

April 16, 2018

OREGON DIVISION OF FINANCIAL REGULATION BULLETIN DFR 2018-3

TO: All Entities Transacting Auto Insurance in Oregon

RE: Action Required by Oregon Auto Insurers

Summary:

This Division of Financial Regulation (DFR) Bulletin provides guidance for auto insurers regarding the new Department of Transportation, Driver and Motor Vehicle Services Division (DMV) rule which allows the election of “X” for not-specified as a person’s sex on their driver license, driver permit, or identification card.

Auto insurers that have rating plans which rate using the sex or gender of the insured are required to accommodate consumers who designate their sex as not-specified. Rating plans, rating systems and applications that do not allow applicants who designate their sex or gender as not-specified to obtain coverage from an insurer will be considered unfairly discriminatory on the basis of sex.

Background, Discussion and Authority:

DMV adopted OAR 735-062-0013 effective July 1, 2017. The rule allows individuals to designate their sex or gender on their driver license as “M” for male, “F” for female, or “X” for not-specified. This action was taken in response to a decision issued by the Multnomah County Circuit Court. *In re Shupe, No.16CV13991 (Or. Multnomah Co. Cir. Ct. June 10, 2016)*.

The Oregon Insurance Code in ORS 742 reinforces DMV law; this new election available for drivers should be mirrored in offerings for insurance in Oregon. The Oregon Insurance Code prohibits unfair discrimination in the availability of insurance and the application of rates.¹ Unfair discrimination includes using the sex, sexual orientation, or marital status, to determine the charging of premiums for a particular insurance policy, unless the characteristic is demonstrably based on reasonable supporting data.²

Application forms should allow the insured to accurately designate the characteristic upon which rating is based. Insurers who ask applicants to indicate sex or gender on the application must allow the applicant to accurately indicate their official sex or gender designation on file with the DMV. Policy applications that do not allow the applicant to accurately indicate non-specified gender or some alternate acceptable terminology must be disapproved in the form review process.³

¹ ORS 746.015(1).

² OAR 836-080-0055.

³ ORS 742.003.

In order to fulfill their obligation under ORS 737.205 to file and support the rates,⁴ rating systems, and rating plans used in Oregon, insurers that use the sex or gender of the insured as a part of their rating plan must file rates for individuals who indicate their sex as not-specified.

Director's expectations for insurers and other regulated entities:

Insurers that currently have filed auto insurance plans that use sex or gender as a rating factor must also file rates for consumers who choose the "not-specified" gender. Rate and form filings should be made to be effective for policies issued or renewed after January 1, 2019. In the interim, insurers who do not have filed rates for the new alternate non-specified gender will need to take steps to accommodate applicants on a non discriminatory basis within their existing rate structure and advise DCBS of that alternate rating basis in an informational filing. The filed rates for not-specified license holders must not be unfairly discriminatory.

All insurers who ask for sex or gender indication on their application forms will need to file revised forms that acknowledge the fact that there is an alternative for consumers that have chosen the not-specified election on their driving record. Coverage should be made available for consumers immediately. Insurers should advise DCBS of the rate and application basis they will use when the need to accommodate a consumer arises. This can be done in an informational SERFF filing until formal rate and form filings can be carried out prior to January 1, 2019. This bulletin takes effect upon publication.

Dated this 16 day of April, 2018 at Salem, Oregon.



Andrew R. Stolfi, Administrator
Division of Financial Regulation
Insurance Commissioner

⁴ ORS 737.310.