

# House Bill 2823

Sponsored by Representatives ESQUIVEL, WINGARD, RICHARDSON; Representatives CAMERON, FREEMAN, GARRARD, GILMAN, HUFFMAN, KRIEGER, MAURER, OLSON, SPRENGER, THATCHER, THOMPSON, WEIDNER, WHISNANT, Senators KRUSE, TELFER, WHITSETT, WINTERS

## 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**.

Exempts foreign insurers licensed to sell health insurance in another state from requirements of Insurance Code and certain other requirements.

## A BILL FOR AN ACT

1  
2 Relating to health insurance; amending ORS 317.010, 317.650, 317.710 and 731.036.

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

4 **SECTION 1.** ORS 731.036 is amended to read:

5 731.036. The Insurance Code does not apply to any of the following to the extent of the subject  
6 matter of the exemption:

7 (1) A bail bondsman, other than a corporate surety and its agents.

8 (2) A fraternal benefit society that has maintained lodges in this state and other states for 50  
9 years prior to January 1, 1961, and for which a certificate of authority was not required on that  
10 date.

11 (3) A religious organization providing insurance benefits only to its employees, which organiza-  
12 tion is in existence and exempt from taxation under section 501(c)(3) of the federal Internal Revenue  
13 Code on September 13, 1975.

14 (4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-  
15 insurance program for tort liability in accordance with ORS 30.282.

16 (5) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-  
17 insurance program for property damage in accordance with ORS 30.282.

18 (6) Cities, counties, school districts, community college districts, community college service dis-  
19 tricts or districts, as defined in ORS 198.010 and 198.180, that either individually or jointly insure  
20 for health insurance coverage, excluding disability insurance, their employees or retired employees,  
21 or their dependents, or students engaged in school activities, or combination of employees and de-  
22 pendents, with or without employee or student contributions, if all of the following conditions are  
23 met:

24 (a) The individual or jointly self-insured program meets the following minimum requirements:

25 (A) In the case of a school district, community college district or community college service  
26 district, the number of covered employees and dependents and retired employees and dependents  
27 aggregates at least 500 individuals;

28 (B) In the case of an individual public body program other than a school district, community  
29 college district or community college service district, the number of covered employees and depen-  
30 dents and retired employees and dependents aggregates at least 500 individuals; and

**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 (C) In the case of a joint program of two or more public bodies, the number of covered em-  
 2 ployees and dependents and retired employees and dependents aggregates at least 1,000 individuals;

3 (b) The individual or jointly self-insured health insurance program includes all coverages and  
 4 benefits required of group health insurance policies under ORS chapters 743 and 743A;

5 (c) The individual or jointly self-insured program must have program documents that define  
 6 program benefits and administration;

7 (d) Enrollees must be provided copies of summary plan descriptions including:

8 (A) Written general information about services provided, access to services, charges and sched-  
 9 uling applicable to each enrollee's coverage;

10 (B) The program's grievance and appeal process; and

11 (C) Other group health plan enrollee rights, disclosure or written procedure requirements es-  
 12 tablished under ORS chapters 743 and 743A;

13 (e) The financial administration of an individual or jointly self-insured program must include the  
 14 following requirements:

15 (A) Program contributions and reserves must be held in separate accounts and used for the ex-  
 16 clusive benefit of the program;

17 (B) The program must maintain adequate reserves. Reserves may be invested in accordance with  
 18 the provisions of ORS chapter 293. Reserve adequacy must be calculated annually with proper  
 19 actuarial calculations including the following:

20 (i) Known claims, paid and outstanding;

21 (ii) A history of incurred but not reported claims;

22 (iii) Claims handling expenses;

23 (iv) Unearned contributions; and

24 (v) A claims trend factor; and

25 (C) The program must maintain adequate reinsurance against the risk of economic loss in ac-  
 26 cordance with the provisions of ORS 742.065 unless the program has received written approval for  
 27 an alternative arrangement for protection against economic loss from the Director of the Depart-  
 28 ment of Consumer and Business Services;

29 (f) The individual or jointly self-insured program must have sufficient personnel to service the  
 30 employee benefit program or must contract with a third party administrator licensed under ORS  
 31 chapter 744 as a third party administrator to provide such services;

32 (g) The individual or jointly self-insured program shall be subject to assessment in accordance  
 33 with ORS 735.614 and former enrollees shall be eligible for portability coverage in accordance with  
 34 ORS 735.616;

35 (h) The public body, or the program administrator in the case of a joint insurance program of  
 36 two or more public bodies, files with the Director of the Department of Consumer and Business  
 37 Services copies of all documents creating and governing the program, all forms used to communicate  
 38 the coverage to beneficiaries, the schedule of payments established to support the program and,  
 39 annually, a financial report showing the total incurred cost of the program for the preceding year.  
 40 A copy of the annual audit required by ORS 297.425 may be used to satisfy the financial report filing  
 41 requirement; and

42 (i) Each public body in a joint insurance program is liable only to its own employees and no  
 43 others for benefits under the program in the event, and to the extent, that no further funds, in-  
 44 cluding funds from insurance policies obtained by the pool, are available in the joint insurance pool.

45 (7) All ambulance services.

1 (8) A person providing any of the services described in this subsection. The exemption under this  
 2 subsection does not apply to an authorized insurer providing such services under an insurance pol-  
 3 icy. This subsection applies to the following services:

4 (a) Towing service.

5 (b) Emergency road service, which means adjustment, repair or replacement of the equipment,  
 6 tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be operated  
 7 under its own power.

8 (c) Transportation and arrangements for the transportation of human remains, including all  
 9 necessary and appropriate preparations for and actual transportation provided to return a  
 10 decedent's remains from the decedent's place of death to a location designated by a person with  
 11 valid legal authority under ORS 97.130.

12 (9)(a) A person described in this subsection who, in an agreement to lease or to finance the  
 13 purchase of a motor vehicle, agrees to waive for no additional charge the amount specified in par-  
 14 agraph (b) of this subsection upon total loss of the motor vehicle because of physical damage, theft  
 15 or other occurrence, as specified in the agreement. The exemption established in this subsection  
 16 applies to the following persons:

17 (A) The seller of the motor vehicle, if the sale is made pursuant to a motor vehicle retail in-  
 18 stallment contract.

19 (B) The lessor of the motor vehicle.

20 (C) The lender who finances the purchase of the motor vehicle.

21 (D) The assignee of a person described in this paragraph.

22 (b) The amount waived pursuant to the agreement shall be the difference, or portion thereof,  
 23 between the amount received by the seller, lessor, lender or assignee, as applicable, which repres-  
 24 ents the actual cash value of the motor vehicle at the date of loss, and the amount owed under the  
 25 agreement.

26 **(10) A foreign insurer who is licensed to sell a policy of health insurance in any other**  
 27 **state, when the insurer sells that particular policy in this state.**

28 **SECTION 2.** ORS 317.010, as amended by section 14, chapter 45, Oregon Laws 2008, is amended  
 29 to read:

30 317.010. As used in this chapter, unless the context requires otherwise:

31 (1) "Centrally assessed corporation" means every corporation the property of which is assessed  
 32 by the Department of Revenue under ORS 308.505 to 308.665.

33 (2) "Department" means the Department of Revenue.

34 (3)(a) "Consolidated federal return" means the return permitted or required to be filed by a  
 35 group of affiliated corporations under section 1501 of the Internal Revenue Code.

36 (b) "Consolidated state return" means the return required to be filed under ORS 317.710 (5).

37 (4) "Doing business" means any transaction or transactions in the course of its activities con-  
 38 ducted within the state by a national banking association, or any other corporation; provided, how-  
 39 ever, that a foreign corporation whose activities in this state are confined to purchases of personal  
 40 property, and the storage thereof incident to shipment outside the state, shall not be deemed to be  
 41 doing business unless such foreign corporation is an affiliate of another foreign or domestic corpo-  
 42 ration which is doing business in Oregon. Whether or not corporations are affiliated shall be de-  
 43 termined as provided in section 1504 of the Internal Revenue Code.

44 (5) "Excise tax" means a tax measured by or according to net income imposed upon national  
 45 banking associations, all other banks, and financial, centrally assessed, mercantile, manufacturing

1 and business corporations for the privilege of carrying on or doing business in this state.

2 (6) “Financial institution” or “financial corporation” means a bank or trust company organized  
 3 under ORS chapter 707, national banking association or production credit association organized  
 4 under federal statute, building and loan association, savings and loan association, mutual savings  
 5 bank, and any other corporation whose principal business is in direct competition with national and  
 6 state banks.

7 (7) “Internal Revenue Code,” except where the Legislative Assembly has provided otherwise,  
 8 refers to the laws of the United States or to the Internal Revenue Code as they are amended and  
 9 in effect:

10 (a) On December 31, 2007; or

11 (b) If related to the definition of taxable income, as applicable to the tax year of the taxpayer.

12 (8) “Oregon taxable income” means taxable income, less the deduction allowed under ORS  
 13 317.476, except as otherwise provided with respect to insurers in subsection (11) of this section and  
 14 ORS 317.650 to 317.665.

15 (9) “Oregon net loss” means taxable loss, except as otherwise provided with respect to insurers  
 16 in subsection (11) of this section and ORS 317.650 to 317.665.

17 (10) “Taxable income or loss” means the taxable income or loss determined, or in the case of a  
 18 corporation for which no federal taxable income or loss is determined, as would be determined, un-  
 19 der chapter 1, Subtitle A of the Internal Revenue Code and any other laws of the United States  
 20 relating to the determination of taxable income or loss of corporate taxpayers, with the additions,  
 21 subtractions, adjustments and other modifications as are specifically prescribed by this chapter ex-  
 22 cept that in determining taxable income or loss for any year, no deduction under ORS 317.476 or  
 23 317.478 and section 45b, chapter 293, Oregon Laws 1987, shall be allowed. If the corporation is a  
 24 corporation to which ORS 314.280 or 314.605 to 314.675 (requiring or permitting apportionment of  
 25 income from transactions or activities carried on both within and without the state) applies, to  
 26 derive taxable income or loss, the following shall occur:

27 (a) From the amount otherwise determined under this subsection, subtract nonbusiness income,  
 28 or add nonbusiness loss, whichever is applicable.

29 (b) Multiply the amount determined under paragraph (a) of this subsection by the Oregon ap-  
 30 portionment percentage defined under ORS 314.280, 314.650 or 314.670, whichever is applicable. The  
 31 resulting product shall be Oregon apportioned income or loss.

32 (c) To the amount determined as Oregon apportioned income or loss under paragraph (b) of this  
 33 subsection, add nonbusiness income allocable entirely to Oregon under ORS 314.280 or 314.625 to  
 34 314.645, or subtract nonbusiness loss allocable entirely to Oregon under ORS 314.280 or 314.625 to  
 35 314.645. The resulting figure is “taxable income or loss” for those corporations carrying on taxable  
 36 transactions or activities both within and without Oregon.

37 (11) As used in ORS 317.122 and 317.650 to 317.665, “insurer” means any domestic, foreign or  
 38 alien insurer as defined in ORS 731.082 and any interinsurance and reciprocal exchange and its at-  
 39 torney in fact with respect to its attorney in fact net income as a corporate attorney in fact acting  
 40 as attorney in compliance with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or  
 41 interinsurance exchange. However, “insurer” does not include title insurers [*or*], health care service  
 42 contractors operating pursuant to ORS 750.005 to 750.095 **or foreign insurers who are exempt**  
 43 **from the application of the Insurance Code pursuant to ORS 731.036 (10).**

44 **SECTION 3.** ORS 317.650 is amended to read:

45 317.650. (1) ORS 317.356, relating to depreciation and basis, shall be applicable to every insurer.

1 (2) Notwithstanding ORS 314.835 or 314.840 or any other law concerning confidentiality of tax  
 2 returns, the Department of Consumer and Business Services and the Department of Revenue may  
 3 disclose to each other returns and all other information necessary to carry out ORS 731.854 and  
 4 731.859 and otherwise to administer the corporate excise tax imposed by this chapter on insurers.

5 (3) Notwithstanding ORS 314.085 or other law, for purposes of this chapter, each of the following  
 6 insurers shall file a return on a calendar year basis:

7 (a) A foreign or alien insurer, **other than a foreign insurer who is exempt from the appli-**  
 8 **cation of the Insurance Code pursuant to ORS 731.036 (10);** or

9 (b) A domestic insurer organized after January 1, 1971, the ownership or control of which is  
 10 exercised, directly or indirectly, by a foreign insurer or other foreign corporation owning or con-  
 11 trolling directly or indirectly, a foreign insurer.

12 **SECTION 4.** ORS 317.710 is amended to read:

13 317.710. (1) A corporation shall make a return with respect to the tax imposed by this chapter  
 14 as provided in this section.

15 (2) If the corporation is a member of an affiliated group of corporations making a consolidated  
 16 federal return, it shall file a return and determine its Oregon taxable income as provided in ORS  
 17 317.715. The corporation's tax liability shall be joint and several with any other corporation that is  
 18 included in a consolidated state return with the corporation under subsection (5) of this section.

19 (3) If the corporation makes a separate return for federal income tax purposes, it shall file a  
 20 separate return under this chapter. The corporation shall determine its Oregon taxable income and  
 21 tax liability separately from any other corporation.

22 (4) For purposes of subsection (3) of this section, if the corporation is not subject to taxation  
 23 under the Internal Revenue Code a return for federal income tax purposes includes any form of re-  
 24 turn required to be made in lieu of an income tax return under the Internal Revenue Code or reg-  
 25 ulations thereunder.

26 (5)(a) If two or more corporations subject to taxation under this chapter are members of the  
 27 same affiliated group making a consolidated federal return and are members of the same unitary  
 28 group, they shall file a consolidated state return. The Department of Revenue shall prescribe by rule  
 29 the method by which a consolidated state return shall be filed.

30 (b) If any corporation that is a member of an affiliated group is permitted or required to deter-  
 31 mine its Oregon taxable income on a separate basis under ORS 314.670, or if any corporation is  
 32 permitted or required by statute or rule to use different apportionment factors than a corporation  
 33 with which it is affiliated, the corporation shall not be included in a consolidated state return under  
 34 paragraph (a) of this subsection.

35 (c) Whenever two or more corporations are required to file a consolidated state return under  
 36 paragraph (a) of this subsection, any reference in this chapter to a corporation for purposes of de-  
 37 riving Oregon taxable income shall be treated as a reference to all corporations that are included  
 38 in the consolidated state return.

39 (6) If so directed by the department, by rule or instructions on the state tax return form, every  
 40 corporation required to make a return under this chapter shall also file with the return a true copy  
 41 of the corporation's federal income tax return for the same taxable year. For purposes of this sub-  
 42 section, the corporation's federal income tax return includes a consolidated federal return for an  
 43 affiliated group of which the corporation is a member. The department may, by rule or instructions,  
 44 permit a corporation to submit specified excerpts from its federal return in lieu of submitting a copy  
 45 of the entire federal return. The federal return or any part thereof required to be filed with the state

1 return is incorporated in and shall be a part of the state return.

2 (7) Each foreign or alien insurer, **except for a foreign insurer who is exempt from the ap-**  
3 **plication of the Insurance Code pursuant to ORS 731.036 (10)**, and each domestic insurer owned  
4 and controlled, directly or indirectly, by one or more foreign insurers shall determine its Oregon  
5 taxable income under ORS 317.650 to 317.665 and make a return of the tax imposed by this chapter  
6 on a separate basis. An interinsurance and reciprocal exchange and its attorney in fact with respect  
7 to its attorney in fact net income as a corporate attorney in fact acting as attorney in compliance  
8 with ORS 731.458, 731.462, 731.466 and 731.470 for the reciprocal or interinsurance exchange may  
9 file a consolidated return under the circumstances in the manner and subject to the rules adopted  
10 by the department.

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