

House Bill 2241

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

SUMMARY

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

Permits Director of Department of Consumer and Business Services to share information related to acquisitions of insurers under certain circumstances.

Permits director to organize or participate in hearing on insurer's acquisition of affiliated company with chief insurance regulatory officers in other jurisdictions.

Requires person that proposes to acquire insurer to notify director, and to wait for specified period of time, before completing acquisition. Requires director to specify form and contents of required notice. Permits director to assess civil penalty if person completes acquisition without notifying director.

Requires director to determine whether acquisition will substantially diminish competition among insurers in this state or tend to create monopoly. Specifies standards under which director must make determination. Permits director to issue order that requires person to cease and desist from transacting insurance or that denies application for certificate of authority if director determines that acquisition will substantially diminish competition or tend to create monopoly, or under other specified circumstances.

Requires insurance holding company system to file annual enterprise risk report.

Permits director to establish or participate in supervisory college for certain insurers.

Requires person that intends to divest control in insurer to notify director.

Specifies information acquiring party must submit to director in connection with acquisition. Specifies composition of portion of board of directors and committees in insurer or person that controls insurer.

Specifies civil and criminal penalties for violating provisions of Act.

Becomes operative January 2, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to insurance companies; creating new provisions; amending ORS 731.988, 731.992, 732.518,
3 732.521, 732.523, 732.526, 732.528, 732.548, 732.552, 732.566, 732.568, 732.574, 732.576, 732.578,
4 732.584, 732.586, 732.588, 732.600, 732.612, 732.810 and 733.630; and declaring an emergency.

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

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

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

11 **(a) Only if the regulatory official's jurisdiction has a statute or rules that are substan-**
12 **tially similar in effect to ORS 732.586; and**

13 **(b) Only if the regulatory official agrees in writing not to disclose the documents, mate-**
14 **rial or information.**

15 **(2) The director shall enter into a written agreement with the National Association of**
16 **Insurance Commissioners that governs how the director and the association may use or**
17 **share documents, material or information the director receives under ORS 732.517 to 732.592,**
18 **including documents, material or information the director receives as a consequence of the**

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

1 director's participation in a supervisory college under section 11 of this 2013 Act. The
2 agreement must:

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

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

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

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

15 (e) Require the association to consent to an insurer's intervention in an administrative
16 or judicial proceeding that may result the association or the association's affiliates or sub-
17 sidiaries having to disclose or produce documents, material or information the director
18 shared with the association; and

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

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

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

31 (2) A chief insurance regulatory official of another state may decline to attend the
32 hearing on the acquisition. If the regulatory official declines to attend, the official shall no-
33 tify the person that filed the statement under ORS 732.523 within 10 days after the date on
34 which the official receives a copy of the statement.

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

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

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

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

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

1 under ORS 731.574.

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

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

6 (a) A person's purchase of an insurer's securities solely for investment purposes, pro-
 7 vided that the person does not use the person's ownership of the securities to cause or at-
 8 tempt to cause an action, or to vote to take an action, that would cause a substantial
 9 decrease in competition in an insurance market in this state. If a presumption arises that
 10 a person controls the insurer by reason of the person's purchase of securities, the person's
 11 purchase of the securities is not solely for investment purposes unless the chief insurance
 12 regulatory official in the state in which the person is domiciled accepts a disclaimer of con-
 13 trol from the person or the regulatory official affirmatively finds that the person does not
 14 control the insurer. The person or the regulatory official must communicate the disclaimer
 15 or the finding to the Director of the Department of Consumer and Business Services.

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

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

26 (d) An acquisition that, immediately after completion, would meet any of these condi-
 27 tions:

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

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

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

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

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

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

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

42 (i) The insurer is in failing condition;

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

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

1 among insurers; and

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

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

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

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

25 (3)(a) A person may not proceed with an acquisition until 30 days after the director re-
 26 ceives the notice under subsection (1) of this section, unless the director permits the acqui-
 27 sition to proceed earlier.

28 (b) During the period of time described in paragraph (a) of this subsection, the director
 29 may, only once, require the person to submit additional information related to the acquisi-
 30 tion. If the director requires additional information, the person may not proceed with the
 31 acquisition until 30 days after the director receives the additional information, unless the
 32 director permits the acquisition to proceed earlier.

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

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

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

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

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

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

1 (b) Tend to create a monopoly.

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

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

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

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

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

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

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

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

26 (B) In a market that is not highly concentrated, the insurers involved in the acquisition
27 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

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

45 (5) Notwithstanding the requirement in subsection (2) of this section to find prima facie

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

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

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

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

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

25 (b) The geographical market is this state.

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

27 (a) Percentages that do not appear in the tables may be interpolated using the percent-
 28 ages that appear in the tables.

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

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

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

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

40 (b) The acquisition would substantially increase the availability of insurance and the
 41 public benefit from increased insurance availability outweighs the public benefit of main-
 42 taining competition in the market.

43 **SECTION 8.** (1)(a) The Director of the Department of Consumer and Business Services
 44 may issue an order with the effect described in paragraph (b) of this subsection if the di-
 45 rector determines that an acquisition may substantially diminish competition in a line of

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

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

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

9 (B) Deny an application from an insurer for a certificate of authority to transact insur-
 10 ance in this state.

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

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

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

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

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

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

23 (a) A civil penalty under ORS 731.988; or

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

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

28 **SECTION 9.** Sections 10, 11 and 12 of this 2013 Act are added to and made a part of ORS
 29 732.517 to 732.592.

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

40 **SECTION 11.** (1)(a) The Director of the Department of Consumer and Business Services
 41 may establish or participate in a temporary or a permanent supervisory college for any do-
 42 mestic insurer that is:

43 (A) Registered under ORS 732.551; and

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

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

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

2 (B) Assess the insurer's:

3 (i) Financial, legal and regulatory position;

4 (ii) Risk exposure and risk management; or

5 (iii) Governance processes; or

6 (C) Examine an individual insurer under ORS 732.584.

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

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

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

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

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

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

19 (E) Draft a crisis management plan;

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

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

23 (b) The director may enter into agreements with other regulatory agencies under ORS
24 705.137 for any of the purposes identified in paragraph (a) of this subsection.

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

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

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

41 **SECTION 13.** Section 14 of this 2013 Act is added to and made a part of ORS 732.600 to
42 732.630.

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

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

5 (2)(a) A member is an eligible member of a mutual holding company for purposes of ORS
 6 732.622 and 732.624 if the member's policy is in force as of the record date for a plan of re-
 7 structuring.

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

11 **SECTION 15.** ORS 731.988 is amended to read:

12 731.988. (1) *[Any]* A person *[who]* **that** violates any provision of the Insurance Code, any lawful
 13 rule or final order of the Director of the Department of Consumer and Business Services or any
 14 judgment *[made by any]* **that** a court **makes in response to the director's** *[upon]* application *[of*
 15 *the director]*, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an
 16 amount determined by the director *[of not more than]* **that does not exceed** \$10,000 for each offense.
 17 *[In the case of individual insurance producers, adjusters or insurance consultants, the civil penalty*
 18 *shall be not more than]* **The civil penalty for individual insurance producers, adjusters or in-**
 19 **surance consultants may not exceed** \$1,000 for each offense. Each violation *[shall be deemed]* is
 20 a separate offense.

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

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

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

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

44 (6) **In addition to the penalties specified in subsections (1), (2), (4) and (5) of this section,**
 45 **an insurer or other person that violates a cease and desist order the director has issued**

1 **under ORS 731.252 in connection with a violation of a provision of ORS 732.517 to 732.592 may**
 2 **be subject to a civil penalty in an amount determined by the director that does not exceed**
 3 **\$10,000 for each day of the violation.**

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

7 [(5)] (8) Civil penalties under this section [*shall*] **must** be imposed and enforced in [*the manner*
 8 *provided by*] **accordance with** ORS 183.745.

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

11 **SECTION 16.** ORS 731.992 is amended to read:

12 731.992. (1) **A violation of ORS 731.260 is a Class A misdemeanor.**

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

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

20 [(2)] (4) **A violation of any provision of the Insurance Code for which [*a greater penalty is not***
 21 ***otherwise provided by*] the Insurance Code or [*by*] other applicable laws of this state **do not provide****
 22 **a greater penalty**, in addition to any applicable prescribed denial, suspension or revocation of any
 23 certificate or license or any civil forfeiture, is a Class A misdemeanor.

24 **SECTION 17.** ORS 732.518 is amended to read:

25 732.518. As used in ORS 732.517 to 732.546:

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

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

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

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

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

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

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

4 (a) The assets of the insurer; or

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

6 **SECTION 18.** ORS 732.521 is amended to read:

7 732.521. (1) Unless **a person first satisfies** the provisions of ORS 732.517 to 732.546, **the person**
 8 **may** *[are first satisfied, a person shall]* not engage in any of the **following** activities *[described in this*
 9 *subsection as follows]*:

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

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

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

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

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

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

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

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

36 (C) Any other arrangement that brings together under common ownership, control or responsi-
 37 bility all or a significant portion of the assets, liabilities or insurance in force of two or more per-
 38 sons, at least one of which is a domestic insurer.

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

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

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

45 (3) Subject to the requirements of ORS 732.517 to 732.546, a domestic stock insurer, domestic

1 mutual insurer, domestic reciprocal insurer or domestic health care service contractor that is a
 2 corporation for profit may merge or consolidate with a stock insurer, mutual insurer, reciprocal
 3 insurer or health care service contractor that is a corporation for profit.

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

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

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

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

17 **SECTION 19.** ORS 732.523 is amended to read:

18 732.523. (1) An acquiring party **shall**:

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

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

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

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

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

44 (c) Fully audited financial information as to the earnings and financial condition of each ac-
 45 quiring party for the **acquiring party’s** preceding five fiscal years, **or for as long** *[of the acquiring*

1 party, or for such lesser period] as the acquiring party and any predecessors of the acquiring party
2 have [been in existence] **existed, if the acquiring party and the acquiring party's predecessors**
3 **have existed for a shorter period of time**, and similar unaudited information as of a date not
4 earlier than 90 days [prior to the filing of] **before the statement was filed.**

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

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

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

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

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

27 (h) **The names of persons who have purchased any securities of a type described in ORS**
28 **732.521 during the 12 months before the date on which the acquiring party files the statement**
29 **under this section, together with the dates of purchase and the amount and type of consid-**
30 **eration the persons paid or agreed to pay.**

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

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

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

44 (L) **An agreement to submit an enterprise risk report under section 10 of this 2013 Act**
45 **each year during which the acquiring party controls the domestic insurer and an acknowl-**

1 **edgment that the acquiring party and all subsidiaries in the insurance holding company sys-**
 2 **tem that are within the acquiring party's control will provide, at the director's request,**
 3 **information the director needs to evaluate enterprise risk to the insurer.**

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

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

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

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

29 (6) If an offer, request, invitation, agreement or acquisition [referred to] **described** in ORS
 30 732.521 (1) is proposed to be made by means of a registration statement under the Securities Act
 31 of 1933 or in circumstances [requiring the disclosure of] **that require disclosing** similar information
 32 under the Securities Exchange Act of 1934, or under a state law [requiring] **that requires a** similar
 33 registration or disclosure, the party or parties [required to file the statement under this section may
 34 use such documents in furnishing the information called for by that statement] **may use the regis-**
 35 **tration statement or disclosure to provide the information the party or parties must provide**
 36 **in the statement required under subsection (1) of this section.**

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

42 **SECTION 20.** ORS 732.526 is amended to read:

43 732.526. (1) If a **person has duly filed a** written request for a hearing [has been duly filed] or
 44 if, within 10 days after [the filing of] **an acquiring party has filed** a completed statement **under**
 45 **ORS 732.523,** the Director of the Department of Consumer and Business Services [considers it nec-

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

3 (2) The hearing *[shall]* **must** be held **at a time and place the director designates** within 30
4 days after the *[filing of]* the written request for a hearing **was filed** or within 30 days after the **date**
5 **of the** director's order *[directing that]* **for** a hearing **to** be held¹, *at a time and place designated by*
6 *the director*. **In addition to any other notice required under ORS chapter 183, at least 20 days**
7 **before the hearing the director shall notify the person that filed the written request and the**
8 **acquiring party of the hearing. At least seven days before the hearing,** one or more of the
9 insurers or other parties to the proposed activity shall give notice as *[required by]* the director **re-**
10 **quires** to parties *[designated by]* the director **designates**. The acquiring party shall bear the expense
11 of providing the notice and, as security for the payment of the expense, shall file with the director
12 a bond or other deposit in a form and amount acceptable to the director.

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

15 **SECTION 21.** ORS 732.528 is amended to read:

16 732.528. (1) The Director of the Department of Consumer and Business Services shall *[approve]*
17 **make a determination concerning** the proposed activity described in ORS 732.521 (1) not later
18 than the 60th day before the effective date of the activity. *[unless the director finds that any of the*
19 *grounds specified in this subsection apply to the proposed activity. The grounds upon which]* The di-
20 rector may refuse, **after a public hearing,** to approve a proposed activity *[are as follows]* **if:**

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

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

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

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

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

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

42 **(B) May not disapprove the activity if the director finds that the activity would yield**
43 **substantial economies of scale or increase the availability of insurance as provided in section**
44 **7 (9) of this 2013 Act.**

45 **(C) May condition the director's approval of the activity on a party's removing the basis**

1 **for the director's disapproval within a specific period of time.**

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

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

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

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

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

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

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

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

29 [(3)] (4) [*Any amendment to the statement filed under ORS 732.523 pursuant to the director's ob-*
30 *jection shall be filed by*] The acquiring party or parties [*filing the statement*] **that filed a statement**
31 **of acquisition under ORS 732.523 shall file any amendment to the statement that responds**
32 **to the director's objection** and, if a hearing was held on the proposed activity, shall [*be*
33 *resubmitted*] **resubmit the amendment** at a hearing held [*pursuant to*] **under** this section unless the
34 director finds that [*such*] a hearing is not necessary [*for the protection of*] **to protect** the
35 policyholders, shareholders or any other person [*affected by*] the proposed activity **affects.**

36 [(4)] (5) The director may retain at the acquiring [*person's*] **party's** expense any actuaries, ac-
37 countants and other experts not otherwise a part of the director's staff as **the director** may [*be*
38 *reasonably necessary*] **reasonably need** to assist the director in reviewing the proposed activity.

39 [(5)] (6) The director may establish the effective date of an activity to which ORS 732.521 (1)
40 applies in the order [*approving*] **that approves** the activity.

41 [(6)] (7) **Within 60 days after receiving a notice of approval or disapproval**, any insurer or
42 other party to a proposed activity, including the insurer [*proposed to be acquired*] **subject to the**
43 **acquisition**, [*within 60 days after receipt of a notice of approval or disapproval,*] may appeal the
44 **director's** final order [*of the director*] as provided in ORS chapter 183. For purposes of the judicial
45 review, the specifications [*required to be*] **the director must** set forth in the **director's** written

1 notice *[from the director shall be deemed]* **are** the findings of fact and conclusions of law of the De-
2 partment of **Consumer and Business Services**.

3 [(7)] (8) On petition to the court, the court's power *[shall extend]* **extends** to affirming the order
4 of the director, modifying all or any part of the director's objections, adding additional objections,
5 approving the proposed activity as submitted or subject to such modifications or changes as the
6 court may find proper, and requiring resubmission to the boards of directors or other governing
7 bodies or for hearing as provided in ORS 732.526.

8 **SECTION 22.** ORS 732.548 is amended to read:

9 732.548. As used in ORS 732.517 to 732.592:

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

13 [(2) "Control," including its use in the terms "controlling," "controlled," "controlled by" and "under
14 common control with," means the possession, direct or indirect, of the power to direct or cause the di-
15 rection of the management and policies of a person, whether through the ownership of voting securities,
16 by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless
17 the power is the result of an official position with or corporate office held by the person. Control shall
18 be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote,
19 or holds proxies representing, 10 percent or more of the voting securities of any other person. This
20 presumption may be rebutted by a showing made in the manner provided by ORS 732.568 that control
21 does not exist in fact. The Director of the Department of Consumer and Business Services may deter-
22 mine, after furnishing all persons in interest notice and opportunity to be heard and making specific
23 findings of fact to support such determination, that control exists in fact, notwithstanding the absence
24 of a presumption to that effect.]

25 (2) "Control" means possessing the direct or indirect power to manage a person or set
26 the person's policies, whether by owning voting securities, by contract other than a com-
27 mercial contract for goods or nonmanagement services, or otherwise, unless the power is the
28 result of an official position or corporate office the person holds.

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

36 [(3)] (4) "Insurance holding company system" means two or more affiliated persons, one or more
37 of which is an insurer, and includes a financial holding company as *[referred to]* **described** in section
38 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

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

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

45 (b) "Person" does not include:

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

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

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

10 [(4)] (8) [A] “Subsidiary” [of a specified person is] means an affiliate [controlled by the
 11 specified] that a person controls directly or indirectly through one or more intermediaries.

12 [(5)] (9) [A] “Voting security” [includes any] means a security that entitles the owner or
 13 holder of the security to vote at a meeting of shareholders, including a security that is con-
 14 vertible into a voting security or [evidencing] that is evidence of a right to acquire a voting secu-
 15 rity.

16 **SECTION 23.** ORS 732.552 is amended to read:

17 732.552. (1) Every insurer that is subject to the registration requirements of ORS 732.551 shall
 18 file a registration statement on a form prescribed by the Director of the Department of Consumer
 19 and Business Services. [For purposes of the form,] The director shall consider and may prescribe as
 20 the registration statement form for this section the form that [prescribed by] the National Asso-
 21 ciation of Insurance Commissioners prescribes. The registration statement [shall contain current
 22 information about] must list, describe, summarize or include, as appropriate and as the direc-
 23 tor specifies by rule:

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

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

27 (c) The following agreements in force and transactions currently outstanding or that have oc-
 28 curred during the last calendar year between [such] the insurer and [its] the insurer’s affiliates:

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

31 (B) Purchases, sales or exchanges of assets;

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

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

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

37 (F) Reinsurance agreements;

38 (G) Dividends and other distributions to shareholders; and

39 (H) Consolidated tax allocation agreements.

40 (d) Any pledge of the insurer’s stock [of the insurer], including stock of any subsidiary or con-
 41 trolling affiliate, for a loan made to any member of the insurance holding company system.

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

44 (B) Financial statements that are subject to this paragraph include, but are not limited
 45 to, annual audited financial statements that the insurer or the insurance holding company

1 system files with the United States Securities and Exchange Commission under the Securi-
 2 ties Act of 1933 or the Securities Exchange Act of 1934.

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

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

8 (g) Affidavits that state that:

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

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

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

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

17 **SECTION 24.** ORS 732.566 is amended to read:

18 732.566. (1) The registration requirements of ORS 732.517 to 732.592 do not apply to any insurer,
 19 information or transaction [*exempted by*] the Director of the Department of Consumer and Business
 20 Services **exempts** by rule or order.

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

24 **SECTION 25.** ORS 732.568 is amended to read:

25 732.568. (1) Any person, **insurer or member of an insurance holding company system** may
 26 file with the Director of the Department of Consumer and Business Services a disclaimer of affil-
 27 iation with any authorized insurer[, *or such a disclaimer may be filed by any insurer or any member*
 28 *of an insurance holding company system*]. The disclaimer must fully disclose all material relationships
 29 and bases for affiliation between the person, **insurer or member** and the insurer **to which the**
 30 **disclaimer of affiliation applies**, as well as the basis for disclaiming the affiliation.

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

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

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

44 **SECTION 26.** ORS 732.574 is amended to read:

45 732.574. (1) A transaction within an insurance holding company system to which an insurer

1 subject to registration is a party is subject to the following standards:

2 (a) The terms must be fair and reasonable.

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

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

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

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

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

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

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

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

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

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

33 **(d)** This subsection applies to the following transactions:

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

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

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

41 [(b)] **(B)** Loans or extensions of credit to any person [who] **that** is not an affiliate, [when] **if** the
42 insurer makes the loans or extensions of credit with the agreement or understanding that the pro-
43 ceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions
44 of credit to, to purchase assets of, or to make investments in any affiliate of the insurer [making
45 such loans or extensions of credit] **that is making the loans or extending the credit.** This [para-

1 *graph*] **subparagraph** applies to [*such*] transactions that equal or exceed the following:

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

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

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

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

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

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

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

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

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

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

43 **SECTION 27.** ORS 732.576 is amended to read:

44 732.576. (1) [*The following provisions of*] This section [*apply*] **applies** to dividends and other
45 distributions within an insurance holding company system[.].

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

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

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

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

14 [(b) **(ii)** The net gain from operations of the insurer after dividends to policyholders and federal
 15 income taxes and before realized capital gains or losses, if the insurer is authorized to transact life
 16 insurance, or the net income, if the insurer is not authorized to transact life insurance, for the
 17 12-month period ending the 31st day of December immediately preceding.

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

20 [(4) **(3)(a)** Except as provided in this subsection, a domestic insurer may declare or pay divi-
 21 dends to shareholders only from earned surplus. A domestic insurer may declare a dividend from
 22 other than earned surplus only if the director approves the declaration prior to payment of the
 23 dividend.

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

26 [(6) **(4)** An insurer may declare an extraordinary dividend or distribution that is conditional
 27 upon the director's approval *[thereof. Such a]* **of the dividend or distribution. The** declaration
 28 confers no rights upon shareholders until the date on which the director approves the payment of
 29 *[such a]* **the** dividend or distribution, or until 30 days after the director received notice of the dec-
 30 laration *[thereof]* **of the dividend or distribution** under subsection [(1) **(2)**] of this section if the
 31 director does not disapprove the payment within the 30-day period.

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

39 **SECTION 28.** ORS 732.578 is amended to read:

40 732.578. (1) *[Control by any person]* **A person's control** of a domestic insurer **that is** subject
 41 to registration does not relieve the officers and directors of the insurer of any obligation or liability
 42 to which *[they]* **the officers and directors** would otherwise be subject by law. The **domestic** insurer
 43 must be managed so as to assure *[its]* **the insurer's** separate operating identity in accordance with
 44 the Insurance Code.

45 **(2) This section does not preclude a domestic insurer from having or sharing a common**

1 management, or from using personnel, property or services jointly or cooperatively, with
 2 another person under an arrangement that meets the standards set forth in ORS 732.574.

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

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

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

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

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

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

17 (b) Reviewing the insurer's financial condition and the scope and results of any inde-
 18 pendent or internal audit;

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

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

22 (e) Evaluating the principal officers' performance.

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

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

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

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

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

38 **SECTION 29.** ORS 732.584 is amended to read:

39 732.584. (1)(a) In addition to other powers [of] **that** the Director of the Department of Consumer
 40 and Business Services **has** under the Insurance Code [relating to the examination and investigation
 41 of] **to examine and investigate** insurers, the director may also order any insurer registered under
 42 ORS 732.517 to 732.592 to produce [such] books, records, accounts, papers, documents and computer
 43 and other recordings [in the possession of] the insurer or [its] **the insurer's** affiliates [as] **have that**
 44 are necessary **for the director** to ascertain the **insurer's** financial condition [of the insurer] or to
 45 determine **the insurer's** compliance with the Insurance Code. If the insurer fails to comply with

1 *[such an]* **the director's** order, the director may examine the affiliates to obtain *[such]* **the** infor-
 2 mation **the director requires.**

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

7 **(c) In determining compliance with the Insurance Code, the director may order an**
 8 **insurer that is registered under ORS 732.517 to 732.592 to produce information the insurer**
 9 **does not possess but to which the insurer might have access by reason of a contractual re-**
 10 **lationship or a statutory obligation or by other means. If the insurer cannot obtain the in-**
 11 **formation the director requires, the insurer shall provide the director with a detailed**
 12 **explanation of the reason the insurer cannot obtain the information and shall identify the**
 13 **person that possesses the information. If the director finds that the insurer's explanation is**
 14 **without merit, the director may impose a civil penalty on the insurer under ORS 731.988 or**
 15 **may suspend or revoke the insurer's certificate of authority.**

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

19 **SECTION 30.** ORS 732.586 is amended to read:

20 732.586. (1) All information, documents and copies *[thereof]* **of information or documents** ob-
 21 tained by or disclosed to the Director of the Department of Consumer and Business Services or any
 22 other person in the course of an examination or investigation *[made pursuant to]* **under** ORS 732.584
 23 are subject to the provisions of ORS 731.312.

24 **(2) All information reported [pursuant to] in accordance with** ORS 732.552, 732.554, 732.574 and
 25 732.576 is confidential and may not be made public except as provided in this subsection. The di-
 26 rector may disclose reported information only as provided in ORS 705.137[. *Otherwise, the director*
 27 *may disclose such reported information only as follows]* **or only if:**

28 (a) *[If]* The director obtains the prior written consent of the insurer to which the reported in-
 29 formation pertains; or

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

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

39 **SECTION 31.** ORS 732.588 is amended to read:

40 732.588. (1) If the Director of the Department of Consumer and Business Services determines
 41 that a **person's** violation *[by any person]* of any provision of ORS 732.517 to 732.592 so impairs the
 42 financial condition of a domestic insurer as to threaten insolvency or *[make the]* **makes the**
 43 **insurer's** further transaction of business *[by it]* hazardous to *[its]* **the insurer's** policyholders,
 44 creditors, shareholders or the public, the director may place the insurer under supervision or in
 45 rehabilitation or liquidation as provided in ORS chapter 734.

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

6 **SECTION 32.** ORS 732.600 is amended to read:

7 732.600. As used in ORS 732.600 to 732.630:

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

10 (2) “Converted stock insurer” means *[the]* a domestic stock insurer *[to]* **into** which *[the]* a do-
 11 mestic mutual insurer is converted in accordance with ORS 732.600 to 732.630.

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

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

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

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

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

26 (6) “Issuer” means **a corporation the director approves and** any of the following¹, *and in ad-*
 27 *dition, any other corporation approved by the director*:

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

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

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

33 (7) “Member” means:

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

41 (b) With respect to a mutual holding company, any owner, **as defined in ORS 732.465 (3)**, of
 42 one or more policies of insurance, other than a policy of reinsurance, issued by the stock insurer
 43 resulting from a reorganization involving the organization of a mutual holding company and, if set
 44 forth in an order of the director, any owner of one or more policies of insurance, other than a policy
 45 of reinsurance, issued by any other insurer that is a direct or indirect subsidiary of the mutual

1 holding company. [For purposes of this definition, “owner” has the meaning given that term in ORS
 2 732.465 (3). A member is an eligible member of a mutual holding company for purposes of ORS 732.622
 3 and 732.624 if the policy of the member is in force as of the record date for the plan of restructuring,
 4 which is the date the board of directors of the mutual holding company adopts the plan or some other
 5 date specified as the record date in the plan and approved by the director.]

6 (8) “Membership interest” means:

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

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

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

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

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

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

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

21 (14) “Restructuring mutual holding company” means [the] a mutual holding company that is re-
 22 structured to a stock holding company.

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

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

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

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

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

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

35 **SECTION 33.** ORS 732.612 is amended to read:

36 732.612. (1) In the case of a conversion or in the case of a reorganization [involving] **that in-**
 37 **volves** the organization of a stock holding company, consideration for the membership interests of
 38 the eligible members of a converting mutual insurer [shall consist] **consists** of one or any combina-
 39 tion of the following:

40 (a) Nontransferable subscription rights to purchase shares of capital stock of the issuer as de-
 41 scribed in subsection (2) of this section;

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

43 (c) Cash;

44 (d) Premium credits;

45 (e) In the case of a converting mutual insurer transacting primarily property or casualty insur-

1 ance, or both, certificates of contribution that bear interest as established in the plan, that are re-
 2 payable within 10 years or, if approved by the Director of the Department of Consumer and Business
 3 Services, within a longer period and that are repayable on terms set forth in the plan;

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

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

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

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

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

31 (c) [*The plan must*] Provide that to the extent an eligible member does not exercise, in whole
 32 or in part, subscription rights allocated to the eligible member, the eligible member instead will re-
 33 ceive one or more of the forms of consideration described in subsection (1) of this section that are
 34 specified in the plan.

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

42 (e) [*The plan must*] Further provide that any shares of capital stock of the issuer for which
 43 subscription rights are allocated to the eligible members but [*which are not purchased by the eligible*
 44 *members pursuant to the exercise of such*] **that the eligible members do not purchase by exer-**
 45 **cising the members'** subscription rights must be sold in a public offering through an underwriter,

1 unless the number of shares that *[are not purchased by]* the eligible members **do not purchase** is
 2 so small in number *[so as not to warrant]* **that** the expense of a public offering **is not warranted**,
 3 in which case the plan may provide for the sale of *[such]* **the** shares by private placement or through
 4 any other fair and equitable means approved by the director. If the director finds that market con-
 5 ditions or other circumstances may cause the interests of the eligible members to be adversely af-
 6 fected, the director may require *[such]* **the** offering of shares to be postponed or the terms of
 7 *[such]* **the** offering to be modified.

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

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

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

37 (6) For a converting mutual insurer *[transacting]* **that transacts** primarily life or health insur-
 38 ance, or both, the consideration specified in subsection (1) of this section must be allocated among
 39 the eligible members *[pursuant to]* **in accordance with** a fair and equitable formula. The formula for
 40 allocating the consideration among the eligible members must either:

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

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

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

5 (a) Allocate the consideration among the eligible members in the proportion that the aggregate
 6 premiums *[earned by]* the converting mutual insurer **earns** on the **eligible member's** policies in
 7 force *[of the eligible member]* during a specified period before the record date described in *[ORS*
 8 *732.600 (7)]* **section 14 (1) of this 2013 Act** bear to the aggregate premiums *[so earned by]* **that** the
 9 converting mutual insurer **earns** during the same period on all **eligible members'** policies in force
 10 *[of all eligible members]*. The specified period must be 36 months unless **the plan specifies** another
 11 period *[is specified in the plan]*.

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

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

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

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

28 **SECTION 34.** ORS 732.810 is amended to read:

29 732.810. As used in ORS 732.810 to 732.814:

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

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

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

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

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

39 **SECTION 35.** ORS 733.630 is amended to read:

40 733.630. (1) Except as provided in this section, funds of an insurer may be invested in common
 41 stock, preferred stock, debt obligations and other securities of one or more corporations without
 42 regard to the provisions and limitations of ORS 733.590, 733.620, 733.770 and 733.780 (1)(a) if the
 43 corporation is engaged, or will be engaged, in the kind of business or activity *[which]* **that** is related
 44 to the insurance business as described in ORS 733.635, provided **that the insurer owns** 80 percent
 45 or more of the shares of the corporation *[having]* **that have** voting powers *[are owned by the insurer]*

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

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

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

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

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

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

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

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

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

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

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

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

43 *[(5)]* (6) An insurer must determine whether any investment pursuant to subsection (2), (3) or (4)
 44 of this section meets the applicable requirements on the last day of the month **that** immediately
 45 *[preceding]* **precedes** the day on which the investment is made. The determination must be made

1 prior to the investment by calculating the applicable investment limitations as though the invest-
 2 ment had already been made, taking into account the then outstanding principal balance on all
 3 previous investments in debt obligations and the value of all previous investments in equity securi-
 4 ties as of the day [they] **the investments** were made, net of any return of capital invested, not in-
 5 cluding dividends.

6 **SECTION 36.** (1) Sections 2, 4, 5, 6, 7, 8, 10, 11, 12 and 14 of this 2013 Act and the
 7 amendments to ORS 731.988, 731.992, 732.518, 732.521, 732.523, 732.526, 732.528, 732.548, 732.552,
 8 732.566, 732.568, 732.574, 732.576, 732.578, 732.584, 732.586, 732.588, 732.600, 732.612, 732.810 and
 9 733.630 by sections 15 to 35 of this 2013 Act become operative on January 2, 2014.

10 (2) The Director of the Department of Consumer and Business Services may take any
 11 action before the operative date specified in subsection (1) of this section that is necessary
 12 to enable the director to exercise, on and after the operative date specified in subsection (1)
 13 of this section, all of the duties, functions and powers conferred on the director by sections
 14 2, 4, 5, 6, 7, 8, 10, 11, 12 and 14 of this 2013 Act and the amendments to ORS 731.988, 731.992,
 15 732.518, 732.521, 732.523, 732.526, 732.528, 732.548, 732.552, 732.566, 732.568, 732.574, 732.576,
 16 732.578, 732.584, 732.586, 732.588, 732.600, 732.612, 732.810 and 733.630 by sections 15 to 35 of this
 17 2013 Act.

18 **SECTION 37.** Sections 2, 4, 5, 6, 7, 8, 10, 11, 12 and 14 of this 2013 Act and the amend-
 19 ments to ORS 731.988, 731.992, 732.518, 732.521, 732.523, 732.526, 732.528, 732.548, 732.552,
 20 732.566, 732.568, 732.574, 732.576, 732.578, 732.584, 732.586 and 732.588 by sections 15 to 31 of this
 21 2013 Act apply to activities that are subject to ORS 732.517 to 732.592 and that occur on or
 22 after the operative date specified in section 36 (1) of this 2013 Act.

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