

House Bill 2087

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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**.

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 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. Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon Life and Health Insurance Guaranty Association; amending ORS 734.760,
3 734.800, 734.810 and 734.815; and declaring an emergency.

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

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

6 734.760. As used in ORS 734.750 to 734.890, unless the context requires otherwise:

7 (1) "Account" means any of the [*three*] accounts **or subaccounts** created under ORS 734.800.

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

10 (3) "Contractual obligation" means any obligation under covered policies.

11 (4) "Covered policy" means any policy or contract to which ORS 734.750 to 734.890 apply.

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

15 [(5)] (6) "Impaired insurer" means a member insurer deemed by the Director of the Department
16 of Consumer and Business Services after September 13, 1975, to be potentially unable to fulfill its
17 contractual obligations, excluding insolvent insurers.

18 [(6)] (7) "Insolvent insurer" means an insurer:

19 (a) That was a member insurer either at the time the policy was issued or when the insured
20 event occurred, or any insurer that has acquired direct policy obligations from a member insurer
21 through purchase, merger, consolidation, reinsurance or otherwise, whether or not the acquiring
22 insurer held a certificate of authority to transact insurance in this state at the time the policy was
23 issued or when the insured event occurred; and

24 (b) That, after September 13, 1975, becomes insolvent and is placed under a final order of liqui-
25 dation, rehabilitation or conservation by a court of competent jurisdiction.

26 (8) **"Long term care insurance" has the meaning given that term in ORS 743.652.**

27 [(7)] (9) "Member insurer" means any insurer authorized to transact in this state any kind of
28 insurance to which ORS 734.750 to 734.890 apply.

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

5 [(9)] (11) “Resident” means a person to whom contractual obligations are owed by a member
 6 insurer which is determined to be an impaired or insolvent insurer at a time when the person is a
 7 resident of this state.

8 **SECTION 2.** ORS 734.800 is amended to read:

9 734.800. (1) There is created a nonprofit legal entity to be known as the Oregon Life and Health
 10 Insurance Guaranty Association. All member insurers shall be and remain members of the associ-
 11 ation as a condition of their authority to transact insurance in this state. The association shall
 12 perform its functions under the plan of operation established and approved under ORS 734.820, and
 13 shall exercise its powers through a board of directors established under ORS 734.805. For purposes
 14 of administration and assessment, the association shall maintain three accounts:

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

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

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

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

19 (b) The life insurance account; and

20 (c) The annuity account.

21 (2) The association shall come under the immediate supervision of the Director of the Depart-
 22 ment of Consumer and Business Services and shall be subject to the applicable provisions of the
 23 insurance laws of this state.

24 **SECTION 3.** ORS 734.810, as amended by section 1, chapter 26, Oregon Laws 2010, is amended
 25 to read:

26 734.810. *[In addition to the other powers and duties enumerated in ORS 734.750 to 734.890:]*

27 (1) If a domestic insurer is an impaired insurer, the Oregon Life and Health Insurance Guaranty
 28 Association may, subject to any conditions imposed by the association and approved by the impaired
 29 insurer and the Director of the Department of Consumer and Business Services, other than those
 30 which impair the contractual obligations of the impaired insurer:

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

33 (b) Provide such money, pledges, notes, guarantees or other means as are proper to implement
 34 paragraph (a) of this subsection and assure payment of the contractual obligations of the impaired
 35 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, subject to the approval of
 38 the director:

39 (a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the cov-
 40 ered policies of the insolvent insurer;

41 (b) Assure payment of the contractual obligations of the insolvent insurer; and

42 (c) Provide such money, pledges, notes, guarantees or other means as are reasonably necessary
 43 to discharge such duties.

44 (3)(a) In carrying out its duties under subsection (2) of this section, the association may impose
 45 permanent policy liens or contract liens in connection with any guaranteed, assumption or reinsur-

1 ance agreement, if the court considering the lien finds that the amounts which can be assessed un-
 2 der ORS 734.750 to 734.890 are less than the amounts needed to assure full and prompt performance
 3 of the insolvent insurer's contractual obligations or that the economic or financial conditions af-
 4 fecting member insurers are sufficiently adverse to render the imposition of policy or contract liens
 5 to be in the public interest, and approves the specific policy liens or contract liens to be used.

6 (b) Before being obligated under subsection (2) of this section the association may request that
 7 there be imposed temporary moratoriums or liens on payments of cash values and policy loans, in
 8 addition to any contractual provisions for deferral of cash or policy loan values, and such temporary
 9 moratoriums and liens may be imposed if they are approved by the court.

10 (4) If the association fails to act as required in subsection (2) of this section within a reasonable
 11 time, the director shall have the powers and duties of the association under ORS 734.750 to 734.890
 12 with respect to insolvent insurers.

13 (5) The association may render assistance and advice to the director, upon request of the di-
 14 rector, concerning rehabilitation, payment of claims, continuance of coverage or the performance
 15 of other contractual obligations of any impaired or insolvent insurer.

16 (6) The association shall have standing to appear before any court in this state having juris-
 17 diction over an impaired or insolvent insurer concerning which the association is or may become
 18 obligated under ORS 734.750 to 734.890. Such standing shall extend to all matters germane to the
 19 powers and duties of the association including, but not limited to, proposals for reinsuring or guar-
 20 anteeing the covered policies of the impaired or insolvent insurer and the determination of the
 21 covered policies and contractual obligations. The association may also appear or intervene before
 22 a court in another state with jurisdiction over an impaired or insolvent insurer for which the asso-
 23 ciation is or may become obligated or with jurisdiction over a third party against whom the asso-
 24 ciation may have rights through subrogation of the policyholders of the insurer.

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

33 (b) The subrogation rights of the association under this subsection shall have the same priority
 34 against the assets of the insolvent insurer as that possessed by the person entitled to receive bene-
 35 fits under ORS 734.750 to 734.890.

36 (8) The contractual obligations of the insolvent insurer for which the association becomes or
 37 may become liable shall not exceed the lesser of:

38 (a) The contractual obligations for which the insurer is liable or would have been liable if it
 39 were not an insolvent insurer, unless such obligations are reduced as permitted by subsection (3)
 40 of this section; or

41 (b) The applicable following benefits, subject to subsection (9) of this section:

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

45 (B) ~~[\$100,000]~~ **\$500,000** in health insurance benefits **other than disability insurance or long**

1 **term care insurance**, including any net cash surrender and net cash withdrawal values, with re-
 2 spect to any one life, regardless of the number of policies or contracts.

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

4 **(D) \$200,000 in long term care insurance benefits.**

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

8 [(D)] **(F)** \$250,000 in present value annuity benefits, in the aggregate, including net cash sur-
 9 render and net cash withdrawal values, with respect to each individual participating in a govern-
 10 mental retirement plan established under section 401, 403(b) or 457 of the United States Internal
 11 Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such indi-
 12 vidual if deceased.

13 (9) The association shall not be liable for more than \$300,000 in the aggregate with respect to
 14 any one individual under subsection [(8)(b)] **(8)(b)(A), (C), (D), (E) or (F)** of this section **or for**
 15 **more than \$500,000 in the aggregate with respect to any one individual under subsection**
 16 **(8)(b)(B) of this section.**

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

23 (11) The association may:

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

26 (b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any
 27 unpaid assessments under ORS 734.815.

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 insurers and
 30 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 life or health insurer, but in no case may the association issue
 39 policies other than those issued to perform the contractual obligations of the impaired or insolvent
 40 insurer.

41 **(12) The duties and powers of the association described in this section are in addition to**
 42 **the duties and powers of the association described in ORS 734.750 to 734.890.**

43 **SECTION 4.** ORS 734.815 is amended to read:

44 734.815. (1) For the purpose of providing the funds necessary to carry out the powers and duties
 45 of the Oregon Life and Health Insurance Guaranty Association, the board of directors shall assess

1 the member insurers, separately for each account, at such time and for such amounts as the board
2 finds necessary. The board shall collect the assessments after 30 days' written notice to the member
3 insurers before payment is due.

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

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

7 (b) Class B assessments shall be made to the extent necessary to carry out the powers and du-
8 ties of the association under ORS 734.810 with regard to an impaired or insolvent insurer.

9 (3)(a) The amount of any class A assessment shall be determined by the board and may be made
10 on a pro rata or other basis. If pro rata, the board may provide that the class A assessment be
11 credited against future class B assessments. An assessment on another basis shall not exceed
12 [~~\$150~~] **\$300** per member insurer in any one calendar year. The amount of any class B assessment
13 shall be allocated for assessment purposes among the accounts in the proportion that the premiums
14 received by the impaired or insolvent insurer on the policies covered by each account, for the last
15 calendar year preceding the assessment in which the impaired or insolvent insurer received premi-
16 ums, bears to the premiums received by such insurer for such calendar year on all covered policies.

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

22 (c) Assessments for funds to meet the requirements of the association with respect to an im-
23 paired or insolvent insurer shall not be made until necessary to implement the purposes of ORS
24 734.750 to 734.890. Classification of assessments under subsection (2) of this section and computation
25 of assessments under this subsection shall be made with a reasonable degree of accuracy, recogniz-
26 ing that exact determinations may not always be possible.

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

32 (5) A member insurer shall not be required to pay assessments in any one calendar year ex-
33 ceeding two percent of the insurer's premiums in this state on the policies covered by the account.
34 If a member insurer's total assessment cannot be collected in any one year because of this limita-
35 tion, the remaining amount due shall be collected from the insurer in future years.

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

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

1 (8) The association shall issue to each insurer paying an assessment under ORS 734.750 to
2 734.890, other than a class A assessment, a certificate of contribution in a form prescribed by the
3 Director of the Department of Consumer and Business Services for the amount so paid. All out-
4 standing certificates shall be of equal dignity and priority without reference to amounts or dates
5 of issue. A certificate of contribution may be shown by the insurer in its financial statement as an
6 asset in such form and for such amount, if any, and period of time as the director may approve.

7 (9) The association may assess and collect interest on the amount of an assessment owed by a
8 member insurer that fails to pay the assessment when due. The annual rate that may be charged
9 under this subsection shall not exceed the rate established by the director by rule.

10 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
12 **on its passage.**

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