

A-Engrossed
House Bill 2087

Ordered by the House April 12
Including House Amendments dated April 12

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Consumer and Business Services)

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.

Specifies applicability of provisions guaranteeing coverage for policies and contracts regulated by Oregon Life and Health Insurance Guaranty Association.

Subdivides health insurance account administered by [*Oregon Life and Health Insurance Guaranty*] association into three subaccounts and revises benefit limits for each subcategory of health insurance. Increases aggregate liability limit for [*health insurance benefits other than disability insurance and long term care insurance*] **basic hospital, medical and surgical insurance or major medical insurance** from \$300,000 to \$500,000. Increases maximum annual assessment from \$150 to \$300 per member insurer for assessments determined on other than pro rata basis.

Specifies duties and powers of association when member insurer becomes insolvent and makes other changes to provisions regulating such insolvency.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon Life and Health Insurance Guaranty Association; creating new provisions;
3 amending ORS 734.760, 734.790, 734.800, 734.805, 734.810, 734.815, 734.820, 734.840, 734.870 and
4 734.880; and declaring an emergency.

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

6 **SECTION 1.** ORS 734.760 is amended to read:

7 734.760. As used in ORS 734.750 to 734.890, unless the context requires otherwise:

8 (1) "Account" means [*any*] **one** of the three accounts created under ORS 734.800.

9 (2) "Association" means the Oregon Life and Health Insurance Guaranty Association created
10 under ORS 734.800.

11 (3) "Contractual obligation" means any obligation under a covered [*policies*] **policy or contract**
12 **or a certificate under a group policy or contract.**

13 (4) "Covered policy" means any policy or contract **or a certificate under a group policy or**
14 **contract** to which ORS 734.750 to 734.890 apply.

15 (5) "**Disability insurance**" means **health insurance that provides income payments to an**
16 **insured wage earner whose income is interrupted due to an accident or illness. "Disability**
17 **insurance" does not include workers' compensation insurance.**

18 [(5)] (6) "Impaired insurer" means a member insurer [*deemed by the Director of the Department*
19 *of Consumer and Business Services*] **that is subject to an order of rehabilitation under ORS**
20 **734.063 or an order of conservation under ORS 734.200** after September 13, 1975[, *to be potentially*
21 *unable to fulfill its contractual obligations, excluding*]. "**Impaired insurer**" **does not include an in-**
22 **solvent [*insurers*] insurer.**

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 [(6)] (7) “Insolvent insurer” means [an insurer:]

2 [(a) That was a member insurer either at the time the policy was issued or when the insured event
3 occurred, or any insurer that has acquired direct policy obligations from a member insurer through
4 purchase, merger, consolidation, reinsurance or otherwise, whether or not the acquiring insurer held
5 a certificate of authority to transact insurance in this state at the time the policy was issued or when
6 the insured event occurred; and]

7 [(b)] **a member insurer** that, after September 13, 1975, [becomes insolvent and] is placed under
8 [a final] **an** order of liquidation[, rehabilitation or conservation] by a court of competent jurisdiction
9 **with a finding of insolvency.**

10 **(8) “Long term care insurance” has the meaning given that term in ORS 743.652.**

11 [(7)] **(9)(a) “Member insurer” means any insurer currently authorized to transact in this state
12 any kind of insurance to which ORS 734.750 to 734.890 apply[.], regardless of whether the
13 insurer’s authorization to transact insurance was, in the past, suspended, revoked, not re-
14 newed or voluntarily withdrawn.**

15 **(b) “Member insurer” does not include:**

16 **(A) A hospital or medical service organization, whether for-profit or nonprofit;**

17 **(B) A health maintenance organization;**

18 **(C) A fraternal benefit society;**

19 **(D) A mandatory state pooling plan;**

20 **(E) A mutual assessment company or other person that operates on an assessment basis;**

21 **(F) An insurance exchange; or**

22 **(G) An organization that has a certificate of authority limited to the issuance of chari-
23 table gift annuities under ORS 731.038.**

24 [(8)] **(10) “Premiums” means direct gross insurance, including annuity, premiums written on
25 covered policies, less return premiums thereon and dividends paid or credited to policyholders on
26 such direct business. “Premiums” does not include premiums on contracts between insurers and re-
27 insurers or any premiums on policies or contracts excluded under ORS 734.790.**

28 **(11)(a) “Principal place of business” means:**

29 **(A) For a plan sponsor or a person other than a natural person, the state in which the
30 natural persons who establish policy for the direction, control and coordination of the oper-
31 ations of the entity as a whole primarily exercise that function, as determined by the asso-
32 ciation after considering the following factors:**

33 **(i) The state in which the primary executive and administrative headquarters of the en-
34 tity is located;**

35 **(ii) The state in which the principal office of the chief executive officer of the entity is
36 located;**

37 **(iii) The state in which the board of directors or governing body of the entity conducts
38 the majority of its meetings;**

39 **(iv) The state in which the executive or management committee of the board of directors
40 of the entity conducts the majority of its meetings; and**

41 **(v) The state from which the management of the overall operations of the entity is di-
42 rected.**

43 **(B) For a benefit plan sponsored by affiliated companies comprising a consolidated cor-
44 poration, the state in which the holding company or controlling affiliate has its principal
45 place of business as determined using the factors set forth in subparagraph (A) of this par-**

1 **agraph.**

2 (C) For a plan sponsor of a benefit plan for which more than 50 percent of the partic-
3 ipants in the benefit plan are employed in a single state, the state in which those participants
4 are employed.

5 (D) Absent a specific or clear designation of a principal place of business for a plan
6 sponsor of a benefit plan established or maintained by two or more employers or jointly by
7 one or more employers and one or more employee organizations, the principal place of busi-
8 ness of the association, committee, joint board of trustees or other governing body of the
9 employer or employee organization that has the largest investment in the benefit plan.

10 (b) As used in this subsection, “plan sponsor” means:

11 (A) The employer for a benefit plan established or maintained by a single employer.

12 (B) The employee organization for a benefit plan established or maintained by an em-
13 ployee organization.

14 (C) For a benefit plan established or maintained by two or more employers or jointly by
15 one or more employers and one or more employee organizations, the association, committee,
16 joint board of trustees or other governing bodies of the parties that establish or maintain
17 the benefit plan.

18 [(9)] (12) “Resident” means a person to whom contractual obligations are owed by a member
19 insurer [*which is determined to be an impaired or insolvent insurer at a time when the person is a*
20 *resident of this state.*] and who resides in this state on the date a court order is entered that
21 determines the member insurer to be an impaired insurer or an insolvent insurer. A person
22 may be a resident of only one state, which in the case of a person other than a natural
23 person shall be its principal place of business. A citizen of the United States who resides in
24 a foreign country, or resides in a United States possession, territory or protectorate that
25 does not have an association similar to the association created under ORS 734.800, shall be
26 considered a resident of the state of domicile of the insurer that issued the policies or con-
27 tracts. If a person could be covered by the association of another state, whether as an owner,
28 payee, beneficiary or assignee, ORS 734.750 to 734.890 shall be construed with the laws of the
29 other state to result in coverage by only one association.

30 (13) “Structured settlement annuity” means an annuity purchased to fund periodic pay-
31 ments for a plaintiff or other claimant in payment for or with respect to personal injury
32 suffered by the plaintiff or other claimant.

33 (14) “Supplemental contract” means a written agreement entered into for the distrib-
34 ution of proceeds under a life or health insurance policy or an annuity contract.

35 (15) “Unallocated annuity contract” means an annuity contract or group annuity certif-
36 icate that is not issued to and owned by an individual, except to the extent that any annuity
37 benefits may be guaranteed to an individual under the contract or certificate.

38 **SECTION 2.** ORS 734.790 is amended to read:

39 734.790. (1) ORS 734.750 to 734.890 provide coverage [*to the following persons*] for policies and
40 contracts specified in subsection (2) of this section **to the following persons who are not provided**
41 **coverage under the laws of another state:**

42 (a) To a person who is a resident, if the person is an owner of or a certificate holder under the
43 policy or contract **other than a structured settlement annuity** or, in the case of an unallocated
44 annuity contract, an employee participating in a governmental retirement plan established under
45 section 401, 403(b) or 457 of the United States Internal Revenue Code or the beneficiaries of each

1 such individual if deceased.

2 (b) To a person who is not a resident, if the person is an owner of or a certificate holder under
3 the policy or contract **other than a structured settlement annuity** or, in the case of an unallo-
4 cated annuity contract, an employee participating in a governmental retirement plan established
5 under section 401, 403(b) or 457 of the United States Internal Revenue Code or the beneficiaries of
6 each such individual if deceased. This paragraph applies to a person who is not a resident only if
7 all of the following conditions are met:

8 (A) The insurer that issued the policy or contract must be a [*domestic*] **member** insurer.

9 [(B) *The insurer must never have held a license or certificate of authority in the state in which the*
10 *person resides.*]

11 [(C)] (B) The state in which the person resides must have an association similar to the Oregon
12 Life and Health Insurance Guaranty Association.

13 [(D)] (C) The person must not be eligible for coverage by [*the*] **an** association in the state in
14 which the person resides, as described in subparagraph [(C)] (B) of this paragraph, **due to the fact**
15 **that the insurer was not authorized to transact insurance or licensed in that state at the**
16 **time specified in the state's guaranty association law.**

17 (c) To a person who, regardless of where the person resides, is a beneficiary, assignee or payee
18 of the persons covered under paragraph (a) or (b) of this subsection. This paragraph does not include
19 a nonresident certificate holder under a group policy or contract.

20 (d) **To a person who is a payee under a structured settlement annuity, or to the benefi-**
21 **ciary of a payee if the payee is deceased, if the payee:**

22 (A) **Is a resident, regardless of where the contract owner resides; or**

23 (B) **Is not a resident, but only under both of the following conditions:**

24 (i) **The contract owner of the structured settlement annuity is a resident and is not af-**
25 **forded any coverage by an association in another state that is similar to the association**
26 **created under ORS 734.800, or the contract owner of the structured settlement annuity is**
27 **not a resident but the insurer that issued the structured settlement annuity is domiciled in**
28 **this state and the state in which the contract owner resides has an association similar to**
29 **the association created under ORS 734.800; and**

30 (ii) **Neither the payee or beneficiary nor the contract owner of the structured settlement**
31 **annuity is eligible for coverage by the association of the state in which the payee or contract**
32 **owner resides.**

33 (2) **Except as limited by ORS 734.750 to 734.890, the association shall** provide coverage to the
34 persons specified in subsection (1) of this section for direct [*life insurance, including annuity, policies,*
35 *health insurance policies, and contracts supplemental to life and health insurance policies, issued by*
36 *authorized insurers*] **nongroup life or health insurance policies or annuity contracts, for cer-**
37 **tificates under direct group policies or contracts, and for supplemental contracts to any of**
38 **these, in each case issued by member insurers.**

39 (3) ORS 734.750 to 734.890 do not provide coverage for:

40 [(a) *That portion or part of a variable life insurance or variable annuity policy not guaranteed by*
41 *an insurer.*]

42 [(b)] (a) That portion [*or part*] of any policy or contract **not guaranteed by the member**
43 **insurer or** under which the risk is borne by the policyholder **or contract owner.**

44 [(c)] (b) Any policy or contract or part thereof assumed by the impaired or insolvent insurer
45 under a contract of reinsurance, other than reinsurance for which assumption certificates have been

1 issued.

2 [(d)] (c) Any policy or contract issued by a health care service contractor complying with ORS
3 750.005 to 750.095.

4 [(e)] (d) Any policy or contract issued by a fraternal benefit society.

5 [(f)] (e) Any portion of a policy or contract to the extent that the **interest** rate [*of interest*] on
6 which [*it*] **the policy or contract** is based, **or to the extent that the interest rate, crediting rate**
7 **or similar factor determined by use of an index or other external reference stated in the**
8 **policy or contract for the purpose of calculating returns or changes in value:**

9 (A) Exceeds, when averaged over the period of four years prior to the date on which the [*asso-*
10 *ciation becomes obligated with respect to the policy or contract*] **member insurer becomes either**
11 **an impaired or insolvent insurer under ORS 734.750 to 734.890, whichever occurs first**, a rate
12 of interest determined by subtracting four percentage points from Moody's Corporate Bond Yield
13 Average averaged for that same four-year period or for a lesser period if the policy or contract was
14 issued less than four years before the [*association became obligated*] **member insurer becomes ei-**
15 **ther an impaired or insolvent insurer under ORS 734.750 to 734.890, whichever occurred**
16 **first; and**

17 (B) Exceeds, on and after the date on which the [*association becomes obligated with respect to the*
18 *policy or contract,*] **member insurer becomes either an impaired or insolvent insurer under**
19 **ORS 734.750 to 734.890, whichever occurs first**, the rate of interest determined by subtracting
20 three percentage points from Moody's Corporate Bond Yield Average as most recently available.

21 [(g)] (f) Any **portion of a policy or contract issued to a** plan or program of an employer, as-
22 sociation or similar entity to provide life **insurance**, health **insurance** or annuity benefits to its
23 employees or members to the extent that the plan or program is self-funded or uninsured, including
24 benefits payable by an employer, association or similar entity under any of the following:

25 (A) A multiple employer welfare arrangement as defined in section [514] **3(40) (29 U.S.C.**
26 **1002(40))** of the Employee Retirement Income Security Act of 1974, as amended.

27 (B) A minimum premium group insurance plan.

28 (C) A stop-loss group insurance plan.

29 (D) An administrative services only contract.

30 [(h)] (g) Any portion of a policy or contract to the extent that it provides dividends or experi-
31 ence rating credits **or voting rights**, or provides that any fees or allowances be paid to any person,
32 including the [*policy or contract holder*] **policyholder or contract owner**, in connection with the
33 service to or administration of the policy or contract.

34 [(i)] (h) Any policy or contract issued in this state by a member insurer at a time that [*it*] **the**
35 **insurer** did not have a certificate of authority to issue the policy or contract in this state.

36 [(j)] (i) Any unallocated annuity contract issued to **or in connection with** an employee benefit
37 plan protected under the federal Pension Benefit Guaranty Corporation, **regardless of whether the**
38 **federal Pension Benefit Guaranty Corporation has yet become liable to make any payments**
39 **with respect to the benefit plan.**

40 [(k)] (j) Any portion of any unallocated annuity contract that is **not** issued to or in connection
41 with [*a specific employee, union or association of natural persons benefit plan, other than*] a govern-
42 ment retirement plan referred to in subsection (1) of this section, or a government lottery.

43 [(L)] (k) Any coverage issued by the Oregon Medical Insurance Pool.

44 (L) **Any portion of a policy or contract to the extent that the assessments required by**
45 **ORS 734.815 with respect to the policy or contract are preempted by federal or state law.**

1 (m) An obligation that does not arise under the express written terms of the policy or
2 contract issued by the insurer to the policyholder or contract owner, including but not lim-
3 ited to:

4 (A) Claims based on marketing materials;

5 (B) Claims based on side letters, riders or other documents that were issued by the
6 insurer without meeting applicable policy or contract form filing or approval requirements;

7 (C) Misrepresentations of, or regarding, policy or contract benefits;

8 (D) Extracontractual claims, including but not limited to claims related to bad faith in
9 the payment of claims, punitive or exemplary damages or attorney fees or costs; or

10 (E) A claim for penalties or consequential or incidental damages.

11 (n) A contractual agreement that establishes the member insurer's obligations to provide
12 a book value accounting guaranty for defined contribution benefit plan participants by ref-
13 erence to a portfolio of assets that is owned by the benefit plan or its trustee that in either
14 case is not an affiliate of the member insurer.

15 (o) Any portion of a policy or contract to the extent that portion provides for interest
16 or other changes in value to be determined by the use of an index or other external reference
17 stated in the policy or contract, but the changes in value have not been credited to the policy
18 or contract, or as to which the policyholder's or contract owner's rights are subject to
19 forfeiture, as of the date on which the member insurer becomes either an impaired or in-
20 solvent insurer, whichever occurs first. If the interest or changes in value in a policy or
21 contract are credited less frequently than annually, for purposes of determining the values
22 that have been credited and are not subject to forfeiture under this paragraph, the interest
23 or change in value that is determined by using the procedures specified in the policy or
24 contract shall be credited as if the contractual date of crediting interest or changing value
25 was the date of the impairment or insolvency, whichever is earlier, and may not be subject
26 to forfeiture.

27 (p) Any policy or contract providing any hospital, medical, prescription drug or other
28 health care benefits under Part C or Part D of subchapter XVIII, chapter 7, Title 42 of the
29 United States Code, or any regulations issued under those provisions.

30 (4) As used in this section, "Moody's Corporate Bond Yield Average" means the Monthly Av-
31 erage Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

32 **SECTION 3.** ORS 734.800 is amended to read:

33 734.800. (1) There is created a nonprofit legal entity to be known as the Oregon Life and Health
34 Insurance Guaranty Association. All member insurers shall be and remain members of the associ-
35 ation as a condition of their authority to transact insurance in this state. The association shall
36 perform its functions under the plan of operation established and approved under ORS 734.820, and
37 shall exercise its powers through a board of directors established under ORS 734.805. For purposes
38 of administration and assessment, the association shall maintain three accounts:

39 (a) The health insurance account[,], **composed of the following subaccounts:**

40 **(A) The disability insurance subaccount;**

41 **(B) The long term care insurance subaccount; and**

42 **(C) The major medical and all other health insurance subaccount;**

43 (b) The life insurance account; and

44 (c) The annuity account.

45 (2) The association shall come under the immediate supervision of the Director of the Depart-

1 ment of Consumer and Business Services and shall be subject to the applicable provisions of the
2 insurance laws of this state.

3 **SECTION 4.** ORS 734.805 is amended to read:

4 734.805. (1) The board of directors of the Oregon Life and Health Insurance Guaranty Associ-
5 ation shall consist of not less than five nor more than nine **members who represent** member
6 insurers, serving terms as established in the plan of operation. The members of the board shall be
7 selected by member insurers, subject to the approval of the Director of the Department of Consumer
8 and Business Services. Vacancies on the board shall be filled for the remaining period of the term
9 by a majority vote of the remaining board members, subject to the approval of the Director **of the**
10 **Department of Consumer and Business Services.** To select the initial board of directors, and
11 initially organize the association, the Director **of the Department of Consumer and Business**
12 **Services** shall give notice to all member insurers of the time and place of the organizational meet-
13 ing. In determining voting rights at the organizational meeting each member insurer shall be entitled
14 to one vote in person or by proxy. If the board of directors is not selected within 60 days after no-
15 tice of the organizational meeting, the Director **of the Department of Consumer and Business**
16 **Services** may appoint the initial members.

17 (2) In approving selections or in appointing members to the board, the Director **of the De-**
18 **partment of Consumer and Business Services** shall consider, among other things, whether all
19 member insurers are fairly represented.

20 (3) Members of the board of directors may be reimbursed from the assets of the association for
21 expenses incurred by them as members of the board, but members of the board [*shall*] **may** not
22 otherwise be compensated by the association for their services.

23 **SECTION 5.** ORS 734.810, as amended by section 1, chapter 26, Oregon Laws 2010, is amended
24 to read:

25 734.810. [*In addition to the other powers and duties enumerated in ORS 734.750 to 734.890:*]

26 (1) If a [*domestic*] **member** insurer is an impaired insurer, the Oregon Life and Health Insurance
27 Guaranty Association [*may*], **in its discretion and** subject to any conditions imposed by the asso-
28 ciation and approved by [*the impaired insurer and*] the Director of the Department of Consumer and
29 Business Services, other than those which impair the contractual obligations of the impaired
30 insurer, **may**:

31 (a) Guarantee, **assume** or reinsure, or cause to be guaranteed, assumed[,] or reinsured, any or
32 all of the covered policies of the impaired insurer.

33 (b) Provide such [*money*] **moneys**, pledges, notes, **loans**, guarantees or other means as are
34 proper to implement paragraph (a) of this subsection and [*assure*] **ensure** payment of the contractual
35 obligations of the impaired insurer pending action under paragraph (a) of this subsection.

36 [*(c) Loan money to the impaired insurer.*]

37 (2) If a member insurer is an insolvent insurer, the association [*shall*], **in its discretion and**
38 subject to the approval of the director, **shall take either of the following steps**:

39 (a)(A) Guarantee, assume[,] or reinsure, or cause to be guaranteed, assumed[,] or reinsured, the
40 covered policies of the insolvent insurer;

41 [(b)] (B) [*Assure*] **Ensure** payment of the contractual obligations of the insolvent insurer; and

42 [(c)] (C) Provide such [*money*] **moneys**, pledges, notes, **loans**, guarantees or other means as are
43 reasonably necessary to discharge such duties.

44 (b) **Provide benefits and coverages in accordance with the following provisions:**

45 (A) **For life and health insurance policies and annuity contracts, the association shall**

1 ensure that the payment of benefits for premiums, except for terms of conversion and
2 renewability, under the replacement coverage provided by the association is identical to the
3 payment of benefits for premiums that would have been payable under the policies or con-
4 tracts of the insolvent insurer, for claims incurred:

5 (i) With respect to group policies and contracts, not later than the earlier of the next
6 renewal date under those policies or contracts or 45 days, but in no event less than 30 days,
7 after the date on which the association becomes obligated with respect to the policies or
8 contracts.

9 (ii) With respect to nongroup policies and contracts, if any, not later than the earlier of
10 the next renewal date under those policies or contracts or one year, but in no event less than
11 30 days, after the date on which the association becomes obligated with respect to the poli-
12 cies or contracts.

13 (B) The association shall make diligent efforts to provide a 30-day notice of the termi-
14 nation of the benefits provided under subparagraph (A) of this paragraph to all known in-
15 sureds or annuitants for nongroup policies and contracts, or to group policyholders or
16 contract owners with respect to group policies and contracts.

17 (C) For nongroup life and health insurance policies and annuities covered by the associ-
18 ation, the association shall make substitute coverage available to each known insured or
19 annuitant, or owner if other than the insured or annuitant. For an individual formerly in-
20 sured or formerly an annuitant under a group policy who is not eligible for replacement
21 group coverage, the association shall make available substitute coverage on an individual
22 basis in accordance with the provisions of subparagraph (D) of this paragraph, if the insureds
23 or annuitants had a right under law or under the terminated policy or annuity to convert
24 coverage to individual coverage or to continue an individual policy or annuity that was al-
25 ready in force until a specified age or for a specified time, during which the insurer had no
26 right to make changes unilaterally in any provision of the policy or annuity or had a right
27 to make changes only to premiums or to classes of risk.

28 (D) In providing the substitute coverage required under subparagraph (C) of this para-
29 graph, the association:

30 (i) May offer either to reissue the terminated coverage or to issue an alternative policy.

31 (ii) Shall offer alternative or reissued policies without requiring evidence of insurability.

32 (iii) May not impose any waiting period or exclusion that would not have applied under
33 the terminated policy.

34 (iv) May reinsure any alternative or reissued policy.

35 (E) Any alternative policy adopted by the association must:

36 (i) Be approved by the Director of the Department of Consumer and Business Services
37 and the court. The association may adopt alternative policies of various types for future is-
38 suance without regard to any particular impairment or insolvency.

39 (ii) Contain at least the minimum statutory provisions required in this state and provide
40 benefits that are not unreasonable in relation to the premium charged. The association shall
41 set the premium in accordance with a table of rates adopted by the association. The premium
42 shall reflect the amount of insurance to be provided and the age and class of risk of each
43 insured, but may not reflect any changes in the health of the insured after the original policy
44 was last underwritten.

45 (iii) Provide coverage of a type similar to that of the policy issued by the insolvent

1 insurer, as determined by the association.

2 (F) If the association elects to reissue terminated coverage at a premium rate that is
3 different from the premium rate that was charged under the terminated policy, the premium
4 rate shall be set by the association, in accordance with the amount of insurance provided
5 and the age and class of risk, and be subject to approval by the Director of the Department
6 of Consumer and Business Services and the court.

7 (G) The association's obligations with respect to coverage under any policy of the insol-
8 vent insurer or under any reissued or alternative policy shall cease on the date on which the
9 coverage or policy is replaced by another similar policy by the policyholder, the insured or
10 the association.

11 (H) When proceeding under this subsection with respect to a policy or contract that
12 carries a guaranteed minimum interest rate, the association shall ensure the payment or
13 crediting of a rate of interest consistent with the provisions of ORS 734.790 (3).

14 (3) Nonpayment of premiums within 31 days after the date required under the terms of
15 any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage
16 shall terminate the association's obligations under the policy, contract or substitute cover-
17 age under ORS 734.750 to 734.890 with respect to the policy, contract or substitute coverage,
18 except with respect to any claims incurred or any net cash surrender value or net cash
19 withdrawal value that may be due in accordance with the provisions of ORS 734.750 to
20 734.890.

21 (4) Premiums due for coverage after entry of an order of liquidation of an insolvent
22 insurer shall belong to and be payable at the direction of the association. At the request of
23 the liquidator of an insolvent insurer, the association shall provide a report to the liquidator
24 regarding any premium collected by the association. The association is liable for unearned
25 premiums due to policyholders or contract owners arising after the entry of the order.

26 (5) The protection provided by ORS 734.750 to 734.890 does not apply where any guaranty
27 protection is provided to residents of this state by the laws of the domiciliary state or ju-
28 risdiction of the impaired or insolvent insurer other than this state.

29 [(3)(a)] (6)(a) In carrying out its duties under subsection (2) of this section, the association may
30 impose permanent policy liens or contract liens in connection with any guaranteed, assumption or
31 reinsurance agreement, if the court considering the lien finds that the amounts [which] **that** can be
32 assessed under ORS 734.750 to 734.890 are less than the amounts needed to [assure] **ensure** full and
33 prompt performance of the insolvent insurer's contractual obligations or that the economic or fi-
34 nancial conditions affecting member insurers are sufficiently adverse to render the imposition of
35 policy or contract liens to be in the public interest, and approves the specific policy liens or con-
36 tract liens to be used.

37 (b) [Before being obligated] **In carrying out its duties** under subsection (2) of this section, the
38 association may request that there be imposed temporary moratoriums or liens on payments of cash
39 values and policy loans **or temporary moratoriums on the right to withdraw funds held in**
40 **conjunction with the policies or contracts**, in addition to any contractual provisions for deferral
41 of cash or policy loan values, and such temporary moratoriums and liens may be imposed if they are
42 approved by the court. **In addition, in the event of a temporary moratorium or moratorium**
43 **charge imposed by the court on payment of cash values or policy loan values, or on any other**
44 **right to withdraw funds held in conjunction with policies or contracts, out of the assets of**
45 **the impaired or insolvent insurer, the association may defer the payment of cash values,**

1 **policy loan values and other rights by the association for the period of the temporary mor-**
 2 **atorium or moratorium charge that is imposed by the court, except for claims that are**
 3 **covered by the association to be paid in accordance with a hardship procedure that is es-**
 4 **tablished by the liquidator or rehabilitator and approved by the court.**

5 [(4)] (7) If the association fails to act as required in subsection (2) of this section within a rea-
 6 sonable time, the director shall have the powers and duties of the association under ORS 734.750 to
 7 734.890 with respect to insolvent insurers.

8 [(5)] (8) The association may render assistance and advice to the director, upon request of the
 9 director, concerning rehabilitation, payment of claims, continuance of coverage or the performance
 10 of other contractual obligations of any impaired or insolvent insurer.

11 [(6)] (9) The association shall have standing to **intervene or** appear before any court **or agency**
 12 in this state having jurisdiction over an impaired or insolvent insurer concerning which the associ-
 13 ation is or may become obligated under ORS 734.750 to 734.890 **or with jurisdiction over any**
 14 **person or property against which the association has rights through subrogation or other-**
 15 **wise.** Such standing shall extend to all matters germane to the powers and duties of the association
 16 including, but not limited to, proposals for reinsuring, **modifying** or guaranteeing the covered poli-
 17 cies of the impaired or insolvent insurer and the determination of the covered policies and con-
 18 tractual obligations. The association may also appear or intervene before a court **or agency** in
 19 another state with jurisdiction over an impaired or insolvent insurer for which the association is
 20 or may become obligated or with jurisdiction over *[a third party]* **any person or property** against
 21 whom the association may have rights through subrogation *[of the policyholders of the insurer]* **or**
 22 **otherwise.**

23 [(7)(a)] (10)(a) Any person receiving benefits under ORS 734.750 to 734.890 shall be considered
 24 to have assigned the rights under, and any causes of action **against any person for losses arising**
 25 **under, resulting from or otherwise** relating to, the covered policy to the association to the extent
 26 of the benefits received because of ORS 734.750 to 734.890, whether the benefits are payments of or
 27 on account of contractual obligations or continuation of coverage. The association may require an
 28 assignment to *[it]* **the association** of such rights by any payee, *[policy or]* **policyholder**, contract
 29 owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or
 30 benefits conferred by ORS 734.750 to 734.890 upon such person. The association shall be subrogated
 31 to these rights against the assets of any **impaired or** insolvent insurer.

32 (b) The subrogation rights of the association under this subsection shall have the same priority
 33 against the assets of the **impaired or** insolvent insurer as that possessed by the person entitled to
 34 receive benefits under ORS 734.750 to 734.890.

35 (c) **In addition to the rights set forth in paragraphs (a) and (b) of this subsection, the**
 36 **association may exercise any common law rights of subrogation or any other equitable or**
 37 **legal remedy that would have been available to the impaired or insolvent insurer or to the**
 38 **policyholder or contract owner, beneficiary or payee of a policy or contract with respect to**
 39 **the policy or contract. In the case of a structured settlement annuity, these rights include**
 40 **but are not limited to any rights of the policyholder or contract owner, beneficiary or payee**
 41 **of the annuity, to the extent of benefits received under ORS 734.750 to 734.890, against a**
 42 **person originally or by succession responsible for the losses arising from the personal injury**
 43 **relating to the annuity or payment therefor, with the exception of a person responsible solely**
 44 **by reason of serving as an assignee in respect of a qualified assignment under section 130**
 45 **of the federal Internal Revenue Code.**

1 **(d) If the provisions of this subsection are determined by a court to be invalid or inef-**
2 **fective with respect to any person or claim for any reason, the association shall reduce the**
3 **amount payable by the association with respect to the related covered obligations by the**
4 **amount realized by any other person with respect to the person or claim that is attributable**
5 **to the policies or contracts covered by the association.**

6 **(e) If the association provides benefits with respect to a covered obligation and a person**
7 **recovers amounts to which the association has rights as described in this subsection, the**
8 **person shall pay to the association the portion of the recovery attributable to the policies**
9 **or contracts covered by the association.**

10 [(8)] **(11)** The contractual obligations of the **impaired or** insolvent insurer for which the asso-
11 ciation becomes or may become liable [*shall*] **may** not exceed the lesser of:

12 (a) The contractual obligations for which the **impaired or insolvent** insurer is liable or would
13 have been liable if it were not an **impaired or** insolvent insurer, unless such obligations are reduced
14 as permitted by subsection [(3)] **(6)** of this section; [*or*]

15 (b) [*The applicable following benefits, subject to subsection (9) of this section*] **With respect to**
16 **any one life, regardless of the number of policies or contracts:**

17 (A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender
18 and net cash withdrawal values for life insurance[, *with respect to any one life, regardless of the*
19 *number of policies or contracts*].

20 (B) \$100,000 in health insurance benefits **other than basic hospital, medical and surgical in-**
21 **surance, major medical insurance, disability insurance or long term care insurance**, including
22 any net cash surrender and net cash withdrawal values[, *with respect to any one life, regardless of*
23 *the number of policies or contracts*].

24 (C) **\$300,000 in disability insurance benefits.**

25 (D) **\$300,000 in long term care insurance benefits.**

26 (E) **\$500,000 in basic hospital, medical and surgical insurance or major medical insurance.**

27 [(C)] (F) \$250,000 in the present value of annuity benefits, including **any** net cash surrender and
28 net cash withdrawal values[, *with respect to any one life, regardless of the number of policies or con-*
29 *tracts*.];

30 (c) **With respect to each payee of a structured settlement annuity or the beneficiary of**
31 **the payee if deceased, \$250,000 in the present value of annuity benefits, in the aggregate, in-**
32 **cluding any net cash surrender and net cash withdrawal values; or**

33 [(D)] (d) \$250,000 in **the** present value **of** annuity benefits, in the aggregate, including **any** net
34 cash surrender and net cash withdrawal values, with respect to each individual participating in a
35 governmental retirement plan established under section 401, 403(b) or 457 of the United States
36 Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such
37 individual if deceased.

38 [(9)] *The association shall not be liable for more than \$300,000 in the aggregate with respect to any*
39 *one individual under subsection (8)(b) of this section.*

40 [(10)] *Subject to the applicable limitation with respect to any one individual under subsections (8)*
41 *and (9) of this section, the benefits for which the association may become liable with respect to any one*
42 *owner of policies or contracts other than an unallocated annuity contract to which subsection (8)(b)(D)*
43 *of this section applies, whether the owner is an individual, corporation or other person, shall not exceed*
44 *\$5 million in benefits in the aggregate for all persons covered by such policies or contracts, regardless*
45 *of the number of the policies and contracts held by the owner.*

1 **(12) The association may not be liable for more than:**

2 **(a) \$300,000 in benefits, in the aggregate, with respect to any one life under subsection**
3 **(11)(b), (c) and (d) of this section, with the exception of benefits under subsection (11)(b)(E)**
4 **of this section, in which case the aggregate liability of the association may not exceed**
5 **\$500,000 with respect to any one life.**

6 **(b) With respect to one policyholder of multiple nongroup policies of life insurance, re-**
7 **gardless of whether the policyholder is an individual, firm, corporation or other person, and**
8 **whether the persons insured are officers, managers, employees or other persons, \$5 million**
9 **in benefits, regardless of the number of policies and contracts held by the policyholder.**

10 **(13) The limitations set forth in subsections (11) and (12) of this section are limitations**
11 **on the benefits for which the association is obligated before taking into account either its**
12 **subrogation and assignment rights or the extent to which those benefits could be provided**
13 **out of the assets of the impaired or insolvent insurer attributable to covered policies. The**
14 **costs of the association's obligations under ORS 734.750 to 734.890 may be met by the use of**
15 **assets attributable to covered policies or reimbursed to the association under its subrogation**
16 **and assignment rights.**

17 **(14) In performing its obligations to provide coverage under ORS 734.750 to 734.890, the**
18 **association is not required to guarantee, assume, reinsure or perform, or cause to be guar-**
19 **anteed, assumed, reinsured or performed, any contractual obligation of the impaired or in-**
20 **solvent insurer or contract owner under a covered policy that does not materially affect the**
21 **economic values or economic benefits of the covered policy or contract.**

22 ~~[(11)]~~ **(15) The association may:**

23 **(a) Enter into such contracts as are necessary or proper to carry out the provisions and pur-**
24 **poses of ORS 734.750 to 734.890.**

25 **(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any**
26 **unpaid assessments under ORS 734.815 and to settle claims or potential claims against the as-**
27 **sociation.**

28 **(c) Borrow money to effect the purposes of ORS 734.750 to 734.890. Any notes or other evidence**
29 **of indebtedness of the association not in default shall be legal investments for [domestic] member**
30 **insurers and may be carried as admitted assets.**

31 **(d) Employ or retain such persons as are necessary to handle the financial transactions of the**
32 **association, and to perform such other functions as become necessary or proper under ORS 734.750**
33 **to 734.890.**

34 **(e) Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver**
35 **to carry out the powers and duties of the association.**

36 **(f) Take such legal action as may be necessary to avoid payment of improper claims.**

37 **(g) Exercise, for the purposes of ORS 734.750 to 734.890 and to the extent approved by the di-**
38 **rector, the powers of a [domestic] member life or health insurer, but in no case may the association**
39 **issue policies other than those issued to perform the contractual obligations of the impaired or in-**
40 **solvent insurer.**

41 **(h) Organize itself as a corporation or other legal form permitted by the laws of this**
42 **state.**

43 **(i) Request information from a person seeking coverage from the association to aid the**
44 **association in determining its obligations under ORS 734.750 to 734.890 with respect to that**
45 **person.**

1 (j) Take any other necessary or appropriate action to discharge its duties and obligations
2 and to exercise its powers under ORS 734.750 to 734.890.

3 (16) The duties and powers of the association described in this section are in addition to
4 any other duties and powers of the association described in ORS 734.750 to 734.890.

5 (17)(a) Within 180 days after the date of the order of liquidation, the association may
6 succeed to the rights and obligations of the ceding member insurer that relate to policies or
7 annuities covered, in whole or in part, by the association, in each case under any one or
8 more reinsurance contracts entered into by the insolvent insurer and its reinsurers and se-
9 lected by the association. Any such assumption shall be effective as of the date of the order
10 of liquidation. The election shall be effected by the association sending written notice, return
11 receipt requested, to the affected reinsurers.

12 (b) To facilitate the earliest practicable decision about whether to assume any of the
13 contracts of reinsurance, and in order to protect the financial position of the estate, the
14 receiver and each reinsurer of the ceding member insurer shall make available upon request
15 to the association as soon as possible after commencement of formal delinquency pro-
16 ceedings copies of in-force contracts of reinsurance and all related files and records relevant
17 to the determination of whether such contracts should be assumed, and notices of any de-
18 faults under the reinsurance contracts or any known event or condition which with the
19 passage of time could become a default under the reinsurance contracts.

20 (c) For any reinsurance contracts assumed by the association under paragraphs (a) and
21 (b) of this subsection:

22 (A) The association is responsible for all unpaid premiums due under the reinsurance
23 contracts for periods both before and after the date of the order of liquidation, and shall be
24 responsible for the performance of all other obligations to be performed after the date of the
25 order of liquidation, related to policies or annuities covered by the reinsurance contract, in
26 whole or in part, by the association. The association may charge policies or annuities covered
27 in part by the association, through reasonable allocation methods, the costs for reinsurance
28 in excess of the obligations of the association and shall provide notice and an accounting of
29 those charges to the liquidator.

30 (B) The association is entitled to any amounts payable by the reinsurer under the rein-
31 surance contracts with respect to losses or events that occur in periods after the date of the
32 order of liquidation and that relate to policies or annuities covered, in whole or in part, by
33 the association. Upon receipt of any such amounts, the association shall pay the beneficiary
34 under the policy or annuity on account of which the amounts were paid a portion of the
35 amount equal to the lesser of:

36 (i) The amount received by the association; or

37 (ii) The amount received by the association that is in excess of the amount equal to the
38 benefits paid by the association on account of the policy or annuity minus the amount re-
39 tained by the insurer applicable to the loss or event.

40 (C) Within 30 days following the association's election, the association and each reinsurer
41 shall calculate the net balance due to or from the association under each reinsurance con-
42 tract as of the election date with respect to policies or annuities covered, in whole or in part,
43 by the association. The calculation shall give full credit to all items paid by the insurer or
44 its receiver or by the reinsurer prior to the election date. The reinsurer shall pay the re-
45 ceiver any amounts due for losses or events prior to the date of the order of liquidation,

1 subject to any setoff for premiums unpaid for periods prior to that date, and the association
2 or the reinsurer shall pay any remaining balance due to one another. The reinsurer and the
3 association shall make such payments within five days after the completion of the calculation
4 of the net balance due under each reinsurance contract. Any disputes over the amounts due
5 to the association or the reinsurer shall be resolved by arbitration according to the terms
6 of the affected reinsurance contracts or, if the contract contains no arbitration clause, as
7 otherwise provided by law. If the receiver has received any amounts due the association
8 under subparagraph (B) of this paragraph, the receiver shall remit the amounts to the as-
9 sociation as promptly as practicable.

10 (d) If the association, or the receiver on the association's behalf, within 60 days after the
11 election date pays the unpaid premiums due for periods both before and after the election
12 date that relate to policies or annuities covered, in whole or in part, by the association, the
13 reinsurer may not terminate the reinsurance contracts for failure to pay premiums insofar
14 as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by
15 the association, and may not set off any unpaid amounts due under other contracts, or un-
16 paid amounts due from parties other than the association, against amounts due to the as-
17 sociation.

18 (e)(A) During the period from the date of the order of liquidation until the election date
19 or, if the election date does not occur, 180 days after the date of the order of liquidation:

20 (i) Neither the association nor the reinsurer shall have any rights or obligations under
21 reinsurance contracts that the association has the right to assume under paragraph (a) of
22 this subsection, whether for periods prior to or after the date of the order of liquidation; and

23 (ii) The reinsurer, the receiver and the association shall, to the extent practicable, pro-
24 vide to each other data and records that are reasonably requested.

25 (B) After the association has elected to assume a reinsurance contract, the parties'
26 rights and obligations shall be governed by paragraph (a) of this subsection.

27 (f) If the association does not elect to assume a reinsurance contract by the election date
28 under paragraph (a) of this subsection, the association shall have no rights or obligations,
29 for periods both before and after the date of the order of liquidation, with respect to the
30 reinsurance contract.

31 (g) When policies or annuities, or covered obligations related to policies or annuities, are
32 transferred to an assuming insurer, the association may also transfer reinsurance on the
33 policies or annuities for contracts assumed under paragraph (a) of this subsection, subject
34 to the following:

35 (A) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance
36 contract transferred may not cover any new policies of insurance or annuities in addition to
37 those transferred;

38 (B) The obligations described in paragraph (a) of this subsection shall no longer apply
39 with respect to matters arising after the effective date of the transfer; and

40 (C) The transferring party shall give notice in writing, return receipt requested, to the
41 affected reinsurer not less than 30 days before the effective date of the transfer.

42 (h) The provisions of this subsection shall supersede any other provision of law or any
43 affected reinsurance contract that provides for or requires any payment of reinsurance
44 proceeds, on account of losses or events that occur in periods after the date of the order of
45 liquidation, to the receiver or any other person. The receiver shall remain entitled to any

1 amounts payable by the reinsurer under the reinsurance contract with respect to losses or
2 events that occur in periods prior to the date of the order of liquidation, subject to applicable
3 setoff provisions.

4 (i) Except as otherwise provided in this subsection, nothing in this section shall:

5 (A) Alter or modify the terms and conditions of any reinsurance contract;

6 (B) Abrogate or limit any rights of any reinsurer to claim that the reinsurer is entitled
7 to rescind a reinsurance contract;

8 (C) Grant a policyholder, contract owner or beneficiary an independent cause of action
9 against a reinsurer that is not otherwise set forth in the reinsurance contract;

10 (D) Limit or affect the association's rights as a creditor of the estate against the assets
11 of the estate; or

12 (E) Apply to reinsurance agreements covering property or casualty risks.

13 (18) The board of directors of the association may exercise reasonable business judgment
14 to determine the means by which the association is to provide the benefits under ORS 734.750
15 to 734.890 in an economical and efficient manner.

16 (19) If the association has arranged or offered to provide the benefits of ORS 734.750 to
17 734.890 to a covered person under a plan or arrangement that fulfills the association's obli-
18 gations under this section, the person is not entitled to benefits from the association in ad-
19 dition to or other than those provided under the plan or arrangement.

20 (20) Venue in a suit against the association arising under ORS 734.750 to 734.890 shall be
21 in the Circuit Court for Marion County.

22 (21) In carrying out its duties in connection with guaranteeing, assuming or reinsuring
23 policies or contracts under this section, the association may, subject to approval of the
24 court, issue substitute coverage for a policy or contract that provides an interest rate,
25 crediting rate or similar factor determined by use of an index or other external reference
26 stated in the policy or contract for the purpose of calculating returns or changes in value
27 by issuing an alternative policy or contract in accordance with all of the following provisions:

28 (a) In lieu of the index or other external reference provided for in the original policy or
29 contract, the alternative policy or contract provides for a fixed interest rate, payment of
30 dividends with minimum guarantees, or a different method for calculating interest or
31 changes in value.

32 (b) There is no requirement for evidence of insurability, waiting period or other exclusion
33 that would not have applied under the original policy or contract.

34 (c) The alternative policy or contract is substantially similar to the original policy or
35 contract in all other material terms.

36 **SECTION 6.** ORS 734.815 is amended to read:

37 734.815. (1) For the purpose of providing the funds necessary to carry out the powers and duties
38 of the Oregon Life and Health Insurance Guaranty Association, the board of directors shall assess
39 the member insurers, separately for each account, at such time and for such amounts as the board
40 finds necessary. The board shall collect the assessments after 30 days' written notice to the member
41 insurers before payment is due.

42 (2) There shall be two assessments, as follows:

43 (a) Class A assessments shall be made for the purpose of meeting administrative and legal costs
44 and other general expenses whether or not related to a particular impaired or insolvent insurer.

45 (b) Class B assessments shall be made to the extent necessary to carry out the powers and du-

1 ties of the association under ORS 734.810 with regard to an impaired or insolvent insurer.

2 (3)(a) The amount of any class A assessment shall be determined by the board and may be made
3 on a pro rata or other basis. If pro rata, the board may provide that the class A assessment be
4 credited against future class B assessments. An assessment on another basis *[shall]* **may** not exceed
5 ~~[\$150]~~ **\$300** per member insurer in any one calendar year. The amount of any class B assessment
6 shall be allocated for assessment purposes among the accounts in the proportion that the premiums
7 received by the impaired or insolvent insurer on the policies covered by each account, for the last
8 calendar year preceding the assessment in which the impaired or insolvent insurer received premi-
9 ums, bears to the premiums received by such insurer for such calendar year on all covered policies.

10 (b) Class B assessments for each account shall be in the proportion that the premiums received
11 on business in this state by each assessed member insurer on policies covered by each account for
12 the three most recent calendar years for which information is available preceding the year in which
13 the insurer became impaired or insolvent, as the case may be, bears to such premiums received on
14 business in this state for such calendar years by all assessed member insurers.

15 (c) Assessments for funds to meet the requirements of the association with respect to an im-
16 paired or insolvent insurer *[shall]* **may** not be made until necessary to implement the purposes of
17 ORS 734.750 to 734.890. Classification of assessments under subsection (2) of this section and com-
18 putation of assessments under this subsection shall be made with a reasonable degree of accuracy,
19 recognizing that exact determinations may not always be possible.

20 (4) The association may abate or defer, in whole or in part, the assessment of a member insurer
21 if, in the opinion of the board, payment of the assessment would endanger the ability of the member
22 insurer to fulfill its contractual obligations. In the event an assessment against a member insurer
23 is abated or deferred, in whole or in part, the amount by which such assessment is abated or de-
24 ferred shall be assessed against the other member insurers.

25 (5) A member insurer *[shall]* **may** not be required to pay assessments in any one calendar year
26 exceeding two percent of the insurer's premiums in this state on the policies covered by the account.
27 If a member insurer's total assessment cannot be collected in any one year because of this limita-
28 tion, the remaining amount due shall be collected from the insurer in future years.

29 (6) The board may, by an equitable method as established in the plan of operation, refund to
30 member insurers, in proportion to the contribution of each insurer to that account, the amount by
31 which the assets of the account exceed the amount the board finds is necessary to carry out during
32 the coming year the obligations of the association with regard to that account, including assets ac-
33 cruing from assignment, subrogation, net realized gains and income from investments. A reasonable
34 amount may be retained in any account to provide funds for the continuing expenses of the associ-
35 ation and for future losses.

36 (7) It shall be proper for any member insurer, in determining its premium rates and policyowner
37 dividends for any kind of insurance within the scope of ORS 734.750 to 734.890, to consider the
38 amount reasonably necessary to meet its assessment obligations under ORS 734.750 to 734.890.

39 (8) The association shall issue to each insurer paying an assessment under ORS 734.750 to
40 734.890, other than a class A assessment, a certificate of contribution in a form prescribed by the
41 Director of the Department of Consumer and Business Services for the amount so paid. All out-
42 standing certificates shall be of equal dignity and priority without reference to amounts or dates
43 of issue. A certificate of contribution may be shown by the insurer in its financial statement as an
44 asset in such form and for such amount, if any, and period of time as the director may approve.

45 (9) The association may assess and collect interest on the amount of an assessment owed by a

1 member insurer that fails to pay the assessment when due. The annual rate that may be charged
2 under this subsection [*shall*] **may** not exceed the rate established by the director by rule.

3 **SECTION 7.** ORS 734.820 is amended to read:

4 734.820. (1)(a) The Oregon Life and Health Insurance Guaranty Association shall maintain on
5 file with the Director of the Department of Consumer and Business Services a plan of operation and
6 shall submit any amendments thereto necessary or suitable to [*assure*] **ensure** the fair, reasonable
7 and equitable administration of the association. Amendments to the plan shall become effective upon
8 approval in writing by the director.

9 (b) If the association fails to submit suitable amendments to the plan, the director shall, after
10 notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to
11 implement the provisions of ORS 734.750 to 734.890. Such rules shall continue in force until modified
12 by the director or superseded by amendments submitted by the association and approved by the di-
13 rector.

14 (2) All member insurers shall comply with the plan of operation.

15 (3) The plan of operation shall, in addition to requirements enumerated elsewhere in ORS
16 734.750 to 734.890:

17 (a) Establish procedures for handling the assets of the association.

18 (b) Establish the amount and method of reimbursing members of the board of directors.

19 (c) Establish regular places and times for meetings of the board of directors.

20 (d) Establish procedures for records to be kept of all financial transactions of the association,
21 its agents, and the board of directors.

22 (e) Establish the procedures whereby selections for the board of directors will be made and
23 submitted to the director.

24 (f) Establish any additional procedures for assessments under ORS 734.815.

25 (g) Contain additional provisions necessary or proper for the execution of the powers and duties
26 of the association.

27 **(h) Establish procedures for removing a member of the board of directors for cause, in-**
28 **cluding removing a board member who represents a member insurer when the member**
29 **insurer becomes either an impaired or insolvent insurer.**

30 **(i) Include a policy and procedures for addressing a conflict of interest.**

31 (4) The plan of operation may provide that any or all powers and duties of the association, ex-
32 cept those under [*of*] ORS 734.810 [*(11)(c)*] **(15)(c)** and 734.815, may be delegated to a corporation,
33 association or other organization which performs or will perform functions similar to those of the
34 association, or its equivalent, in two or more states. Such corporation, association or organization
35 shall be reimbursed for any payments made on behalf of the association and shall be paid for its
36 performance of any function of the association. A delegation under this subsection shall take effect
37 only with the approval of both the board of directors and the director, and may be made only to a
38 corporation, association or organization which extends protection not substantially less favorable
39 and effective than that provided by ORS 734.750 to 734.890.

40 **SECTION 8.** ORS 734.840 is amended to read:

41 734.840. (1) Nothing in ORS 734.750 to 734.890 shall be construed to reduce the liability for un-
42 paid assessments of the insureds on an impaired or insolvent insurer operating under a plan with
43 assessment liability.

44 (2) Records shall be kept of all negotiations and meetings in which the Oregon Life and Health
45 Insurance Guaranty Association or its representatives are involved to discuss the activities of the

1 association in carrying out its powers and duties under ORS 734.810. Records of such negotiations
 2 or meetings shall be made public only upon the termination of a liquidation, rehabilitation or con-
 3 servation proceeding involving the impaired or insolvent insurer, upon the termination of the
 4 impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction.
 5 Nothing in this subsection shall limit the duty of the association to render a report of its activities
 6 under ORS 734.850.

7 (3) For the purpose of carrying out its obligations under ORS 734.750 to 734.890, the association
 8 shall be considered to be a creditor of the impaired or insolvent insurer to the extent of assets at-
 9 tributable to covered policies reduced by any amounts to which the association is entitled as
 10 subrogee pursuant to ORS 734.810 [(7)] (10). All assets of the impaired or insolvent insurer attrib-
 11 utable to covered policies shall be used to continue all covered policies and pay all contractual ob-
 12 ligations of the impaired or insolvent insurer as required by ORS 734.750 to 734.890. "Assets
 13 attributable to covered policies," as used in this subsection, is that proportion of the assets which
 14 the reserves that should have been established for such policies bear to the reserves that should
 15 have been established for all policies of insurance written by the impaired or insolvent insurer.

16 (4) **As a creditor of the impaired or insolvent insurer as established in subsection (3) of**
 17 **this section and consistent with the provisions of ORS 731.648, the association and other**
 18 **similar associations shall be entitled to receive a disbursement of assets out of the**
 19 **marshaled assets, from time to time as the assets become available to reimburse it, as a**
 20 **credit against the contractual obligations of the association as set forth in ORS 734.810. If**
 21 **the liquidator has not, within 120 days of a final determination of insolvency of an insurer**
 22 **by the court, made an application to the court for the approval of a proposal to disburse**
 23 **assets out of marshaled assets to guaranty associations having obligations because of the**
 24 **insolvency, then the association may apply to the court for approval of the association's own**
 25 **proposal to disburse those assets.**

26 [(4)(a)] (5)(a) Prior to the termination of any liquidation, rehabilitation or conservation pro-
 27 ceeding, the court may take into consideration the contributions of the respective parties, including
 28 the association, the shareholders and [*policyowners*] **policyholders** of the insolvent insurer and any
 29 other party with a bona fide interest, in making an equitable distribution of the ownership rights
 30 of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the
 31 policyholders of the continuing or successor insurer.

32 (b) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made
 33 until and unless the total amount of valid claims of the association for funds expended in carrying
 34 out its powers and duties under ORS 734.810 with respect to such insurer have been fully recovered
 35 by the association.

36 [(5)(a)] (6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this state
 37 has been entered, the receiver appointed under such order shall have a right to recover on behalf
 38 of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock
 39 dividends paid by the insurer on its capital stock, made at any time during the five years preceding
 40 the petition for liquidation or rehabilitation, subject to the limitations of paragraphs (b), (c) and (d)
 41 of this subsection.

42 (b) No such dividend shall be recoverable if the insurer shows that, when paid, the distribution
 43 was lawful and reasonable, and that the insurer did not know and could not reasonably have known
 44 that the distribution might adversely affect the ability of the insurer to fulfill its contractual obli-
 45 gations.

1 (c) Any person who was an affiliate that controlled the insurer at the time the distributions
2 were paid shall be liable up to the amount of distributions the person received. Any person who was
3 an affiliate that controlled the insurer at the time the distributions were declared shall be liable up
4 to the amount of distributions the person would have received if they had been paid immediately.
5 If two persons are liable with respect to the same distributions, they shall be jointly and severally
6 liable.

7 (d) The maximum amount recoverable under this subsection shall be the amount needed in ex-
8 cess of all other available assets of the insolvent insurer to pay the contractual obligations of the
9 insolvent insurer.

10 (e) If any person liable under paragraph (c) of this subsection is insolvent, all its affiliates that
11 controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting
12 deficiency in the amount recovered from the insolvent affiliate.

13 **SECTION 9.** ORS 734.870 is amended to read:

14 734.870. There shall be no liability on the part of, and no cause of action of any nature shall
15 arise against, any member insurer or its agents or employees, the Oregon Life and Health Insurance
16 Guaranty Association or its agents or employees, members of the board of directors, or the Director
17 of the Department of Consumer and Business Services or the representatives of the director, for any
18 action taken by them in the performance of their powers and duties under ORS 734.750 to 734.890.
19 **The immunity provided under this section shall extend to the participation in any organiza-**
20 **tion of one or more other state associations of similar purposes and to any such organization**
21 **and its agents or employees.**

22 **SECTION 10.** ORS 734.880 is amended to read:

23 734.880. All proceedings in which an insolvent insurer is a party in any court in this state shall
24 be stayed [60] **180** days from the date an order of liquidation, rehabilitation or conservation is final
25 to permit proper legal action by the Oregon Life and Health Insurance Guaranty Association on any
26 matters germane to its powers or duties. As to judgment under any decision, order, verdict or find-
27 ing based on default the association may apply to have such judgment set aside by the same court
28 that made the judgment, and shall be permitted to defend against such suit on the merits.

29 **SECTION 11.** **The amendments to ORS 734.760, 734.790, 734.800, 734.805, 734.810, 734.815,**
30 **734.820, 734.840, 734.870 and 734.880 by sections 1 to 10 of this 2011 Act apply to coverage the**
31 **Oregon Life and Health Insurance Guaranty Association provides in connection with any**
32 **member insurer first placed under an order of rehabilitation, or first placed under an order**
33 **of liquidation if no order of rehabilitation was previously entered, on or after the effective**
34 **date of this 2011 Act.**

35 **SECTION 12.** **This 2011 Act being necessary for the immediate preservation of the public**
36 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
37 **on its passage.**

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