OUR VIEW

A move worth making?

Oregon allows insurers to use credit history, gender, marital status, education, profession, employment status and more to determine how much to charge for car insurance.

Are those things directly linked to how well you drive? No.

Do they help insurers gauge how much risk a driver may pose? Insurers believe so.

Two bills earlier this year proposed stripping insurers from being able to use those factors to set premiums. Instead, insurers would have to focus on driving record, miles driven and years of driving experience. Apparently the idea is going to be revived in a bill for the short 2022 session.

Is it the right thing to do? It's not simple.

Gov. Kate Brown and Oregon's Department of Consumer and Business Services backed those bills. Much of the department's argument focused on credit scores. A low credit score can mean a person pays more for insurance even if their driving record is clean. There's also concern that using credit scores can be discriminatory. Black and Latino drivers are more likely than others to have lower credit scores. Similar arguments about discrimination were also made about allowing insurers to use education, employment status and occupation.

The department also challenged the assumption that gender should be considered. For instance, the National Highway Traffic Safety Administration has said that both men and women are equally likely to be distracted drivers. As for marital status, a person is not necessarily a poorer driver because their spouse died or they went through a divorce.

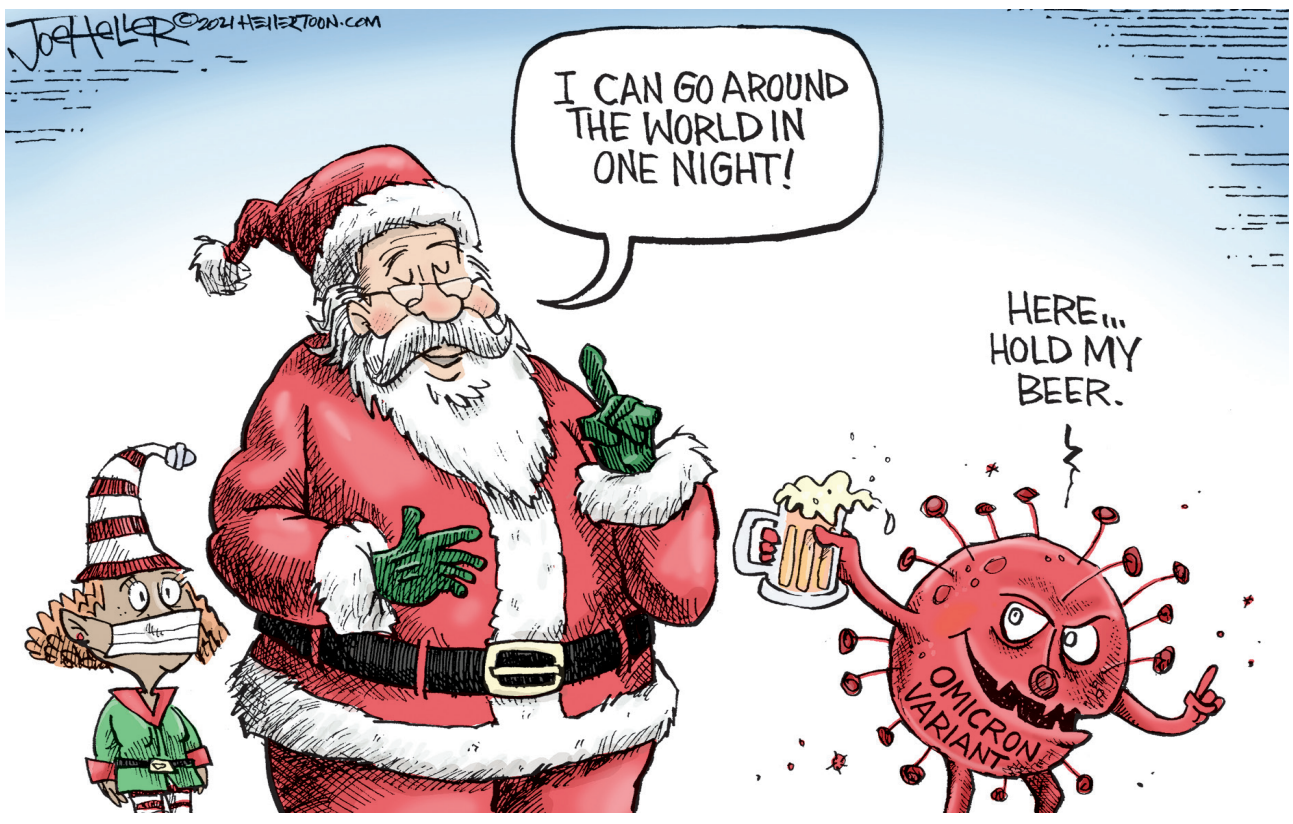
What would such changes mean for the insurance industry? Other states, such as California, have restricted what information insurers can use. The department argued the insurance industry is still strong.

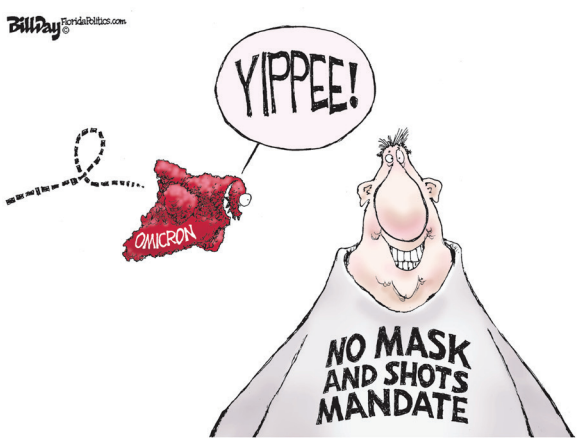
There are, though, other things to consider. It would mean premiums would go up for many Oregonians. The department says people with good or excellent credit ratings would face increases and people with poor credit scores would pay less. "The reduction in cost for people with poor scores is four times the increase in premiums for people with good or excellent scores," according to a chart the department provided.

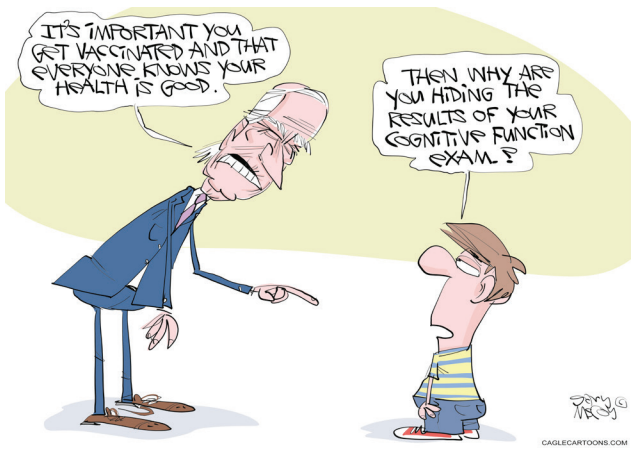
Some people in Oregon also get discounts because of their membership in a labor union or other groups. Those would be eliminated. That's part of the reason the Oregon Coalition of Police and Sheriffs have opposed such changes.

Lawrence Powell, an insurance analyst at the University of Alabama, insisted in testimony to the Legislature the predictors the insurance industry uses are accurate and help match premiums to risk. They aren't perfect. They do help. Occupation and education can help reveal things that are difficult to observe such as risk tolerance. Gender and marital status also can correlate with miles driven, and when and where people drive. He also said if Oregonians purchased their insurance in California, which has many of the policies in the bills, they would have paid more by about 7%.

It's not easy to know who will be a safe driver. Should the state of Oregon dictate how insurance businesses can evaluate drivers? Tell you legislators what you think. You can find them here: oregonlegislature.gov/FindYourLegislator/leg-districts.html.







OTHER VIEWS

Ethics in short supply with DA, state bar

ANNE MORRISON
THINKING OUT LOUD

As an attorney for more than 30 years, I've always appreciated my profession's theoretical adherence to ethical principles. Law students must complete a course in legal ethics; applicants to the bar must demonstrate knowledge of ethical rules; attorneys must take ongoing training in legal ethics.

Of course I understand that those rules are somewhat aspirational. But still, they exist.

The most significant ethical rules address attorney honesty. Oregon's rules prohibit a lawyer from knowingly misstating anything to a tribunal, whether material or not, whether fact or law, whether orally or in writing. Sometimes, failure to make a disclosure is the equivalent of an affirmative misrepresentation.

Complete candor to the court is expected, and "a half-truth or silence can be as much a misrepresentation as a lie." Oregon's Supreme Court has stated, "The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice."

But what if the bar chooses to abandon its longstanding requirement that attorneys always act with the utmost honesty in their conduct as attorneys?

In April 2020, Union County District Attorney Kelsie McDaniel filed a motion to disqualify Judge Wes Williams from hearing criminal cases in Union County. Although no reason is required to disqualify a judge, McDaniel included a gratuitous memorandum describing scores of incidents that she claimed demonstrated Williams' bias against the state and favoritism toward defendants, then immediately contacted The Observer to publicize her allegations.

The problem?

A comparison of the memorandum with transcripts of the actual hearings showed that McDaniel repeatedly misrepresented Williams' rulings — most frequently, by omitting critical context. McDaniel's memorandum charged that Williams showed favoritism for the defendant when he refused to sentence a nine-time DUII defendant to jail — but omitted the jail's concern that the defendant's medical care would nearly deplete the jail's entire medical budget.

The memorandum claimed that Williams exhibited bias against the state when he started a hearing with no prosecutor present — omitting the on-the-record discussion that the prosecutor had silently slipped out of the courtroom without notifying Williams, leaving Williams unaware that the prosecutor was absent. Given that an attorney need not provide any reason to disqualify a judge, McDaniel's purpose in misrepresenting Williams' actions appeared to be to discredit and defame.

In June 2020, I filed a bar complaint alleging that McDaniel made 16 serious misrepresentations in her descriptions of Williams' behavior. The bar addressed just two, and dismissed my complaint. Significantly, the bar did not exonerate McDaniel — it never found that McDaniel's descriptions were accurate or truthful. Instead, the bar dismissed on a technicality, reasoning that because an attorney need not show evidence of bias to remove a judge, the unneeded examples could not be "misrepresentations," even if inaccurate or untrue.

Instead, any factual discrepancies should be viewed as simply reflecting McDaniel's "perspective" of Williams' actions.

The bar's reasoning contradicts longstanding law that prohibits a lawyer from knowingly misstating anything to a tribunal. Instead, the bar has determined that an attorney's duty to be honest is now "contextual." Even if an attorney's portrayal of events is distorted, or inaccurate, or completely made up, she may still present them as fact if she claims that they are the basis for her "perception" of bias. The bar refused to address the charges of dishonesty on the merits, to the detriment of our entire community.

Days after the Oregon Bar decided that, at least sometimes, providing intentionally misleading information to the court and public does not constitute misconduct in Oregon, the New York Supreme Court suspended Rudolph Giuliani's license to practice law because Giuliani made "demonstrably false and misleading statements" to the courts and public. That court noted its inherent duty "to protect the public in its reliance upon the integrity and responsibility of the legal profession":

"When … false statements are made by an attorney, it … erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information. It tarnishes the reputation of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice. Where, as here, the false statements are being made by respondent, acting with the authority of being an attorney, and using his large megaphone, the harm is magnified."

It has been discouraging to learn how little value our own county's district attorney places on the principle of truthfulness. It is even more demoralizing to discover that the ethical standards of our state bar are equally low.

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Anne Morrison is a La Grande resident and retired attorney who has lived in Union County since 2000.

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