any information in a consumer report furnished
17 by the consumer reporting agency.

18 “(6) Notwithstanding subsection (1) of this section, an insurer or insurance producer responsible
19 for an adverse underwriting decision that is based in whole or in part on credit history or insurance
20 score must provide the notice [*described in*] **required by** subsection (5) of this section only when the
21 insurer or insurance producer makes the initial adverse underwriting decision regarding a consumer.

22 **“(7) Notwithstanding subsection (1) of this section, when an adverse underwriting deci-**
23 **sion relating to homeowner insurance is based in whole or in part on a loss history report,**
24 **the insurer or insurance producer responsible for the decision must provide the consumer**
25 **proposed for coverage with the specific reason or reasons for the adverse underwriting de-**
26 **cision in writing. The notice must include the following:**

27 **“(a) A description of a specific claim or claims that are the basis for the specific loss**
28 **history report used to make the adverse underwriting decision.**

29 **“(b) The name, address and telephone number, including a toll-free telephone number,**
30 **of the consumer reporting agency that provided the information for the loss history report.**

31 **“(c) A statement that the consumer reporting agency used by the insurer or insurance**
32 **producer to obtain the loss history report of the consumer did not make the adverse under-**
33 **writing decision and is unable to provide the consumer with specific reasons why the insurer**
34 **or insurance producer made an adverse underwriting decision.**

35 **“(d) Information on the right of the consumer:**

36 **“(A) To obtain a free copy of the consumer’s loss history report from the consumer re-**
37 **porting agency described in paragraph (b) of this subsection, including the deadline, if any,**
38 **for obtaining a copy; and**

39 **“(B) To dispute the accuracy or completeness of any information in a loss history report**
40 **furnished by the consumer reporting agency.**

41 **“(8) When an adverse underwriting decision relating to homeowner insurance is based in**
42 **part on credit history and in part on a loss history report, the insurer or insurance producer**
43 **responsible for the adverse underwriting decision may provide the notices required by sub-**
44 **sections (5) and (7) of this section in a single notice.**

45 **“SECTION 8. Sections 4 to 6 of this 2005 Act and the amendments to ORS 746.600 and**

1 **746.650 by sections 1, 2 and 7 of this 2005 Act apply to applications for or renewals of home-**
2 **owner insurance made on or after the effective date of this 2005 Act.”.**
3 _____