

Enrolled
House Bill 2241

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CHAPTER

AN ACT

Relating to insurance companies; creating new provisions; amending ORS 731.988, 731.992, 732.518, 732.521, 732.523, 732.526, 732.528, 732.548, 732.552, 732.566, 732.568, 732.574, 732.576, 732.578, 732.584, 732.586, 732.588, 732.600, 732.612, 732.810 and 733.630; and declaring an emergency.

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

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 705.

SECTION 2. (1) The Director of the Department of Consumer and Business Services may share confidential and privileged documents, material or information the director receives under ORS 732.517 to 732.592 with a chief insurance regulatory official in accordance with ORS 705.137:

(a) Only if the regulatory official's jurisdiction has a statute or rules that are substantially similar in effect to ORS 732.586; and

(b) Only if the regulatory official agrees in writing not to disclose the documents, material or information.

(2) The director shall enter into a written agreement with the National Association of Insurance Commissioners that governs how the director and the association may use or share documents, material or information the director receives under ORS 732.517 to 732.592, including documents, material or information the director receives as a consequence of the director's participation in a supervisory college under section 11 of this 2013 Act. The agreement must:

(a) Specify procedures and protocols for maintaining the confidentiality and security of documents, material and information the director shares with the association and the association's affiliates or subsidiaries;

(b) Specify conditions under which the association may share the documents, material or information with other state, federal or international regulatory agencies;

(c) State that the director retains ownership of the documents, material and information the director shares with the association and the association's affiliates and subsidiaries and that the association's use of the documents, material or information is subject to the director's control;

(d) Require the director or the association to notify an insurer if a subpoena or other request compels the association or the association's affiliates or subsidiaries to disclose or produce documents, material or information the director has shared with the association;

(e) Require the association to consent to an insurer's intervention in an administrative or judicial proceeding that may result the association or the association's affiliates or sub-

sidiaries having to disclose or produce documents, material or information the director shared with the association; and

(f) State that the association must maintain, in accordance with ORS 705.137, the confidentiality of the documents, material or information the association receives from the director.

SECTION 3. Sections 4 to 8 of this 2013 Act are added to and made a part of ORS 732.517 to 732.546.

SECTION 4. (1) If the chief insurance regulatory officials of two or more jurisdictions must approve a proposal to acquire control of an insurer, a person that files a statement with the Director of the Department of Consumer and Business Services under ORS 732.523 may request a hearing on the acquisition in a single proceeding before all of the chief insurance regulatory officials who must approve the acquisition. The person that files the statement under ORS 732.523 shall file a copy of the statement with the National Association of Insurance Commissioners within five days after filing the statement with the director.

(2) A chief insurance regulatory official of another state may decline to attend the hearing on the acquisition. If the regulatory official declines to attend, the official shall notify the person that filed the statement under ORS 732.523 within 10 days after the date on which the official receives a copy of the statement.

(3) The proceeding described in subsection (1) of this section must be:

(a) Conducted as a public hearing before the chief insurance regulatory officials of the states in which the acquiring party and the insurer subject to the acquisition are domiciled; and

(b) Held in one of the states in which the acquiring party and the insurer subject to the acquisition are domiciled.

(4) A chief insurance regulatory official may attend the proceeding described in subsection (1) of this section in person or by telecommunication.

SECTION 5. (1) As used in subsection (3)(d) of this section, "market" means the direct written insurance premium for a line of business in this state that an insurer authorized to transact insurance in this state claims in the annual financial statement the insurer files under ORS 731.574.

(2) Except as provided in subsection (3) of this section, sections 4, 6, 7 and 8 of this 2013 Act apply to an acquisition in which a change of control occurs in an insurer that is authorized to transact insurance in this state.

(3) Sections 4, 6, 7 and 8 of this 2013 Act do not apply to:

(a) A person's purchase of an insurer's securities solely for investment purposes, provided that the person does not use the person's ownership of the securities to cause or attempt to cause an action, or to vote to take an action, that would cause a substantial decrease in competition in an insurance market in this state. If a presumption arises that a person controls the insurer by reason of the person's purchase of securities, the person's purchase of the securities is not solely for investment purposes unless the chief insurance regulatory official in the state in which the person is domiciled accepts a disclaimer of control from the person or the regulatory official affirmatively finds that the person does not control the insurer. The person or the regulatory official must communicate the disclaimer or the finding to the Director of the Department of Consumer and Business Services.

(b) A person's acquisition of another person, if both the person that is acquiring the other person and the person that is subject to the acquisition are not engaged primarily in transacting insurance, either directly or through an affiliate. An exemption under this subsection from the application of sections 4, 6, 7 and 8 of this 2013 Act is effective only if the person that is acquiring the other person notifies the director in accordance with section 6 of this 2013 Act not less than 30 days before the date on which the acquisition would be completed. The requirement to notify the director does not apply if an exclusion set forth in paragraph (a), (c), (d), (e) or (f) of this subsection applies to the acquisition.

(c) An acquisition in which a person acquires another person with which the person is already affiliated.

(d) An acquisition that, immediately after completion, would meet any of these conditions:

(A) The combined market share held by an insurer that is acquiring another insurer and the insurer that is subject to the acquisition does not exceed five percent of the total market share in any market;

(B) The market share in any market does not increase for either an insurer that is acquiring another insurer or the insurer that is subject to the acquisition; or

(C) The combined market share held by an insurer that is acquiring another insurer and the insurer that is subject to the acquisition does not:

(i) Exceed 12 percent of the total market share in any market; or

(ii) Increase by more than two percent of the total market share in any market.

(e) An acquisition for which an insurer that is acquiring another insurer must notify the director in accordance with section 6 of this 2013 Act solely because of the effect the acquisition would have on the ocean marine line of business.

(f)(A) An acquisition of an insurer for which the chief insurance regulatory officer of the state in which the insurer is domiciled finds that:

(i) The insurer is in failing condition;

(ii) No feasible alternative exists for improving the insurer's condition; and

(iii) The public benefit that would arise from improving the insurer's condition by means of the acquisition outweigh the detriment that may result from diminishing competition among insurers; and

(B) For an exemption under this paragraph to apply, the chief insurance regulatory officer of the state in which the insurer is domiciled must communicate the regulatory officer's findings to the director.

SECTION 6. (1)(a) A person that proposes to acquire another person, or the person that would be subject to the acquisition, must notify the Director of the Department of Consumer and Business Services and wait for the period of time specified in subsection (3) of this section before completing the acquisition. The director shall treat a notice and information that a person submits in accordance with this section as confidential and as exempt from disclosure under ORS 192.410 to 192.505.

(b) A person that completes an acquisition without notifying the director as provided in this subsection may be subject to an order from the director under section 8 of this 2013 Act.

(2) The director by rule shall prescribe the form and content of the notice that a person must submit under subsection (1) of this section and, in prescribing the form and content of the notice, shall consider the form and content of the notice that the National Association of Insurance Commissioners prescribes for markets in which, under section 5 (2) of this 2013 Act, completing an acquisition requires submitting a notice under this section. The director may require any additional information the director deems necessary to determine under section 7 of this 2013 Act whether the acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly. The additional information may include an opinion from an economist that assesses what competitive impact the acquisition may have in this state. A person that submits an economist's opinion under this subsection shall also submit a summary of the economist's education and experience that reflect the economist's ability to render an informed opinion.

(3)(a) A person may not proceed with an acquisition until 30 days after the director receives the notice under subsection (1) of this section, unless the director permits the acquisition to proceed earlier.

(b) During the period of time described in paragraph (a) of this subsection, the director may, only once, require the person to submit additional information related to the acquisition. If the director requires additional information, the person may not proceed with the

acquisition until 30 days after the director receives the additional information, unless the director permits the acquisition to proceed earlier.

SECTION 7. (1) As used in this section:

(a) "Highly concentrated market" means a market in which the share that the four largest insurers hold is 75 percent or more of the market.

(b) "Insurer" means a company that transacts insurance or a group of companies that transact insurance and are under common management, ownership or control.

(c) "Market" means the relevant product or geographical market the Director of the Department of Consumer and Business Services determines under subsection (7) of this section.

(2) The director may issue an order under section 8 of this 2013 Act if an insurer fails to submit adequate information in accordance with section 6 of this 2013 Act or if prima facie or substantial evidence of the type described in subsection (3)(a) or (b) of this section exists to support the director's determination that an acquisition may:

(a) Substantially diminish competition in a line of insurance in this state; or

(b) Tend to create a monopoly.

(3)(a) Prima facie evidence exists to support the director's determination that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly if the acquisition:

(A) Is subject to section 5 of this 2013 Act;

(B) Involves two or more insurers that compete in the same market;

(C) Will take place in a market that has a significant trend toward increased concentration, as provided in subsection (4) of this section; and

(D) Involves at least one insurer within a group of up to eight of the largest insurers in a market that has a significant trend toward increased concentration, as provided in subsection (4) of this section, and another insurer that is either within the same group or has a market share of two percent or more.

(b) Substantial evidence exists to support the director's determination that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly if:

(A) In a highly concentrated market the insurers involved in the acquisition hold the following shares:

Insurer A	Insurer B
Four percent	Four percent or more
10 percent	Two percent or more
15 percent	One percent or more

(B) In a market that is not highly concentrated, the insurers involved in the acquisition hold the following shares:

Insurer A	Insurer B
Five percent	Five percent or more
10 percent	Four percent or more
15 percent	Three percent or more
19 percent	One percent or more

(4) Evidence of a significant trend toward increased concentration in the market exists if the aggregate market share of any grouping of as many as eight of the largest insurers in the market has increased by seven percent or more over a period of time that begins at least five years and not more than 10 years before the date of the notice described in section 6 of this 2013 Act and that ends on the date of the notice described in section 6 of this 2013 Act.

(5) Notwithstanding the requirement in subsection (2) of this section to find prima facie or substantial evidence before issuing an order under section 8 of this 2013 Act, the director may issue the order if the director determines, on the basis of other substantial evidence, that the acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly. In making a determination under this subsection, the director may consider:

- (a) The market shares of the insurers involved in the acquisition;
- (b) Volatility in the relative market shares among the largest insurers in the market;
- (c) The number of competitors in the market;
- (d) The concentration of the market and any trend toward increased concentration; and
- (e) The ease with which an insurer may enter or exit the market.

(6) The director has the burden of showing prima facie evidence for the director's determination that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly. A person may rebut the director's showing or determination under subsection (2), (3) or (5) of this section by providing substantial evidence to the contrary.

(7) In determining the scope and extent of the market for the purpose of determining whether an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly, the director at a minimum shall consider definitions and guidelines that the National Association of Insurance Commissioners promulgates and information that the parties to the acquisition submit. Unless the director determines otherwise:

(a) The product market is the direct written insurance premium for the line of business in this state that an insurer authorized to transact insurance in this state claims in the annual financial statement the insurer files under ORS 731.574; and

(b) The geographical market is this state.

(8) In the tables shown in subsection (3)(b) of this section:

(a) Percentages that do not appear in the tables may be interpolated using the percentages that appear in the tables.

(b) Prima facie evidence exists for the director to determine that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly if more than two insurers are involved in the acquisition and the total market share among the insurers exceeds the aggregated market share of "Insurer A" and "Insurer B" in any row shown in the tables.

(c) "Insurer A" is the insurer with the largest share of the market.

(9) The director may not issue an order under section 8 of this 2013 Act if:

(a) The acquisition will yield substantial economies of scale or substantial economies in resource use that cannot feasibly be achieved in any other way and the economies would provide a public benefit that outweighs the public benefit of maintaining competition in the market; or

(b) The acquisition would substantially increase the availability of insurance and the public benefit from increased insurance availability outweighs the public benefit of maintaining competition in the market.

SECTION 8. (1)(a) The Director of the Department of Consumer and Business Services may issue an order with the effect described in paragraph (b) of this subsection if the di-

rector determines that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly or if the director determines that a party to an acquisition has violated a provision of section 6 of this 2013 Act. The director shall issue the order together with findings of fact and conclusions of law that support the order.

(b) An order issued under paragraph (a) of this subsection may:

(A) Require an insurer to cease and desist from transacting insurance in this state in the line of insurance the director identifies in the director's determination under paragraph (a) of this subsection; or

(B) Deny an application from an insurer for a certificate of authority to transact insurance in this state.

(2) The director may not issue an order under subsection (1) of this section unless the director:

(a) Provides a hearing to the person that will be subject to the order;

(b) Notifies the person of the impending order and the hearing within 30 days after the date on which the person submitted the notice described in section 6 of this 2013 Act and not less than 15 days before the date of the hearing; and

(c) Completes the hearing and issues the order not later than 60 days after the date on which the person submitted the notice described in section 6 of this 2013 Act.

(3) An order issued under subsection (1) of this section does not apply if an acquisition that is the subject of the order does not proceed.

(4) A person that violates an order issued under subsection (1) of this section may be subject to:

(a) A civil penalty under ORS 731.988; or

(b) A suspension or revocation of the person's certificate of authority.

(5) Notwithstanding ORS 732.543 (4), ORS 732.543 (2) and (3) and 732.588 do not apply to an acquisition concerning which the director has issued an order under subsection (1) of this section.

SECTION 9. Sections 10, 11 and 12 of this 2013 Act are added to and made a part of ORS 732.517 to 732.592.

SECTION 10. Every insurer that must register with the Director of the Department of Consumer and Business Services under ORS 732.551 shall file an enterprise risk report each year. The enterprise risk report must identify, to the best of the insurer's knowledge and belief, the material risks within the insurance holding company system of which the insurer is a part that could pose enterprise risk to the insurer. The insurer shall file the enterprise risk report with the chief insurance regulatory official in the state that the director determines is the lead state for the insurance holding company system of which the insurer is a part. The director shall make the determination in accordance with procedures the director adopts by rule after considering procedures set forth in a Financial Analysis Handbook that the National Association of Insurance Commissioners has adopted.

SECTION 11. (1)(a) The Director of the Department of Consumer and Business Services may establish or participate in a temporary or a permanent supervisory college for any domestic insurer that is:

(A) Registered under ORS 732.551; and

(B) Part of an insurance holding company system that has international operations.

(b) The director may establish or participate in a supervisory college in order to:

(A) Ensure that the insurer complies with the Insurance Code;

(B) Assess the insurer's:

(i) Financial, legal and regulatory position;

(ii) Risk exposure and risk management; or

(iii) Governance processes; or

(C) Examine an individual insurer under ORS 732.584.

(c) The director may participate in a supervisory college with state, federal, international or other regulatory agencies that supervise the insurer or the insurer's affiliates.

(2)(a) As part of the director's establishment of or participation in a supervisory college, the director may:

(A) Specify criteria under which other regulatory agencies may become members of and participate in the supervisory college;

(B) Specify the functions of the supervisory college and the roles that other regulatory agencies will undertake in the supervisory college;

(C) Establish a leader among the regulatory agencies that participate in the supervisory college;

(D) Plan meetings and supervisory actions, specify processes for sharing information and otherwise coordinate the activities of the supervisory college;

(E) Draft a crisis management plan;

(F) Determine how long the director will participate in any supervisory college; and

(G) Take other actions that are necessary to participate in or facilitate a supervisory college's operations.

(b) The director may enter into agreements with other regulatory agencies under ORS 705.137 for any of the purposes identified in paragraph (a) of this subsection.

(3) An insurer that is registered under ORS 732.517 to 732.592 is liable to and shall pay to the director a reasonable amount that is equal to the expenses, including reasonable travel expenses, that the director incurs as a result of the director's participation in a supervisory college under this section. The director may assess the insurer regularly in order to pay the expenses.

(4) This section does not delegate to a supervisory college the director's authority within this state to regulate or supervise an insurer or the insurer's affiliates.

SECTION 12. The Director of the Department of Consumer and Business Services shall presume that a person controls another person if the person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of the other person. A person may rebut this presumption with a showing in the manner provided under ORS 732.568 that control does not exist in fact. The director may determine, after giving persons that have an interest in the director's determination notice and opportunity to be heard and after making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption that control exists in fact.

SECTION 13. Section 14 of this 2013 Act is added to and made a part of ORS 732.600 to 732.630.

SECTION 14. (1)(a) A member is an eligible member of a domestic mutual insurer for purposes of ORS 732.600 to 732.630 if the member's policy is in force as of the record date for a plan of conversion or reorganization.

(b) For purposes of this subsection, the record date is the date on which the mutual insurer's board of directors adopts the plan of conversion or reorganization or on some other date that the plan specifies as the record date and that the Director of the Department of Consumer and Business Services approves.

(2)(a) A member is an eligible member of a mutual holding company for purposes of ORS 732.622 and 732.624 if the member's policy is in force as of the record date for a plan of restructuring.

(b) For purposes of this subsection, the record date is the date on which the mutual holding company's board of directors adopts the plan of restructuring or on another date the plan specifies as the record date and that the director approves.

SECTION 15. ORS 731.988 is amended to read:

731.988. (1) [Any] A person [who] **that** violates any provision of the Insurance Code, any lawful rule or final order of the Director of the Department of Consumer and Business Services or any

judgment *[made by any]* **that a court makes in response to the director's** *[upon]* application *[of the director]*, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director *[of not more than]* **that does not exceed \$10,000** for each offense. *[In the case of individual insurance producers, adjusters or insurance consultants, the civil penalty shall be not more than]* **The civil penalty for individual insurance producers, adjusters or insurance consultants may not exceed \$1,000** for each offense. Each violation *[shall be deemed]* is a separate offense.

(2) In addition to the civil penalty *[set forth]* **specified** in subsection (1) of this section, *[any]* a person *[who]* **that** violates any provision of the Insurance Code, any lawful rule or final order of the director or any judgment *[made by any]* **that a court** *[upon]* **makes in response to the director's** application *[of the director]*, may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director *[but not to]* **that does not** exceed the amount by which *[such]* **the** person profited in any transaction *[which]* **that** violates *[any such]* **the** provision, rule, order or judgment.

(3) In addition to the civil penalties *[set forth]* **specified** in subsections (1) and (2) of this section, *[any]* an insurer that *[is required to make]* **must submit** a report under ORS 742.400 and that fails to do so within the specified time may be required to pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director *[but not to]* **that does not** exceed \$10,000.

(4) **In addition to the penalties specified in subsection (1), (2), (5) and (6) of this section, a director or officer of an insurance holding company system who engages in a transaction or makes an investment that has not been properly reported under, or does not otherwise comply with, ORS 732.517 to 732.592, who knowingly participates in or assents to the transaction or investment, or who permits another officer or an agent of the insurance holding company system to engage in the transaction or make the investment, shall pay, in the director or officer's individual capacity, a civil penalty in an amount determined by the director that does not exceed \$10,000.**

(5) **In addition to the penalties specified in subsections (1), (2), (4) and (6) of this section, an insurer or other person that fails to make a required filing or demonstrate a good faith effort to comply with a filing requirement under section 4, 5, 6, 7, or 8 of this 2013 Act shall pay a civil penalty in an amount determined by the director that does not exceed \$50,000.**

(6) **In addition to the penalties specified in subsections (1), (2), (4) and (5) of this section, an insurer or other person that violates a cease and desist order the director has issued under ORS 731.252 in connection with a violation of a provision of ORS 732.517 to 732.592 may be subject to a civil penalty in an amount determined by the director that does not exceed \$10,000 for each day of the violation.**

[(4)] (7) A civil penalty imposed under this section may be recovered either as provided in subsection *[(5)]* (8) of this section or in an action brought in the name of the State of Oregon in any court of appropriate jurisdiction.

[(5)] (8) Civil penalties under this section *[shall]* **must** be imposed and enforced in *[the manner provided by]* **accordance with** ORS 183.745.

[(6)] (9) The provisions of this section are in addition to and not in lieu of any other enforcement provisions *[contained]* **specified** in the Insurance Code.

SECTION 16. ORS 731.992 is amended to read:

731.992. (1) A violation of ORS 731.260 is a Class A misdemeanor.

(2) A violation of a provision of ORS 732.517 to 732.592 is a Class C felony.

(3) **An officer, director or employee of an insurance holding company system who willfully and knowingly makes, causes to be made, or subscribes to, a false statement, report or filing with the intent to deceive the Director of the Department of Consumer and Business Services in the performance of the director's duties under ORS 732.517 to 732.592 is guilty of a Class C misdemeanor. The officer, director or employee shall pay any fines imposed under this subsection in the officer's, director's or employee's individual capacity.**

[(2)] (4) A violation of any provision of the Insurance Code for which [a greater penalty is not otherwise provided by] the Insurance Code or [by] other applicable laws of this state **do not provide a greater penalty**, in addition to any applicable prescribed denial, suspension or revocation of any certificate or license or any civil forfeiture, is a Class A misdemeanor.

SECTION 17. ORS 732.518 is amended to read:

732.518. As used in ORS 732.517 to 732.546:

[(1) “Acquiring party” means each person by whom or on whose behalf an acquisition of control referred to in ORS 732.521 (1)(a), a merger or other acquisition of control referred to in ORS 732.521 (1)(b) or an activity referred to in ORS 732.521 (1)(c) is to be effected. The term includes any intermediary or subsidiary corporation or insurer who acquires or holds, directly or indirectly, the assets or voting securities or assumes the liabilities of an insurer or other corporation.]

(1) **“Acquiring party” means a person that acquires or attempts to acquire control of a domestic insurer as described in ORS 732.521 (1)(a), that enters into an agreement to merge with or otherwise acquire control of a domestic insurer as described in ORS 732.521 (1)(b) or that engages in an activity described in ORS 732.521 (1)(c), or an intermediary or subsidiary corporation that holds, directly or indirectly, the assets or voting securities or assumes the liabilities of an insurer or other corporation.**

(2) **“Acquisition” means an agreement, arrangement or activity that results in a person acquiring control of another person, directly or indirectly, including but not limited to an acquisition of voting securities, a merger, an acquisition of assets or bulk reinsurance.**

[(2) A “domestic insurer” includes any person controlling a domestic insurer.]

(3) **“Domestic insurer” means an insurer formed under the laws of this state or a person that controls an insurer formed under the laws of this state.**

[(3) “Person” does not include any securities broker holding, in the usual and customary broker’s function, less than 20 percent of the voting securities of an insurer or of any person that controls an insurer.]

(4) “[A] Significant portion” means, when acquired in one transaction or in a related or integrated series of transactions[,], within any 12 consecutive month period, 10 percent or more of [the following]:

(a) The assets of the insurer; or

(b) The **insurer’s** insurance or [a] major class of insurance in force [of the insurer].

SECTION 18. ORS 732.521 is amended to read:

732.521. (1) Unless **a person first satisfies** the provisions of ORS 732.517 to 732.546, **the person may** [are first satisfied, a person shall] not engage in any of the **following** activities [described in this subsection as follows]:

(a) A person other than the [issuer of] **person that issues** voting securities of a domestic insurer [shall] **may** not acquire or attempt to acquire control of the domestic insurer. For purposes of this paragraph, a person acquires or attempts to acquire control of a domestic insurer [when the person] **if, as a result of engaging in and completing any of the following actions, in the open market or otherwise, the person would directly or indirectly control the domestic insurer, or would control the domestic insurer by exercising a right to acquire or by conversion:** [engages in any of the actions described in this paragraph, in the open market or otherwise, and if after consummation thereof the person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the domestic insurer. The actions are as follows:]

(A) Making a tender offer for or a request or invitation for tenders of any voting security of the domestic insurer;

(B) Entering into any agreement to exchange securities for any voting security of the domestic insurer; or

(C) Acquiring or seeking to acquire any voting security of the domestic insurer.

(b) A person [shall] **may** not enter into an agreement to merge with or otherwise acquire control of a domestic insurer.

(c) A person [shall] **may** not engage or attempt to engage in any of the following activities:

(A) Acquiring, directly or indirectly, ownership of all or a significant portion of the assets of a domestic insurer. For purposes of this subparagraph, such an acquisition includes an offer, a request or invitation for offers, an acquisition or series of acquisitions in the open market, an exchange offer or agreement, an agreement *[providing]* **that provides** an option to purchase, or a purchase of or offer to purchase securities **that are** convertible into voting securities.

(B) Bulk reinsurance by one insurer of all or a significant portion of the insurance, or a major class of *[such]* **the** insurance, in force with another insurer or related or affiliated group of insurers. The provisions of this subparagraph do not apply to ordinary or customary reinsurance, or reinsurance pursuant to a treaty or treaties approved by the director.

(C) Any other arrangement that brings together under common ownership, control or responsibility all or a significant portion of the assets, liabilities or insurance in force of two or more persons, at least one of which is a domestic insurer.

(2) The provisions of subsection (1) of this section do not apply to any offer, request, invitation, agreement or acquisition *[exempted by]* the Director of the Department of Consumer and Business Services **exempts** by order as:

(a) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control or ownership of a domestic insurer; or

(b) Otherwise not comprehended within the purposes of subsection (1) of this section.

(3) Subject to the requirements of ORS 732.517 to 732.546, a domestic stock insurer, domestic mutual insurer, domestic reciprocal insurer or domestic health care service contractor that is a corporation for profit may merge or consolidate with a stock insurer, mutual insurer, reciprocal insurer or health care service contractor that is a corporation for profit.

(4)(a) A person that seeks in any manner to give up a controlling interest in a domestic insurer shall file a confidential notice of the person's proposed divestiture with the director and send a copy of the notice to the domestic insurer at least 30 days before the person ceases to own or hold a controlling interest in the domestic insurer. The notice is confidential until the transaction that transfers control of the domestic insurer concludes, unless the director determines, at the director's sole discretion, that keeping the notice confidential will interfere with the enforcement of this subsection.

(b) The director shall determine in which instances an acquisition or divestiture of control will require a person to file for and obtain approval of the transaction.

(c) This subsection does not apply if a person files a statement under ORS 732.523.

(5) If an acquisition is otherwise subject to this section, the acquiring party shall file a notice with the director in accordance with section 6 of this 2013 Act. An acquiring party that does not file the notice may be subject to the penalty specified in ORS 731.988 (5).

SECTION 19. ORS 732.523 is amended to read:

732.523. (1) An acquiring party **shall**:

(a) *[Must]* File **a statement of acquisition that has the information specified in this section** with the Director of the Department of Consumer and Business Services for approval *[a statement containing the information required in this section]*. If more than one acquiring party *[is required to]* **must** file a statement under this paragraph, any or all *[such]* **acquiring parties that are** acting in concert may file a joint statement.

(b) *[Must]* Deliver or mail to the domestic insurer to which the activity described in ORS 732.521 (1) applies, concurrently with filing the statement under paragraph (a) of this subsection, a statement *[containing]* **that has** the information *[required by]* **specified in** this section. A statement mailed under this paragraph *[shall]* **must** be sent by certified mail, return receipt requested. If a joint statement is filed under paragraph (a) of this subsection, the joint statement *[shall]* **must** be the statement mailed or delivered under this paragraph.

(2) The statement *[to be filed]* **an acquiring party files** with the director under this section *[shall]* **must** be made under oath or affirmation and *[shall contain]* **must have** the following information:

(a) The name and address of the domestic insurer *[involved]* **that is subject to the acquisition and of each acquiring party** *[required to]* **that must** file the statement, *[and]* additional biographical and business information about each acquiring party *[required to]* **that must** file the statement, **and** business plans and information regarding persons who will serve as or perform functions of directors or officers, as required by the Director **of the Department of Consumer and Business Services**.

(b) The source, nature and amount of the consideration used or to be used in effecting the activity, a description of any transaction in which funds were or are to be obtained for the activity and the identity of persons *[furnishing]* **that provide** the consideration. *[However, when]* **If** a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender *[shall]* **must** remain confidential as provided in ORS 705.137, if the acquiring party filing the statement *[so]* requests **confidentiality**.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the **acquiring party's** preceding five fiscal years, **or for as long** *[of the acquiring party, or for such lesser period]* as the acquiring party and any predecessors of the acquiring party have *[been in existence]* **existed, if the acquiring party and the acquiring party's predecessors have existed for a shorter period of time**, and similar unaudited information as of a date not earlier than 90 days *[prior to the filing of]* **before** the statement **was filed**.

(d) Any plan or proposals *[of each]* **that each** acquiring party *[required to]* **that must** file a statement **has** to liquidate the insurer, to sell *[its]* **the insurer's** assets or **to** merge or consolidate *[it]* **the insurer** with any person[,], or to make any other material change in *[its]* **the insurer's** business, *[or]* corporate structure or management.

[(e) As required by the director, information regarding shares to be acquired by an acquiring party in connection with the activity, information regarding related offers or agreements, information regarding classes of security to be acquired and related contracts, arrangements or understandings, and information regarding related purchases of securities and recommendations to purchase.]

(e) **The number of shares of any security of a type described in ORS 732.521 that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement or acquisition of any security of a type described in ORS 732.521 and a statement as to the method by which the acquiring party determined the fairness of the proposal.**

(f) **The amount of each class of any security of a type described in ORS 732.521 that each acquiring party owns beneficially or concerning which each acquiring party has a right to acquire beneficial ownership.**

(g) **A full description of any contracts, agreements or understandings with respect to any security of a type described in ORS 732.521 in which any acquiring party is involved, including but not limited to contracts, agreements or understandings that govern a transfer of any of the securities or that relate to joint ventures, loan or option arrangements, puts or calls, loan guarantees, guarantees against loss or guarantees of profits, division of losses or profits, or giving or withholding proxies. The description must identify the persons with which each acquiring party has entered into the contract, agreement or understanding.**

(h) **The names of persons who have purchased any securities of a type described in ORS 732.521 during the 12 months before the date on which the acquiring party files the statement under this section, together with the dates of purchase and the amount and type of consideration the persons paid or agreed to pay.**

(i) **A description of any recommendations to purchase any securities of a type described in ORS 732.521 that an acquiring party made during the 12 months before the date on which the acquiring party files the statement under this section, or of any recommendations that another person made as a result of interviewing an acquiring party or at an acquiring party's suggestion.**

(j) **Copies of all tender offers, requests, exchange offers, invitations to tender or agreements to acquire securities of a type described in ORS 732.521, along with any additional material used to solicit the tender offers, requests, exchange offers, invitations to tender or agreements, if any additional material was distributed.**

(k) The term of any contract, agreement or understanding for soliciting securities of a type described in ORS 732.521 for tender that is made with or proposed to be made with a broker-dealer, together with the fees, commissions or other compensation the broker-dealer will receive in connection with the solicitation.

(L) An agreement to submit an enterprise risk report under section 10 of this 2013 Act each year during which the acquiring party controls the domestic insurer and an acknowledgment that the acquiring party and all subsidiaries in the insurance holding company system that are within the acquiring party's control will provide, at the director's request, information the director needs to evaluate enterprise risk to the insurer.

[(f)] (m) Any additional information *[required by]* the director **may require**.

(3) All requests or invitations for tenders or advertisements *[making]* **that make** a tender offer or *[requesting or inviting]* **request or invite** tenders of securities for control of a domestic insurer made by or on behalf of any acquiring party required to file the statement under this section *[shall contain such]* **must have the** information specified in subsection (2) of this section *[as the director may prescribe]*. Copies of the materials *[shall]* **must be** filed with the director at least 10 days *[prior to]* **before** the time the materials are first published or sent or given to security holders. Any additional materials *[soliciting or requesting]* **that solicit or request** the tenders *[subsequent to]* **after** the initial solicitation or request *[shall contain such]* **must have the** information *[as the director may prescribe]* **specified in subsection (2) of this section**. Copies of the additional materials *[shall]* **must be** filed with the director at least 10 days prior to the time the materials are first published or sent or given to security holders.

(4) If any acquiring party required to file the statement under this section is a partnership, limited partnership, syndicate or other group, the director may require that the information *[called for by]* **specified in** subsection (2) of this section be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person *[who]* **that** controls the partner or member. If any *[such]* partner, member or person is a corporation or if the acquiring party is a corporation, the director may require that the information *[called for by]* **described in** subsection (2) of this section be given with respect to the corporation and each officer and director of the corporation and each person *[who]* **that** is directly or indirectly the beneficial owner of more than 10 percent of the outstanding securities of the corporation.

(5) If any material change occurs in the facts set forth in the statement filed under this section, the party *[who]* **that** filed the statement *[must]* **shall** file with the director and send to the insurer, within two business days after the party learns of the change, an amendment *[setting]* **that sets** forth the change together with copies of all documents and other material relevant to the change.

(6) If an offer, request, invitation, agreement or acquisition *[referred to]* **described** in ORS 732.521 (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances *[requiring the disclosure of]* **that require disclosing** similar information under the Securities Exchange Act of 1934, or under a state law *[requiring]* **that requires a** similar registration or disclosure, the party or parties *[required to file the statement under this section may use such documents in furnishing the information called for by that statement]* **may use the registration statement or disclosure to provide the information the party or parties must provide in the statement required under subsection (1) of this section**.

(7) Any acquiring party may file with the completed statement or within 10 days *[thereafter]* **after the date on which the acquiring party filed the statement** a written request for a hearing on the acquisition. The insurer *[to be acquired]* **that is subject to the acquisition** may file with the director a written request for a hearing on the acquisition within 10 days after the *[filing of]* **acquiring party filed** the completed statement.

SECTION 20. ORS 732.526 is amended to read:

732.526. (1) If a **person has duly filed** a written request for a hearing *[has been duly filed]* or if, within 10 days after *[the filing of]* **an acquiring party has filed** a completed statement **under ORS 732.523**, the Director of the Department of Consumer and Business Services *[considers it nec-*

essary or advisable to hold] **finds that holding a hearing is necessary or advisable**, the director shall [direct that] **cause** a hearing to be held.

(2) The hearing [shall] **must** be held **at a time and place the director designates** within 30 days after the [filing of] the written request for a hearing **was filed** or within 30 days after the **date of the director's order [directing that] for a hearing to be held**, *at a time and place designated by the director*. **In addition to any other notice required under ORS chapter 183, at least 20 days before the hearing the director shall notify the person that filed the written request and the acquiring party of the hearing. At least seven days before the hearing**, one or more of the insurers or other parties to the proposed activity shall give notice as [required by] the director **requires** to parties [designated by] the director **designates**. The acquiring party shall bear the expense of providing the notice and, as security for the payment of the expense, shall file with the director a bond or other deposit in a form and amount acceptable to the director.

(3) The hearing must be conducted in accordance with the provisions for a contested case proceeding under ORS chapter 183.

SECTION 21. ORS 732.528 is amended to read:

732.528. (1) The Director of the Department of Consumer and Business Services shall [approve] **make a determination concerning** the proposed activity described in ORS 732.521 (1) not later than the 60th day before the effective date of the activity. [unless the director finds that any of the grounds specified in this subsection apply to the proposed activity. The grounds upon which] The director may refuse, **after a public hearing**, to approve a proposed activity [are as follows] **if**:

(a) The activity is contrary to law or would result in a prohibited combination of risks or classes of insurance.

(b) The activity is inequitable or unfair to the policyholders or shareholders of any insurer involved **in**, or to any other person affected by, the proposed activity. However, in connection with an acquisition of the **insurer's** voting securities [of an insurer] from the **insurer's** shareholders [of the insurer], the director shall evaluate [the fairness of] **whether** the proposed acquisition **is fair** to the shareholders of the insurer to be acquired only with respect to any shareholders [remaining after consummation of the acquisition who] **that** are unaffiliated with the acquiring party or parties **and that would remain after the acquisition is completed**.

(c) The activity would substantially reduce the security of and service to be rendered to policyholders of any domestic insurer involved **in the proposed activity**, or would otherwise prejudice the interests of such policyholders in this state or elsewhere.

(d) The activity provides for a foreign or alien insurer to be an acquiring party, and the director further finds that the insurer cannot satisfy the requirements of this state for transacting an insurance business involving the classes of insurance affected by the activity.

(e) The activity or [its consummation] **the completion of the activity** would substantially [lessen] **diminish** competition in insurance in this state or tend to create a monopoly. **In determining whether the activity would substantially diminish competition in insurance in this state or tend to create a monopoly, the director:**

(A) Shall require the information described in section 6 of this 2013 Act and apply the standards set forth in section 7 of this 2013 Act.

(B) May not disapprove the activity if the director finds that the activity would yield substantial economies of scale or increase the availability of insurance as provided in section 7 (9) of this 2013 Act.

(C) May condition the director's approval of the activity on a party's removing the basis for the director's disapproval within a specific period of time.

(f) After the change of control or ownership, the domestic insurer to which the activity described in ORS 732.521 (1) applies would not be able to satisfy the requirements for [the issuance of] **receiving** a certificate of authority to transact the line or lines of insurance for which [it] **the domestic insurer** is currently authorized.

(g) The financial condition of any acquiring party might jeopardize the financial stability of the insurer.

(h) The plans or proposals that the acquiring party has to liquidate the insurer, sell *[its]* **the insurer's** assets or consolidate or merge *[it]* **the insurer** with any person, or to make any other material change in *[its]* **the insurer's** business or corporate structure or management, are unfair and unreasonable to **the insurer's** policyholders *[of the insurer]* and not in the public interest.

(i) The competence, experience and integrity of *[those]* **the persons** *[who]* **that** would control the operation of the insurer are such that *[it]* **permitting the activity or permitting completion of the activity** would not be in the interest of **the insurer's** policyholders *[of the insurer and of the public to permit the activity or its consummation]* **and the public.**

(j) The activity or *[its consummation]* **completing the activity** is likely to be hazardous or prejudicial to the insurance-buying public.

(k) The activity is subject to other material and reasonable objections.

(2) If the director *[does not approve]* **disapproves** the proposed activity, the director shall promptly notify, **in writing**, each insurer and each acquiring party *[to]* **involved in** the proposed activity *[in writing]*, specifying the bases, factors and reasons for the disapproval and giving each insurer and each acquiring party *[who]* **that** filed the statement relating to the proposed activity an opportunity to amend the statement, if possible, to obviate the director's objections.

(3) If the director determines that a party that acquires control of a domestic insurer must maintain or restore the domestic insurer's capital to a level required under the laws and rules of this state, the director shall make and communicate the determination to the acquiring party not later than 60 days after the acquiring party files the statement required under ORS 732.523.

[(3)] **(4) [Any amendment to the statement filed under ORS 732.523 pursuant to the director's objection shall be filed by] The acquiring party or parties [filing the statement] that filed a statement of acquisition under ORS 732.523 shall file any amendment to the statement that responds to the director's objection and, if a hearing was held on the proposed activity, shall [be resubmitted] resubmit the amendment at a hearing held [pursuant to] under this section unless the director finds that [such] a hearing is not necessary [for the protection of] to protect the policyholders, shareholders or any other person [affected by] the proposed activity affects.**

[(4)] **(5) The director may retain at the acquiring [person's] party's expense any actuaries, accountants and other experts not otherwise a part of the director's staff as the director may [be reasonably necessary] reasonably need to assist the director in reviewing the proposed activity.**

[(5)] **(6) The director may establish the effective date of an activity to which ORS 732.521 (1) applies in the order [approving] that approves the activity.**

[(6)] **(7) Within 60 days after receiving a notice of approval or disapproval, any insurer or other party to a proposed activity, including the insurer [proposed to be acquired] subject to the acquisition, [within 60 days after receipt of a notice of approval or disapproval,] may appeal the director's final order [of the director] as provided in ORS chapter 183. For purposes of the judicial review, the specifications [required to be] the director must set forth in the director's written notice [from the director shall be deemed] are the findings of fact and conclusions of law of the Department of Consumer and Business Services.**

[(7)] **(8) On petition to the court, the court's power [shall extend] extends to affirming the order of the director, modifying all or any part of the director's objections, adding additional objections, approving the proposed activity as submitted or subject to such modifications or changes as the court may find proper, and requiring resubmission to the boards of directors or other governing bodies or for hearing as provided in ORS 732.526.**

SECTION 22. ORS 732.548 is amended to read:

732.548. As used in ORS 732.517 to 732.592:

(1) "Affiliate" *[of, or person "affiliated" with, a specified person]* means a person that directly[,] or indirectly, through one or more intermediaries, controls, *[or]* is controlled by, or is under common control with, *[the person specified]* **another person.**

(2) "Control," *including its use in the terms "controlling," "controlled," "controlled by" and "under common control with,"* means the possession, direct or indirect, of the power to direct or cause the di-

rection of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by ORS 732.568 that control does not exist in fact. The Director of the Department of Consumer and Business Services may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.]

(2) **“Control” means possessing the direct or indirect power to manage a person or set the person’s policies, whether by owning voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office the person holds.**

(3) **“Enterprise risk” means an activity, circumstance, event or series of events that involve one or more of an insurer’s affiliates and that, if not remedied promptly, are likely to have an adverse material effect on the insurer’s or the insurance holding company system’s financial condition or liquidity, including but not limited to an activity, circumstance, event or series of events that would cause the insurer’s risk-based capital to fall into company action level or cause the Director of the Department of Consumer and Business Services to determine under ORS 731.385 that the insurer is in hazardous financial condition.**

[3] (4) **“Insurance holding company system” means two or more affiliated persons, one or more of which is an insurer, and includes a financial holding company as [referred to] described in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).**

(5) **“Insurer” has the meaning given that term in ORS 731.106 but does not include an agency, authority or instrumentality of the United States, the Commonwealth of Puerto Rico, another state or a political subdivision of another state.**

(6)(a) **“Person” means an individual, corporation, limited liability company, partnership, association, joint stock company, trust, unincorporated organization or a similar entity or combination of entities that are described in this subsection.**

(b) **“Person” does not include:**

(A) **A joint venture partnership that is engaged exclusively in owning, managing, leasing or developing real or tangible personal property; or**

(B) **For the purposes of ORS 732.518, 732.521, 732.523, 732.526 and 732.528, a securities broker that holds, in the usual and customary broker’s function, less than 20 percent of the voting securities of an insurer or of any person that controls an insurer.**

(7) **“Security holder” means a person that owns a security of another person, including a security denominated as common stock, preferred stock or a debt obligation and any instrument that is convertible into or that is evidence of the right to acquire the security of another person.**

[4] (8) [A] **“Subsidiary” [of a specified person is] means an affiliate [controlled by the specified] that a person controls directly or indirectly through one or more intermediaries.**

[5] (9) [A] **“Voting security” [includes any] means a security that entitles the owner or holder of the security to vote at a meeting of shareholders, including a security that is convertible into a voting security or [evidencing] that is evidence of a right to acquire a voting security.**

SECTION 23. ORS 732.552 is amended to read:

732.552. (1) Every insurer **that is** subject to the registration requirements of ORS 732.551 shall file a registration statement on a form prescribed by the Director of the Department of Consumer and Business Services. [For purposes of the form,] The director shall consider and may prescribe **as** the registration statement form **for this section the form that** [prescribed by] the National Association of Insurance Commissioners **prescribes**. The registration statement [shall contain current

information about] **must list, describe, summarize or include, as appropriate and as the director specifies by rule:**

(a) The capital structure, general financial condition, ownership and management of the insurer and any person *[controlling]* **that controls** the insurer.

(b) The identity and relationship of every member of the insurance holding company system.

(c) The following agreements in force and transactions currently outstanding or that have occurred during the last calendar year between *[such]* **the insurer** and *[its]* **the insurer's** affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by *[its]* **the insurer's** affiliates;

(B) Purchases, sales or exchanges of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts *[entered]* **the insurer enters** into in the ordinary course of the insurer's business;

(E) All management agreements, service contracts and all cost-sharing arrangements;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements.

(d) Any pledge of the **insurer's** stock *[of the insurer]*, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(e)(A) Financial statements of or within an insurance holding company system, including financial statements of affiliates, if the director requests the financial statements.

(B) Financial statements that are subject to this paragraph include, but are not limited to, annual audited financial statements that the insurer or the insurance holding company system files with the United States Securities and Exchange Commission under the Securities Act of 1933 or the Securities Exchange Act of 1934.

(C) An insurer that must file financial statements under this paragraph may satisfy the requirement by providing the director with the parent corporation financial statements that have been filed most recently with the United States Securities and Exchange Commission.

[e] (f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms prescribed by the director.

(g) Affidavits that state that:

(A) The insurer's board of directors is responsible for and oversees corporate governance and internal controls; and

(B) The insurer's officers or senior management have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures.

(h) Any other information the director requires by rule.

(2) Each registration statement *[must contain]* **filed under this section must have** a summary *[outlining]* **that outlines** all items in the current registration statement *[representing changes]* **that have changed** from the prior registration statement.

SECTION 24. ORS 732.566 is amended to read:

732.566. (1) The registration requirements of ORS 732.517 to 732.592 do not apply to any insurer, information or transaction *[exempted by]* the Director of the Department of Consumer and Business Services **exempts** by rule or order.

(2) ORS 732.521, 732.523, 732.526 and 732.528 do not apply to a transaction that is subject to the provisions of ORS 732.517 to 732.546 that relate to a merger or consolidation between or among two or more insurers.

SECTION 25. ORS 732.568 is amended to read:

732.568. (1) Any person, **insurer or member of an insurance holding company system** may file with the Director of the Department of Consumer and Business Services a disclaimer of affiliation with any authorized insurer¹, *or such a disclaimer may be filed by any insurer or any member of an insurance holding company system*. The disclaimer must fully disclose all material relationships

and bases for affiliation between the person, **insurer or member** and the insurer **to which the disclaimer of affiliation applies**, as well as the basis for disclaiming the affiliation.

(2) After **the person, insurer or member files** a disclaimer [*has been filed*], the **person, insurer or member and the insurer** [*shall be*] **to which the disclaimer applies** are relieved of any duty to register or report under ORS 732.517 to 732.592 that may arise out of the insurer's relationship with [*such*] **the person, insurer or member of the insurance holding company system that filed the disclaimer** unless the director disallows [*such a*] **the disclaimer**. [*The director may disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.*]

(3) **A disclaimer that the person, insurer or member of the insurance holding company system files under this section is effective unless within 30 days after the director receives the disclaimer the director notifies the person, the insurer or the member of the insurance holding company system that director has disallowed the disclaimer.**

(4) **The director shall grant a hearing if the person, insurer or member of a insurance holding company system that filed the disclaimer requests a hearing.**

SECTION 26. ORS 732.574 is amended to read:

732.574. (1) A transaction within an insurance holding company system to which an insurer subject to registration is a party is subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices **that are** consistently applied.

(d) The books, accounts and records of each party to the transaction must be [*so*] maintained **so** as to disclose clearly and accurately the nature and details of the transaction, including accounting information **that is** necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The combined capital and surplus of the insurer following any transaction with an affiliate or any shareholder dividend must be reasonable in relation to the insurer's outstanding liabilities and adequate to [*its*] **the insurer's** financial needs.

(f) **Agreements for cost-sharing services and management must include provisions that the Director of the Department of Consumer and Business Services requires by rule.**

(2)(a) [*A transaction described in this subsection that involves*] A domestic insurer and any person in [*its*] **the domestic insurer's** insurance holding company system may [*be entered into*] **enter into a transaction described in this subsection, including an amendment to or modification of an affiliate agreement that is subject to standards set forth in this section, only if:**

(A) The **domestic** insurer has notified the director [*of the Department of Consumer and Business Services in writing*] **of the domestic insurer's intention to enter into the transaction in writing and** not later than the 30th day before the transaction, or **within** a shorter period [*allowed by the director, of its intention to enter into the transaction and if*] **the director allows; and**

(B) The director [*has not disapproved*] **does not disapprove** the transaction within the period.

(b) **A notice for a transaction that is an amendment to or modification of an affiliate agreement that was previously filed must include a statement of reasons for the change and an estimate of the financial impact the change would have on the domestic insurer. An insurer shall notify the director informally within 30 days after a previously filed agreement has terminated, and the director, after receiving the notice, shall determine the type of filing the insurer must submit, if any.**

(c) This subsection does not authorize or permit any transaction that, in the case of an insurer **that is** not a member of the same insurance holding company system, would be otherwise contrary to law.

(d) This subsection applies to the following transactions:

[*a*] (A) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments, [*when*] **if** the transactions equal or exceed the following:

[(A)] (i) With respect to insurers **that are** not authorized to transact life insurance, the lesser of three percent of the insurer's allowed assets or 25 percent of the insurer's combined capital and surplus, each as of the 31st day of December immediately preceding.

[(B)] (ii) With respect to insurers **that are** authorized to transact life insurance, three percent of the insurer's allowed assets, as of the 31st day of December immediately preceding.

[(b)] (B) Loans or extensions of credit to any person *[who]* **that** is not an affiliate, *[when]* **if** the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer *[making such loans or extensions of credit]* **that is making the loans or extending the credit.** This *[paragraph]* **subparagraph** applies to *[such]* transactions that equal or exceed the following:

[(A)] (i) With respect to insurers **that are** not authorized to transact life insurance, the lesser of three percent of the insurer's allowed assets or 25 percent of the insurer's combined capital and surplus, each as of the 31st day of December immediately preceding.

[(B)] (ii) With respect to insurers **that are** authorized to transact life insurance, three percent of the insurer's allowed assets, as of the 31st day of December immediately preceding.

[(c)] (C) Reinsurance agreements or modifications *[thereto]* **to reinsurance agreements, reinsurance pooling agreements and agreements** in which the reinsurance premium or a change in the insurer's liabilities *[of the insurer]*, **the projected reinsurance premium or a projected change in the insurer's liabilities in any of the next three years** equals or exceeds five percent of the insurer's combined capital and surplus, as of the 31st day of December immediately preceding, including *[those]* agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that any portion of *[such]* **the** assets will be transferred to one or more affiliates of the insurer.

[(d)] (D) All management agreements, service contracts, **tax allocation agreements, guarantees** and all cost-sharing arrangements.

(E) **A guarantee that a domestic insurer makes if the guarantee is not quantifiable as to amount. If the guarantee is quantifiable as to amount, the domestic insurer is not required to notify the director under this section unless the guarantee exceeds the lesser of one-half of one percent of the insurer's admitted assets or 10 percent of surplus with respect to policyholders as of the 31st day of December immediately preceding.**

(F) **Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer, the amount of which, together with the insurer's existing acquisitions or investments in the person or affiliate, exceeds two and one-half percent of the insurer's surplus to policyholders. An insurer that acquires or invests directly or indirectly in a subsidiary, or in an insurance affiliate that is not a subsidiary, is not required to notify the director under this section if the insurer makes the acquisition or the investment otherwise in accordance with ORS 732.517 to 732.592.**

[(e)] (G) Any material transactions¹, *as* specified by rule², that the director determines may adversely affect the interests of the insurer's policyholders *[of the insurer]*.

(3) A domestic insurer may not enter into one or more transactions during any 12-month period that are part of a plan or series of like transactions with persons **that are** within the insurance holding company system if the purpose of *[those]* **the** separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

(4) In reviewing a transaction *[pursuant to]* **in accordance with** subsection (2) of this section, the director *[must]* **shall** consider whether the transaction complies with the standards set forth in subsection (1) of this section and whether the transaction may adversely affect the interests of policyholders.

(5) A domestic insurer shall notify the director not later than the 30th day after any investment *[of]* the domestic insurer **makes** in any one corporation if the total investment *[in the corporation by]* the insurance holding company system **makes in the corporation** exceeds 10 percent of the corporation's voting securities *[of the corporation]*.

SECTION 27. ORS 732.576 is amended to read:

732.576. (1) *[The following provisions of]* This section *[apply]* **applies** to dividends and other distributions within an insurance holding company system[.].

[(1)] **(2)(a)** A domestic insurer subject to registration *[shall]* **may not pay or make** any extraordinary dividend or *[make any other extraordinary]* distribution to *[its]* **the domestic insurer's** shareholders either until 30 days after the Director of the Department of Consumer and Business Services has received notice of the declaration *[thereof]* **of the dividend or distribution**, if the director has not disapproved the payment within the 30-day period, or until the date on which the director approves the payment if approval occurs within the 30-day period.

[(2)] **(b)** For purposes of this section: *[, an]*

(A) "Extraordinary dividend or distribution" includes any dividend or distribution of cash or other property *[whose]* **the fair market value of which**, together with that of other dividends or distributions made within the period of 12 consecutive months ending on the date on which the proposed dividend or other distribution is scheduled to be paid or made, exceeds the greater of:

[(a)] **(i)** Ten percent of the combined capital and surplus of the insurer as of the 31st day of December immediately preceding; or

[(b)] **(ii)** The net gain from operations of the insurer after dividends to policyholders and federal income taxes and before realized capital gains or losses, if the insurer is authorized to transact life insurance, or the net income, if the insurer is not authorized to transact life insurance, for the 12-month period ending the 31st day of December immediately preceding.

[(3)] **(B)** *[An]* "Extraordinary dividend or distribution" does not include pro rata distributions of any class of the insurer's own securities.

[(4)] **(3)(a)** Except as provided in this subsection, a domestic insurer may declare or pay dividends to shareholders only from earned surplus. A domestic insurer may declare a dividend from other than earned surplus only if the director approves the declaration prior to payment of the dividend.

[(5)] **(b)** For purposes of this *[section]* **subsection**, "earned surplus" does not include surplus arising from unrealized capital gains or revaluation of assets.

[(6)] **(4)** An insurer may declare an extraordinary dividend or distribution that is conditional upon the director's approval *[thereof. Such a]* **of the dividend or distribution. The** declaration confers no rights upon shareholders until the date on which the director approves the payment of *[such a]* **the dividend or distribution**, or until 30 days after the director received notice of the declaration *[thereof]* **of the dividend or distribution** under subsection *[(1)]* **(2)** of this section if the director does not disapprove the payment within the 30-day period.

(5) An insurer other than a life insurer, in determining whether a dividend or distribution is an extraordinary dividend or distribution, may carry forward net income from the previous two calendar years that the insurer has not already paid out as dividends. The insurer shall calculate the amount of the net income the insurer may carry forward by taking the insurer's net income from the second and third preceding calendar years, not including realized capital gains, less dividends the insurer paid in the second and immediately preceding calendar years.

SECTION 28. ORS 732.578 is amended to read:

732.578. (1) *[Control by any person]* **A person's control** of a domestic insurer **that is** subject to registration does not relieve the officers and directors of the insurer of any obligation or liability to which *[they]* **the officers and directors** would otherwise be subject by law. The **domestic** insurer must be managed so as to assure *[its]* **the insurer's** separate operating identity in accordance with the Insurance Code.

(2) This section does not preclude a domestic insurer from having or sharing a common management, or from using personnel, property or services jointly or cooperatively, with another person under an arrangement that meets the standards set forth in ORS 732.574.

(3)(a) At least one-third of a domestic insurer's directors and at least one-third of the members of each committee of the insurer's board of directors must be persons who are not:

(A) Officers or employees of the insurer or of any entity that controls, is controlled by or is under common control with the insurer; or

(B) Beneficial owners of a controlling interest in the voting securities of the insurer or of an entity that controls, is controlled by or is under common control with the insurer.

(b) A quorum for transacting business at a meeting of the insurer's board of directors or any committee of the board of directors must include at least one person with the qualifications described in paragraph (a) of this subsection.

(4) A domestic insurer's board of directors shall establish at least one committee of which the entire membership consists of persons who have the qualifications described in subsection (3)(a) of this section. The board of directors shall give the committee the board establishes under this subsection responsibility for:

(a) Recommending independent certified public accountants for the board to select;

(b) Reviewing the insurer's financial condition and the scope and results of any independent or internal audit;

(c) Nominating candidates for election to the board of directors;

(d) Recommending principal officers for selection and the compensation for the principal officers; and

(e) Evaluating the principal officers' performance.

(5) Subsections (3) and (4) of this section do not apply to a domestic insurer if the person that controls the domestic insurer has a board of directors, and committees of the person's board of directors, that meet the requirements set forth in subsections (3) and (4) of this section.

(7)(a) The Director of the Department of Consumer and Business Services may waive the requirements set forth in subsections (3) and (4) of this section if an insurer applies for a waiver and:

(A) The insurer has less than \$300 million in annual direct written and assumed premium, excluding premium reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program; or

(B) Unique circumstances justify the director's waiver.

(b) In determining whether to grant the waiver, the director may consider what type of business entity the insurer is, the volume of insurance the insurer transacts, whether the insurer has qualified board members, the insurer's ownership or organizational structure and any other factor the director deems relevant.

SECTION 29. ORS 732.584 is amended to read:

732.584. (1)(a) In addition to other powers [of] **that** the Director of the Department of Consumer and Business Services **has** under the Insurance Code [relating to the examination and investigation of] **to examine and investigate** insurers, the director may also order any insurer registered under ORS 732.517 to 732.592 to produce [such] books, records, accounts, papers, documents and computer and other recordings [in the possession of] the insurer or [its] **the insurer's** affiliates [as] **have that** are necessary **for the director** to ascertain the **insurer's** financial condition [of the insurer] or to determine **the insurer's** compliance with the Insurance Code. If the insurer fails to comply with [such an] **the director's** order, the director may examine the affiliates to obtain [such] **the** information **the director requires**.

(b) **In examining the insurer's financial condition, the director may determine the extent to which the person that controls the insurer, the insurance holding company system or an entity within the insurance holding company system may cause enterprise risk to the insurer.**

(c) **In determining compliance with the Insurance Code, the director may order an insurer that is registered under ORS 732.517 to 732.592 to produce information the insurer does not possess but to which the insurer might have access by reason of a contractual relationship or a statutory obligation or by other means. If the insurer cannot obtain the information the director requires, the insurer shall provide the director with a detailed**

explanation of the reason the insurer cannot obtain the information and shall identify the person that possesses the information. If the director finds that the insurer's explanation is without merit, the director may impose a civil penalty on the insurer under ORS 731.988 or may suspend or revoke the insurer's certificate of authority.

(2) ORS 731.302 (2) applies to an examination the director conducts under subsection (1) of this section, and an insurer shall otherwise pay the costs of an examination of the insurer under this section as provided in ORS 731.316.

SECTION 30. ORS 732.586 is amended to read:

732.586. (1) All information, documents and copies *[thereof]* **of information or documents** obtained by or disclosed to the Director of the Department of Consumer and Business Services or any other person in the course of an examination or investigation *[made pursuant to]* **under** ORS 732.584 are subject to the provisions of ORS 731.312.

(2) All information reported *[pursuant to]* **in accordance with** ORS 732.552, 732.554, 732.574 and 732.576 is confidential and may not be made public except as provided in this subsection. The director may disclose reported information only as provided in ORS 705.137. *Otherwise, the director may disclose such reported information only as follows]* **or only if:**

(a) *[If]* The director obtains the prior written consent of the insurer to which the reported information pertains; or

(b) *[If]* The director, after giving the insurer and *[its]* **the insurer's** affiliates *[who]* **that** would be affected *[thereby]* **by the disclosure** notice and opportunity to be heard, determines that **disclosing the information will serve** the interest of policyholders, shareholders or the public *[will be served by the publication thereof]*. If the director determines that **disclosing the information will serve** one or more of such interests *[will be so served]*, the director may publish all or any part *[thereof]* **of the information** in any manner that the director determines *[to be]* **is** appropriate.

(3) The director's sharing of information under ORS 732.517 to 732.592 does not delegate regulatory or rulemaking authority. The director is solely responsible for administering, executing and enforcing ORS 732.517 to 732.592.

SECTION 31. ORS 732.588 is amended to read:

732.588. (1) If the Director of the Department of Consumer and Business Services determines that a **person's** violation *[by any person]* of any provision of ORS 732.517 to 732.592 so impairs the financial condition of a domestic insurer as to threaten insolvency or *[make the]* **makes the insurer's** further transaction of business *[by it]* hazardous to *[its]* **the insurer's** policyholders, creditors, shareholders or the public, the director may place the insurer under supervision or in rehabilitation or liquidation as provided in ORS chapter 734.

(2) If the director determines that a person's violation of ORS 732.521, 732.523, 732.526, 732.541 or 732.566 prevents the director from fully understanding the enterprise risk that an insurance holding company system or an affiliate of an insurer presents to the insurer, the director may, on the basis of the violation, disapprove a dividend or distribution and may place the insurer under supervision as provided in subsection (1) of this section.

SECTION 32. ORS 732.600 is amended to read:

732.600. As used in ORS 732.600 to 732.630:

(1) "Conversion" means *[the]* **a** process by which a domestic mutual insurer is converted to a domestic stock insurer in accordance with ORS 732.600 to 732.630.

(2) "Converted stock insurer" means *[the]* **a** domestic stock insurer *[to]* **into** which *[the]* **a** domestic mutual insurer is converted in accordance with ORS 732.600 to 732.630.

(3) "Converting mutual insurer" means *[the]* **a** domestic mutual insurer that is converted to a domestic stock insurer in accordance with ORS 732.600 to 732.630.

(4) "Effective date" means, with respect to a plan, the date **or dates** on which the plan **or a part of the plan** becomes effective as set forth in an order of the Director of the Department of Consumer and Business Services. *[If the plan establishes different effective dates for separate parts of the plan, the effective date for a part of a plan is the date on which that part becomes effective as set forth in an order of the director.]*

(5) “Intermediate stock holding company” means a corporation that owns, either directly or through a wholly owned subsidiary, all of the outstanding shares of capital stock of *[the]* a converted stock insurer and:

(a) A majority of *[whose]* **the** outstanding shares of voting capital stock **of which** *[are owned by]* a mutual holding company **owns**; and

(b) A majority in total value of *[whose]* **the** outstanding shares of capital stock **of which** *[are owned by]* a mutual holding company **owns**.

(6) “Issuer” means **a corporation the director approves and** any of the following¹, *and in addition, any other corporation approved by the director*:

(a) With respect to a conversion in which there is no reorganization, *[the]* a converted stock insurer.

(b) With respect to a reorganization *[involving]* **that involves** the organization of a stock holding company, the stock holding company.

(c) With respect to a restructuring, *[the]* a restructured stock holding company.

(7) “Member” means:

(a) With respect to a domestic mutual insurer, any owner, **as defined in ORS 732.465 (3)**, of one or more policies of insurance, other than a policy of reinsurance, issued by the mutual insurer. *[For purposes of this definition, “owner” has the meaning given that term in ORS 732.465 (3). A member is an eligible member of a domestic mutual insurer for purposes of ORS 732.600 to 732.630 if the policy of the member is in force as of the record date for the plan of conversion or reorganization, which is the date the board of directors of the mutual insurer adopts the plan or some other date specified as the record date in the plan and approved by the director.]*

(b) With respect to a mutual holding company, any owner, **as defined in ORS 732.465 (3)**, of one or more policies of insurance, other than a policy of reinsurance, issued by the stock insurer resulting from a reorganization involving the organization of a mutual holding company and, if set forth in an order of the director, any owner of one or more policies of insurance, other than a policy of reinsurance, issued by any other insurer that is a direct or indirect subsidiary of the mutual holding company. *[For purposes of this definition, “owner” has the meaning given that term in ORS 732.465 (3). A member is an eligible member of a mutual holding company for purposes of ORS 732.622 and 732.624 if the policy of the member is in force as of the record date for the plan of restructuring, which is the date the board of directors of the mutual holding company adopts the plan or some other date specified as the record date in the plan and approved by the director.]*

(8) “Membership interest” means:

(a) With respect to a domestic mutual insurer, any right that a member of the mutual insurer may hold by virtue of membership in the mutual insurer.

(b) With respect to a mutual holding company, any right that a member of the mutual holding company may hold by virtue of membership in the mutual holding company.

(9) “Mutual holding company” means a corporation organized under the laws of this state in accordance with ORS 732.620.

(10) “Plan” means a plan of conversion, reorganization or restructuring.

(11) “Reorganization” means *[the]* a process by which a domestic mutual insurer is converted to a domestic stock insurer and either a stock holding company or a mutual holding company is organized in accordance with ORS 732.600 to 732.630.

(12) “Restructured stock holding company” means *[the]* a stock holding company *[resulting]* **that results** from *[the]* restructuring *[of]* a mutual holding company.

(13) “Restructuring” means *[the]* a process by which a mutual holding company is restructured *[to]* **into** a stock holding company in accordance with ORS 732.622 and 732.624.

(14) “Restructuring mutual holding company” means *[the]* a mutual holding company that is restructured to a stock holding company.

(15) “Stock holding company” means a corporation that:

(a) Owns, either directly or through one or more subsidiaries, all or part of the outstanding shares of capital stock of *[the]* a converted stock insurer;

(b) Is organized either as a result of a reorganization or as a result of a restructuring; and

(c) Immediately after the effective date of the reorganization or restructuring, is not controlled by any other person, [as “controlled” is defined in ORS 732.548,] unless the **person’s** control [by such person] is set forth in the plan and approved by the director. **As used in this paragraph, “control” has the meaning given that term in ORS 732.548.**

(16)(a) “Voting capital stock” means capital stock [whose] **the holder of which** has the right to vote in the election of directors.

(b) “Voting capital stock” does not include capital stock as to which the right to vote in the election of directors is conditional upon the occurrence or nonoccurrence of a specified event.

SECTION 33. ORS 732.612 is amended to read:

732.612. (1) In the case of a conversion or in the case of a reorganization [involving] **that involves** the organization of a stock holding company, consideration for the membership interests of the eligible members of a converting mutual insurer [shall consist] **consists** of one or any combination of the following:

(a) Nontransferable subscription rights to purchase shares of capital stock of the issuer as described in subsection (2) of this section;

(b) Shares of capital stock of the issuer as described in subsection (3) of this section;

(c) Cash;

(d) Premium credits;

(e) In the case of a converting mutual insurer transacting primarily property or casualty insurance, or both, certificates of contribution that bear interest as established in the plan, that are repayable within 10 years or, if approved by the Director of the Department of Consumer and Business Services, within a longer period and that are repayable on terms set forth in the plan;

(f) In the case of individual policies of life insurance, credits to policy account values or other enhancements in policy benefits; and

(g) Any other form of consideration described in the plan and approved by the director.

(2) A plan may provide for [allocation] **allocating** to eligible members, without payment, [of] nontransferable subscription rights to purchase shares of capital stock of the issuer[, and the plan shall contain the following provisions]. **In addition, the plan must:**

(a) [The plan must] Allocate the subscription rights in whole shares among the eligible members. In the case of a converting mutual insurer transacting primarily life or health insurance, or both, the subscription rights [shall] **must** be allocated in accordance with subsection (6) of this section. In the case of a converting mutual insurer transacting primarily property or casualty insurance, or both, the subscription rights [shall] **must** be allocated in accordance with subsection (7) of this section.

(b) [The plan must] Specify the expiration date of the subscription rights or authorize the board of directors of the converting mutual insurer to establish the expiration date. **An eligible member may exercise** the subscription rights [may be exercised], in whole or in part, [by an eligible member] in the manner described in the plan including, but not limited to, [the payment of] **paying** the subscription exercise price for the shares purchased. The plan may require an eligible member who exercises subscription rights to purchase a minimum number of shares unless the director determines that [such] **a** minimum purchase requirement is unreasonable based on the interests of the eligible members, the converted stock insurer and the issuer. The proposed subscription exercise price per share [shall] **must** be set forth in the plan and [shall] **must** be less than the price at which shares of capital stock of the issuer will be first offered in accordance with paragraph (e) of this subsection. [The proposed subscription exercise price per share shall be determined by] The boards of directors of the converting mutual insurer and the issuer [and shall be approved by the director] **shall determine the proposed subscription exercise price per share and the director must approve the proposed price** based on the interests of the eligible members, the policyholders, the converted stock insurer and the issuer.

(c) [The plan must] Provide that to the extent an eligible member does not exercise, in whole or in part, subscription rights allocated to the eligible member, the eligible member instead will re-

ceive one or more of the forms of consideration described in subsection (1) of this section that are specified in the plan.

(d) *[The plan must]* Set the pro forma market value of the converted stock insurer, which is the value that is estimated to be necessary to attract full subscription for all shares offered by the issuer. The pro forma market value of the converted stock insurer *[shall]* **must** be determined by an independent valuation by a qualified person. The price per share at which the shares of capital stock of the issuer are first offered in accordance with paragraph (e) of this subsection *[shall]* **must** be equal to such pro forma market value of the converted stock insurer divided by the number of shares that would be issued if all subscription rights allocated to the eligible members are exercised.

(e) *[The plan must]* Further provide that any shares of capital stock of the issuer for which subscription rights are allocated to the eligible members but *[which are not purchased by the eligible members pursuant to the exercise of such]* **that the eligible members do not purchase by exercising the members'** subscription rights must be sold in a public offering through an underwriter, unless the number of shares that *[are not purchased by]* the eligible members **do not purchase** is so small in number *[so as not to warrant]* **that** the expense of a public offering **is not warranted**, in which case the plan may provide for the sale of *[such]* **the** shares by private placement or through any other fair and equitable means approved by the director. If the director finds that market conditions or other circumstances may cause the interests of the eligible members to be adversely affected, the director may require *[such]* **the** offering of shares to be postponed or the terms of *[such]* **the** offering to be modified.

(3) A plan may provide for *[the allocation]* **allocating** to the eligible members, without payment, *[of]* shares of capital stock of the issuer. The plan must allocate the shares of capital stock of the issuer in whole shares among the eligible members. In the case of a converting mutual insurer transacting primarily life or health insurance, or both, the shares *[shall]* **must** be allocated in accordance with subsection (6) of this section. In the case of a converting mutual insurer transacting primarily property or casualty insurance, or both, the shares *[shall]* **must** be allocated in accordance with subsection (7) of this section. If shares of capital stock of the issuer constitute the only consideration *[to be received by]* the eligible members **will receive** and the plan does not provide for *[the sale of]* **selling** additional shares of capital stock or other securities of the issuer, the plan does not need to include the valuation of the converting mutual insurer. If the plan provides for *[the allocation]* **allocating** to the eligible members, without payment, *[of]* shares of capital stock of the issuer, the plan may establish a reasonable period within which the eligible members to whom such shares are issued may not dispose of such shares.

(4) If shares of capital stock of the issuer are issued in accordance with subsection (2) or (3) of this section, the issuer must use *[its]* **the issuer's** best efforts to encourage and assist in *[the establishment of]* **establishing** a public market for *[such]* **the** shares unless the director finds that *[such]* **a** public market is not feasible or is not in the best interests of the eligible members, the converted stock insurer and the issuer. The director may provide that subscription rights or shares of capital stock of the issuer do not need to be allocated under subsection (2) or (3) of this section to eligible members *[residing]* **who reside** in a foreign country or other jurisdiction if *[there is]* a small number of eligible members *[residing in such]* **reside in the** foreign country or other jurisdiction and any registration, qualification, filing or other compliance matters under the laws of *[such]* **the** foreign country or other jurisdiction with respect to the shares of capital stock of the issuer would be impracticable or unduly burdensome upon the issuer.

(5) Regardless of the form of consideration for the membership interests of the eligible members of a converting mutual insurer, the plan may provide for *[the sale of]* **selling** additional shares of capital stock or other securities of the issuer to persons other than the eligible members. The issuer shall offer such additional shares or other securities at a price and on terms determined by the boards of directors of the converting mutual insurer and the issuer.

(6) For a converting mutual insurer *[transacting]* **that transacts** primarily life or health insurance, or both, the consideration specified in subsection (1) of this section must be allocated among

the eligible members [pursuant to] **in accordance with** a fair and equitable formula. The formula for allocating the consideration among the eligible members must either:

(a) Allocate a fixed component of consideration per capita among the eligible members and allocate a variable component of consideration among the eligible members in proportion to the cash value of policies [held by them] **the eligible members hold**; or

(b) Allocate the consideration among the eligible members in any other manner approved by the director.

(7) For a converting mutual insurer transacting primarily property or casualty insurance, or both, the consideration specified in subsection (1) of this section must be allocated among the eligible members [pursuant to] **in accordance with** a fair and equitable formula. The formula for allocating the consideration among the eligible members must [do either of the following] **either**:

(a) Allocate the consideration among the eligible members in the proportion that the aggregate premiums [earned by] the converting mutual insurer **earns** on the **eligible member's** policies in force [of the eligible member] during a specified period before the record date described in [ORS 732.600 (7)] **section 14 (1) of this 2013 Act** bear to the aggregate premiums [so earned by] **that** the converting mutual insurer **earns** during the same period on all **eligible members'** policies in force [of all eligible members]. The specified period must be 36 months unless **the plan specifies** another period [is specified in the plan].

(b) Allocate the consideration among the eligible members in any other manner approved by the director.

(8) The form of consideration to be given to a class or category of eligible members may differ from the form of consideration to be given to another class or category of eligible members. The choice of the form of consideration to be given to a class or category of eligible members may take into account the type of policy, size of policy, tax status of the eligible [member] **members** and other factors that the director determines are appropriate.

(9) In the case of a conversion or in the case of a reorganization [involving] **that involves** the organization of a stock holding company, a member of the converting mutual insurer who is not an eligible member is not entitled to receive any consideration for the **member's** membership interest [of such member].

(10) In the case of a reorganization [involving] **that involves** the organization of a mutual holding company, the membership interests of the members of the converting mutual insurer, whether or not [such] **the** members are eligible members, [shall] **must** be merged into the mutual holding company, and consequently the membership interests of the members of the converting mutual insurer [shall] **must** become membership interests in the mutual holding company.

SECTION 34. ORS 732.810 is amended to read:

732.810. As used in ORS 732.810 to 732.814:

(1) "Control" [and "controlled" have the meanings given those terms] **has the meaning given that term** in ORS 732.548.

(2) "Controlled insurer" means an authorized insurer that [is controlled] **an insurance producer controls** directly or indirectly [by an insurance producer].

(3) "Controlling producer" means an insurance producer who directly or indirectly controls an insurer.

(4)(a) "Insurance producer" has the meaning given that term in ORS 731.104[, but excludes].

(b) "**Insurance producer**" **does not include** a person who sells, solicits or negotiates an insurance contract on [behalf of] the insurance [producer] **producer's behalf**.

SECTION 35. ORS 733.630 is amended to read:

733.630. (1) Except as provided in this section, funds of an insurer may be invested in common stock, preferred stock, debt obligations and other securities of one or more corporations without regard to the provisions and limitations of ORS 733.590, 733.620, 733.770 and 733.780 (1)(a) if the corporation is engaged, or will be engaged, in the kind of business or activity [which] **that** is related to the insurance business as described in ORS 733.635, provided **that the insurer owns** 80 percent or more of the shares of the corporation [having] **that have** voting powers [are owned by the insurer]

either by itself] **either alone** or, with prior approval of the Director of the Department of Consumer and Business Services, in cooperation with one or more other persons.

(2) Except as provided in subsection (3) of this section, the amount of funds [so] invested **as described in subsection (1) of this section** may not exceed the lesser of 10 percent of the insurer's assets or 50 percent of the amount of the insurer's combined capital and surplus. However, after such investments, the **insurer's** combined capital and surplus [of the insurer] must be reasonable in relation to the **insurer's** outstanding liabilities [of the insurer] and adequate to [its] **the insurer's** financial needs. For the purpose of this subsection, the amount of **an insurer's** investments [by an insurer shall] **must** be calculated by:

(a) Excluding the admitted value of investments in subsidiaries of the insurer;

(b) Adding the total moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the insurance subsidiary or the shareholders' equity of a noninsurance subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities;

(c) Adding to the sum determined under paragraph (b) of this subsection all amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities of a subsidiary, and all contributions to the capital or surplus of an insurance subsidiary or the shareholders' equity of a noninsurance subsidiary, subsequent to its acquisition or formation; and

(d) Subtracting from the sum determined under paragraph (c) of this subsection the return of any amount included in paragraph (b) or (c) of this subsection, whether the return is in the form of cash, securities or other property.

(3)(a) Funds of an insurer may be invested in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in [the ownership and management of] **owning and managing** assets authorized as investments for the insurer. However, each subsidiary must agree to limit [its] **the subsidiary's** investments in any asset so that the investments will not cause the amount of the **insurer's** total investment [of the insurer] to exceed any of the investment limitations specified in subsection (2) of this section, or **specified** in ORS 733.510 to 733.780, that apply to the insurer.

(b) For the purpose of this subsection, the total investment of the insurer includes:

[(a)] (A) Any direct investment by the insurer in an asset; and

[(b)] (B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which [shall] **must** be calculated by multiplying the amount of the subsidiary's investment by the percentage of the [ownership of the subsidiary] **the subsidiary's ownership**.

(4) With the approval of the director, an insurer may invest any greater amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries. However, after such an investment, the **insurer's** combined capital and surplus [of the insurer] must be reasonable in relation to the **insurer's** outstanding liabilities [of the insurer] and adequate to [its] **the insurer's** financial needs.

(5) Investments in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries that an insurer makes in accordance with subsection (2), (3) or (4) of this section are not subject to restrictions or prohibitions set forth in the Insurance Code that would otherwise apply to an insurer's investments.

[(5)] (6) An insurer must determine whether any investment pursuant to subsection (2), (3) or (4) of this section meets the applicable requirements on the last day of the month **that** immediately [preceding] **precedes** the day on which the investment is made. The determination must be made prior to the investment by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the day [they] **the investments** were made, net of any return of capital invested, not including dividends.

SECTION 36. (1) Sections 2, 4, 5, 6, 7, 8, 10, 11, 12 and 14 of this 2013 Act and the amendments to ORS 731.988, 731.992, 732.518, 732.521, 732.523, 732.526, 732.528, 732.548, 732.552,

732.566, 732.568, 732.574, 732.576, 732.578, 732.584, 732.586, 732.588, 732.600, 732.612, 732.810 and 733.630 by sections 15 to 35 of this 2013 Act become operative on January 2, 2014.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the director by sections 2, 4, 5, 6, 7, 8, 10, 11, 12 and 14 of this 2013 Act and the amendments to ORS 731.988, 731.992, 732.518, 732.521, 732.523, 732.526, 732.528, 732.548, 732.552, 732.566, 732.568, 732.574, 732.576, 732.578, 732.584, 732.586, 732.588, 732.600, 732.612, 732.810 and 733.630 by sections 15 to 35 of this 2013 Act.

SECTION 37. Sections 2, 4, 5, 6, 7, 8, 10, 11, 12 and 14 of this 2013 Act and the amendments to ORS 731.988, 731.992, 732.518, 732.521, 732.523, 732.526, 732.528, 732.548, 732.552, 732.566, 732.568, 732.574, 732.576, 732.578, 732.584, 732.586 and 732.588 by sections 15 to 31 of this 2013 Act apply to activities that are subject to ORS 732.517 to 732.592 and that occur on or after the operative date specified in section 36 (1) of this 2013 Act.

SECTION 38. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House March 11, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 5, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State