

# House Bill 3090

Sponsored by COMMITTEE ON HEALTH CARE

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes Medical Professional Liability Plan to provide participating physicians with insurance coverage. Requires that physicians and podiatric physicians and surgeons participate in plan.

Imposes health insurance surcharge. Requires Director of Department of Consumer and Business Services to collect surcharge.

Establishes Medical Professional Liability Board and Medical Professional Liability Fund. Directs board to establish surcharge percentage based on funding requirements of fund. Directs that collected surcharges be placed in fund. Continuously appropriates moneys in fund to carry out insurance plan.

Imposes annual assessment on physicians who participate in Medical Professional Liability Plan. Provides that amount of assessment is equal to average premium for medical professional liability insurance. Specifies calculation for determining average premium for type of medicine practiced by physician and region in which physician principally practices. Directs that amounts collected under assessment be deposited in Oregon Health Plan Fund.

## A BILL FOR AN ACT

1  
2 Relating to health care; creating new provisions; amending ORS 731.292, 731.836 and 731.840; ap-  
3 propriating money; and providing for revenue raising that requires approval by a three-fifths  
4 majority.

5 Whereas the provision of health care services necessary to the health and safety of the residents  
6 of this state inevitably involves unintended injury to some of the persons receiving the services; and

7 Whereas the method provided by the common law for compensating persons who suffer injury  
8 arising out of the provision of health care services involves long and costly litigation, without  
9 commensurate benefit to the injured person; and

10 Whereas increasing costs of insurance have resulted in limiting access to specialized health  
11 care; and

12 Whereas a statutory system of compensation will provide the best mechanism for balancing  
13 compensation for injuries and the cost and availability of health care for the residents of this state;  
14 and

15 Whereas a Medical Professional Liability Plan will provide fair and adequate compensation for  
16 claims arising out of health care; and

17 Whereas moneys now spent on defensive medicine would be better spent on providing health  
18 care to residents of this state; now, therefore,

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

## MEDICAL PROFESSIONAL LIABILITY PLAN

### **SECTION 1. As used in sections 1 to 11 of this 2007 Act:**

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21  
22  
23 **(1) "Board" means the Medical Professional Liability Board established in section 3 of**  
24 **this 2007 Act.**  
25

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) "Fund" means the Medical Professional Liability Fund established in section 9 of this  
2 2007 Act.

3 (3) "Health care claim" means a civil action arising out of the provision of health care  
4 services by a plan participant and seeking damages arising out of bodily injury or death, in-  
5 cluding emotional injury or distress and loss of consortium.

6 (4) "Health care services" means any health-related services rendered by a plan partic-  
7 ipant.

8 (5) "Physician" means a person who holds a degree of Doctor of Medicine or Doctor of  
9 Osteopathy and who is licensed by the Board of Medical Examiners.

10 (6) "Plan" means the Medical Professional Liability Plan established in section 5 of this  
11 2007 Act.

12 (7) "Plan participant" means a physician, or a podiatric physician and surgeon as defined  
13 in ORS 677.010, who participates in the Medical Professional Liability Plan and any person  
14 listed as an additional insured or named insured under a policy issued by the plan.

15 (8) "Self-insurance arrangement" means any plan, program, contract or other arrange-  
16 ment under which one or more employers, unions or other organizations provide medical  
17 professional liability insurance to their employees or members in this state, either directly  
18 or indirectly through a trust or third party administrator.

19 **SECTION 2.** (1) Except as provided in this section, the Board of Medical Examiners as a  
20 condition of licensing shall require all physicians, and podiatric physicians and surgeons as  
21 defined in ORS 677.010, to participate in the Medical Professional Liability Plan.

22 (2) This section does not apply to any person who is subject to ORS 30.260 to 30.300 or  
23 the Federal Tort Claims Act (28 U.S.C. 2671).

24 **SECTION 3.** (1) The Medical Professional Liability Board is established. The board shall  
25 implement and administer the Medical Professional Liability Plan as provided by sections 1  
26 to 11 of this 2007 Act. The board and the plan are subject to the provisions of ORS 30.260 to  
27 30.300.

28 (2) The board has 11 members. Nine of the members shall be appointed by the Board of  
29 Medical Examiners as follows:

30 (a) Six physician members who are plan participants;

31 (b) One member who is a plan participant and a podiatric physician and surgeon; and

32 (c) Two members who are representatives of medical professional liability insurers and  
33 who have significant experience in and familiarity with the Oregon medical professional li-  
34 ability insurance market.

35 (3) The members appointed under subsection (2) of this section shall appoint to the board  
36 two public members who are not plan participants or representatives of medical professional  
37 liability insurers.

38 (4) The board may elect to self-insure or reinsure any liability of the plan as necessary  
39 to provide the coverage required by sections 1 to 11 of this 2007 Act.

40 **SECTION 4.** The Medical Professional Liability Board shall appoint an administrator for  
41 the Medical Professional Liability Plan. The board shall establish the compensation payable  
42 to the administrator.

43 **SECTION 5.** (1) The Medical Professional Liability Board shall establish a Medical Pro-  
44 fessional Liability Plan. The plan shall provide medical professional liability insurance on a  
45 claims-made basis to plan participants.

1 (2) For all health care claims that are subject to the primary medical professional liabil-  
 2 ity insurance coverage required by section 2 of this 2007 Act, the plan shall provide coverage  
 3 in the amount of \$\_\_\_\_\_ million to one or more claimants for all health care claims against  
 4 a plan participant arising out of a single occurrence.

5 **SECTION 6.** (1) The Medical Professional Liability Plan shall retain counsel, defend, save  
 6 harmless and indemnify a plan participant against any health care claim or demand, whether  
 7 groundless or otherwise, arising out of an alleged act or omission related to the provision  
 8 of health care services rendered by the plan participant.

9 (2) The plan is immune from liability for any claim arising out of an intentional or grossly  
 10 negligent act of a plan participant. A plan participant is liable for intentional and grossly  
 11 negligent acts of the plan participant.

12 **SECTION 7.** (1) The Medical Professional Liability Board shall retain an independent  
 13 consulting firm to make recommendations on the funding requirements for the plan. The  
 14 consulting firm must be a regional or national consulting firm with at least 10 accredited  
 15 casualty actuaries on staff and must possess demonstrated accounting, financial and re-  
 16 search capabilities. The consulting firm must also have experience in the casualty insurance  
 17 industry, particularly in the field of medical professional liability insurance. The board shall  
 18 pay the firm from the Medical Professional Liability Fund.

19 (2) Once each calendar year the board shall establish the surcharge percentage to be  
 20 imposed under section 15 of this 2007 Act, based on the recommendations of the independent  
 21 consulting firm made under subsection (1) of this section, adequate to fund the plan. Upon  
 22 establishing the surcharge amount the board shall give notice to the Director of the De-  
 23 partment of Consumer and Business Services of the surcharge percentage established by the  
 24 board. Any change in the surcharge percentage becomes effective on January 1 of the year  
 25 following the year in which notice is given to the director under this subsection.

26 (3) The consulting firm retained under this section shall annually evaluate and report to  
 27 the board on the funding and reserves necessary to consistently maintain the fiscal viability  
 28 of the Medical Professional Liability Fund.

29 **SECTION 8.** The Medical Professional Liability Board, the Medical Professional Liability  
 30 Plan and the Medical Professional Liability Fund are not subject to ORS chapter 731, 732, 733,  
 31 734, 735, 737, 742, 743, 744, 746, 748 or 750 and are not subject to oversight by the Department  
 32 of Consumer and Business Services.

33 **SECTION 9.** The Medical Professional Liability Fund is established separate and distinct  
 34 from the General Fund. The Medical Professional Liability Fund shall be held in trust by the  
 35 State Treasurer for the benefit of plan participants. The fund is established for the purpose  
 36 of providing coverage under the Medical Professional Liability Plan. Interest earned by the  
 37 Medical Professional Liability Fund shall be credited to the fund. The Medical Professional  
 38 Liability Board shall administer the fund. All amounts in the fund are continuously appro-  
 39 priated to the board and may be used only for the purposes of carrying out the provisions  
 40 of sections 1 to 11 of this 2007 Act.

41 **SECTION 10.** Notwithstanding the provisions of section 5, chapter 781, Oregon Laws 2003,  
 42 any excess or residual moneys remaining in the Rural Medical Liability Reinsurance Fund  
 43 after the State Accident Insurance Fund Corporation has made all payments for which the  
 44 corporation is obligated, other than moneys that are owed to the corporation, shall be  
 45 transferred to the Medical Professional Liability Fund to satisfy costs associated with im-

1 plementing and funding the Medical Professional Liability Plan. In the discretion of the  
2 Medical Professional Liability Board, excess or residual moneys remaining after payment of  
3 costs associated with implementing and funding the plan shall be transferred to the Con-  
4 sumer and Business Services Fund.

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6 **PHYSICIAN ASSESSMENTS**  
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8 **SECTION 11.** (1) The Medical Professional Liability Board shall establish an annual as-  
9 sessment for all physicians who participate in the Medical Professional Liability Plan. The  
10 amount of the assessment shall be equal to the average premium for medical professional  
11 liability insurance charged in Oregon on January 1, 2008, for the type of medicine practiced  
12 by the physician, adjusted as provided in subsection (2) of this section.

13 (2) The board shall establish not less than \_\_\_\_ practice regions in the state. The board  
14 shall conduct an annual study of each of the regions to determine the annual increase or  
15 decrease in health care costs within the region. The board shall annually adjust the amount  
16 of the assessment under this section for physicians who principally practice within the region  
17 in a percentage equal to the percentage increase or decrease in health care costs within each  
18 region.

19 (3) The board shall determine the manner of notifying plan participants of the amount  
20 of the assessment and the deadline for paying assessments.

21 (4) The Medical Professional Liability Board shall notify the Board of Medical Examiners  
22 of any plan participant who fails to make timely payment of the assessment required by this  
23 section, and the Board of Medical Examiners shall suspend the license of the physician, or  
24 podiatric physician and surgeon as defined in ORS 677.010, until such time as the assessment  
25 is paid.

26 (5) All moneys received by the Medical Professional Liability Board under this section  
27 shall be deposited in the Oregon Health Plan Fund.

28  
29 **STUDY**  
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31 **SECTION 12.** The Medical Professional Liability Board shall conduct a study of all issues  
32 relating to the implementation of sections 1 to 11 of this 2007 Act, including a study of the  
33 costs of implementing sections 1 to 11 of this 2007 Act. The board shall make a report to the  
34 Seventy-fifth Legislative Assembly in the manner provided by ORS 192.245 detailing the re-  
35 sults of the study and making such recommendations for changes to sections 1 to 11 of this  
36 2007 Act as the board deems appropriate.

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38 **HEALTH INSURANCE PREMIUM SURCHARGE**  
39

40 **SECTION 13.** Sections 14 to 20 of this 2007 Act are added to and made a part of the In-  
41 surance Code.

42 **SECTION 14.** As used in sections 14 to 20 of this 2007 Act:

43 (1) "Carrier" has the meaning given that term in ORS 743.730.

44 (2) "Gross amount of premiums" has the meaning given that term in ORS 731.808.

45 **SECTION 15.** (1) For the privilege of issuing health insurance in this state, each carrier

1 shall pay a percentage surcharge of the annual gross amount of premiums for health insur-  
2 ance issued by the carrier or the agents of the carrier in this state in an amount determined  
3 under section 7 of this 2007 Act.

4 (2) The Director of the Department of Consumer and Business Services shall adopt rules  
5 that require a carrier to report annually the gross amount of premiums for health insurance  
6 written by the carrier during the calendar year.

7 (3) The surcharge imposed under this section is in addition to and not in lieu of any tax,  
8 assessment or other surcharge imposed on a carrier. An offset against corporate excise  
9 taxes imposed under ORS chapter 317 may not be made for the surcharge imposed under this  
10 section.

11 **SECTION 16.** (1) The surcharge imposed under section 15 of this 2007 Act shall be paid  
12 by a carrier to the Director of the Department of Consumer and Business Services on or  
13 before April 1 of each year.

14 (2) At the time of payment of the surcharge, the carrier shall file a return on a form  
15 prescribed by the director, containing any information required by the director.

16 **SECTION 17.** If a carrier ceases to issue health insurance policies or otherwise ceases  
17 to collect premiums on health insurance policies, the carrier shall determine the amount of  
18 surcharge due under section 15 of this 2007 Act, immediately file a return under section 16  
19 of this 2007 Act reporting the amount of surcharge due and pay the surcharge due.

20 **SECTION 18.** (1) A carrier with a surcharge obligation under section 15 of this 2007 Act  
21 shall prepay the surcharge imposed for the current calendar year if the total surcharge ob-  
22 ligation under section 15 of this 2007 Act for the preceding calendar year was \$400 or more.

23 (2) The Director of the Department of Consumer and Business Services shall credit a  
24 prepayment toward the surcharge obligation of the carrier under section 15 of this 2007 Act  
25 for the current calendar year.

26 (3) The amount of the prepayment shall be based on the gross amount of premiums for  
27 health insurance issued by the carrier during the preceding calendar year and shall be paid  
28 to the director in installments as follows:

29 (a) On or before June 15, 50 percent of the prepayment due;

30 (b) On or before September 15, 25 percent of the prepayment due; and

31 (c) On or before December 15, 25 percent of the prepayment due.

32 (4) If a carrier transfers a policy of insurance to another carrier, the surcharge prepay-  
33 ment obligation with respect to that policy is transferred to the other carrier.

34 (5) On or before June 1 of each year, the director shall notify each carrier required to  
35 make prepayments in that year of the amount of each prepayment and shall provide pre-  
36 payment remittance forms to be used by the carrier. Failure of the director to send, or the  
37 carrier to receive, the notice or the remittance forms does not relieve a carrier of the re-  
38 sponsibility to make prepayments.

39 **SECTION 19.** If the Director of the Department of Consumer and Business Services de-  
40 termines that the amount of the surcharge paid by a carrier under section 15 of this 2007  
41 Act is incorrect, the director shall charge or credit the carrier with the difference between  
42 the correct amount of surcharge and the amount actually paid.

43 **SECTION 20.** Notwithstanding section 18 of this 2007 Act, for the year beginning January  
44 1, 2008, in lieu of the prepayment of surcharges under section 18 of this 2007 Act, a carrier  
45 with a surcharge obligation under section 15 of this 2007 Act for the year shall estimate the

1 **amount of the surcharge and shall pay the following amounts to the Director of the De-**  
 2 **partment of Consumer and Business Services:**

- 3 (1) **On or before June 15, 2008, 50 percent of the estimate;**
- 4 (2) **On or before September 15, 2008, 25 percent of the estimate; and**
- 5 (3) **On or before December 15, 2008, 25 percent of the estimate.**

6 **SECTION 21.** ORS 731.292 is amended to read:

7 731.292. (1) Except as provided in subsections (2) [*and (3)*] **to (4)** of this section, all fees, charges  
 8 and other moneys received by the Department of Consumer and Business Services or the Director  
 9 of the Department of Consumer and Business Services under the Insurance Code shall be deposited  
 10 in the fund created by ORS 705.145 and are continuously appropriated to the department for the  
 11 payment of the expenses of the department in carrying out the Insurance Code.

12 (2) All taxes, fines and penalties paid pursuant to the Insurance Code shall be paid to the di-  
 13 rector and after deductions of refunds shall be paid by the director to the State Treasurer, at the  
 14 end of every calendar month or more often in the director's discretion, for deposit in the General  
 15 Fund to become available for general governmental expenses.

16 (3) All premium taxes received by the director pursuant to ORS 731.820 shall be paid by the  
 17 director to the State Treasurer for deposit in the State Fire Marshal Fund.

18 (4) **All surcharges received by the director under sections 14 to 20 of this 2007 Act shall**  
 19 **be paid by the director to the State Treasurer for deposit in the Medical Professional Li-**  
 20 **ability Fund established under section 9 of this 2007 Act.**

21 **SECTION 22.** ORS 731.836 is amended to read:

22 731.836. The Director of the Department of Consumer and Business Services shall commence an  
 23 action for the recovery of taxes **or surcharges** payable under ORS 731.820, 731.824, 731.828 and  
 24 731.859 **and section 15 of this 2007 Act** not later than the later of the following:

25 (1) Five years after the date such taxes **or surcharges** were payable to the director under such  
 26 sections; or

27 (2) Three years after the date on which the report of examination by the domiciliary state of the  
 28 insurer, disclosing that such taxes **or surcharges** were owing by the insurer under such sections,  
 29 was filed with the director.

30 **SECTION 23.** ORS 731.840 is amended to read:

31 731.840. (1) The retaliatory tax imposed upon a foreign or alien insurer under ORS 731.854 and  
 32 731.859, or the corporate excise tax imposed upon a foreign or alien insurer under ORS chapter 317,  
 33 is in lieu of all other state taxes upon premiums, taxes upon income, franchise or other taxes  
 34 measured by income that might otherwise be imposed upon the foreign or alien insurer except the  
 35 fire insurance premiums tax imposed under ORS 731.820, **the health insurance surcharge imposed**  
 36 **under section 15 of this 2007 Act** and the tax imposed upon wet marine and transportation insur-  
 37 ers under ORS 731.824 and 731.828. However, all real and personal property, if any, of the insurer  
 38 shall be listed, assessed and taxed the same as real and personal property of like character of non-  
 39 insurers. Nothing in this subsection shall be construed to preclude the imposition of the assessments  
 40 imposed under ORS 656.612 upon a foreign or alien insurer.

41 (2) Subsection (1) of this section applies to a reciprocal insurer and its attorney in its capacity  
 42 as such.

43 (3) Subsection (1) of this section applies to foreign or alien title insurers and to foreign or alien  
 44 wet marine and transportation insurers issuing policies and subject to taxes referred to in ORS  
 45 731.824 and 731.828.

1 (4) The State of Oregon hereby preempts the field of regulating or of imposing excise, privilege,  
2 franchise, income, license, permit, registration, and similar taxes, **surcharges**, licenses and fees  
3 upon insurers and their insurance producers and other representatives as such, and:

4 (a) No county, city, district, or other political subdivision or agency in this state shall so regu-  
5 late, or shall levy upon insurers, or upon their insurance producers and representatives as such, any  
6 such tax, **surcharge**, license or fee; except that whenever a county, city, district or other political  
7 subdivision levies or imposes generally on a nondiscriminatory basis throughout the jurisdiction of  
8 the taxing authority a payroll, excise or income tax, as otherwise provided by law, such tax may  
9 be levied or imposed upon domestic insurers; and

10 (b) No county, city, district, political subdivision or agency in this state shall require of any  
11 insurer, insurance producer or representative, duly authorized or licensed as such under the Insur-  
12 ance Code, any additional authorization, license, or permit of any kind for conducting therein  
13 transactions otherwise lawful under the authority or license granted under this code.

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15 **MISCELLANEOUS**

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17 **SECTION 24. (1) Sections 1, 2 and 4 to 11 of this 2007 Act become operative on January**  
18 **1, 2010.**

19 **(2) Sections 3 and 12 of this 2007 Act become operative on the effective date of this 2007**  
20 **Act. The members of the Medical Professional Liability Board shall be appointed within 60**  
21 **days of the effective date of this 2007 Act.**

22 **(3) Sections 14 to 20 of this 2007 Act and the amendments to ORS 731.292, 731.836 and**  
23 **731.840 by sections 21 to 23 of this 2007 Act apply to health insurance policies issued or re-**  
24 **newed on or after January 1, 2010.**

25 **SECTION 25. The unit captions used in this 2007 Act are provided only for the conven-**  
26 **ience of the reader and do not become part of the statutory law of this state or express any**  
27 **legislative intent in the enactment of this 2007 Act.**