

A-Engrossed
Senate Bill 145

Ordered by the Senate April 8
Including Senate Amendments dated April 8

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SUMMARY

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

Modifies Insurance Code definition of "small employer" [*to align with federal law*].

A BILL FOR AN ACT

1
2 Relating to the definition of "small employer"; amending ORS 743.730 and section 66, chapter 681,
3 Oregon Laws 2013.

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

5 **SECTION 1.** ORS 743.730, as amended by section 59, chapter 681, Oregon Laws 2013, is
6 amended to read:

7 743.730. For purposes of ORS 743.730 to 743.773:

8 (1) "Actuarial certification" means a written statement by a member of the American Academy
9 of Actuaries or other individual acceptable to the Director of the Department of Consumer and
10 Business Services that a carrier is in compliance with the provisions of ORS 743.736 based upon the
11 person's examination, including a review of the appropriate records and of the actuarial assumptions
12 and methods used by the carrier in establishing premium rates for small employer health benefit
13 plans.

14 (2) "Affiliate" of, or person "affiliated" with, a specified person means any carrier who, directly
15 or indirectly through one or more intermediaries, controls or is controlled by or is under common
16 control with a specified person. For purposes of this definition, "control" has the meaning given that
17 term in ORS 732.548.

18 (3) "Affiliation period" means, under the terms of a group health benefit plan issued by a health
19 care service contractor, a period:

20 (a) That is applied uniformly and without regard to any health status related factors to an
21 enrollee or late enrollee;

22 (b) That must expire before any coverage becomes effective under the plan for the enrollee or
23 late enrollee;

24 (c) During which no premium shall be charged to the enrollee or late enrollee; and

25 (d) That begins on the enrollee's or late enrollee's first date of eligibility for coverage and runs
26 concurrently with any eligibility waiting period under the plan.

27 (4) "Bona fide association" means an association that:

28 (a) Has been in active existence for at least five years;

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 (b) Has been formed and maintained in good faith for purposes other than obtaining insurance;
- 2 (c) Does not condition membership in the association on any factor relating to the health status
- 3 of an individual or the individual's dependent or employee;
- 4 (d) Makes health insurance coverage that is offered through the association available to all
- 5 members of the association regardless of the health status of the member or individuals who are
- 6 eligible for coverage through the member;
- 7 (e) Does not make health insurance coverage that is offered through the association available
- 8 other than in connection with a member of the association;
- 9 (f) Has a constitution and bylaws; and
- 10 (g) Is not owned or controlled by a carrier, producer or affiliate of a carrier or producer.
- 11 (5) "Carrier" means any person who provides health benefit plans in this state, including:
- 12 (a) A licensed insurance company;
- 13 (b) A health care service contractor;
- 14 (c) A health maintenance organization;
- 15 (d) An association or group of employers that provides benefits by means of a multiple employer
- 16 welfare arrangement and that:
- 17 (A) Is subject to ORS 750.301 to 750.341; or
- 18 (B) Is fully insured and otherwise exempt under ORS 750.303 (4) but elects to be governed by
- 19 ORS 743.733 to 743.737; or
- 20 (e) Any other person or corporation responsible for the payment of benefits or provision of ser-
- 21 vices.
- 22 (6) "Catastrophic plan" means a health benefit plan that meets the requirements for a cat-
- 23 astrophic plan under 42 U.S.C. 18022(e) and that is offered through the Oregon health insurance
- 24 exchange.
- 25 (7) "Creditable coverage" means prior health care coverage as defined in 42 U.S.C. 300gg as
- 26 amended and in effect on February 17, 2009, and includes coverage remaining in force at the time
- 27 the enrollee obtains new coverage.
- 28 (8) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms
- 29 of the health benefit plan covering the employee.
- 30 (9) "Eligible employee" means an employee who works on a regularly scheduled basis, with a
- 31 normal work week of 17.5 or more hours. The employer may determine hours worked for eligibility
- 32 between 17.5 and 40 hours per week subject to rules of the carrier. "Eligible employee" does not
- 33 include employees who work on a temporary, seasonal or substitute basis. Employees who have been
- 34 employed by the employer for fewer than 90 days are not eligible employees unless the employer so
- 35 allows.
- 36 (10) "Employee" means any individual employed by an employer.
- 37 (11) "Enrollee" means an employee, dependent of the employee or an individual otherwise eligi-
- 38 ble for a group or individual health benefit plan who has enrolled for coverage under the terms of
- 39 the plan.
- 40 (12) "Exchange" means the health insurance exchange administered by the Oregon Health In-
- 41 surance Exchange Corporation in accordance with ORS 741.310.
- 42 (13) "Exclusion period" means a period during which specified treatments or services are ex-
- 43 cluded from coverage.
- 44 (14) "Financial impairment" means that a carrier is not insolvent and is:
- 45 (a) Considered by the director to be potentially unable to fulfill its contractual obligations; or

1 (b) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

2 (15)(a) "Geographic average rate" means the arithmetical average of the lowest premium and the
3 corresponding highest premium to be charged by a carrier in a geographic area established by the
4 director for the carrier's:

5 (A) Group health benefit plans offered to small employers; or

6 (B) Individual health benefit plans.

7 (b) "Geographic average rate" does not include premium differences that are due to differences
8 in benefit design, age, tobacco use or family composition.

9 (16) "Grandfathered health plan" has the meaning prescribed by the United States Secretaries
10 of Labor, Health and Human Services and the Treasury pursuant to 42 U.S.C. 18011(e).

11 (17) "Group eligibility waiting period" means, with respect to a group health benefit plan, the
12 period of employment or membership with the group that a prospective enrollee must complete be-
13 fore plan coverage begins.

14 (18)(a) "Health benefit plan" means any:

15 (A) Hospital expense, medical expense or hospital or medical expense policy or certificate;

16 (B) Health care service contractor or health maintenance organization subscriber contract; or

17 (C) Plan provided by a multiple employer welfare arrangement or by another benefit arrange-
18 ment defined in the federal Employee Retirement Income Security Act of 1974, as amended, to the
19 extent that the plan is subject to state regulation.

20 (b) "Health benefit plan" does not include:

21 (A) Coverage for accident only, specific disease or condition only, credit or disability income;

22 (B) Coverage of Medicare services pursuant to contracts with the federal government;

23 (C) Medicare supplement insurance policies;

24 (D) Coverage of TRICARE services pursuant to contracts with the federal government;

25 (E) Benefits delivered through a flexible spending arrangement established pursuant to section
26 125 of the Internal Revenue Code of 1986, as amended, when the benefits are provided in addition
27 to a group health benefit plan;

28 (F) Separately offered long term care insurance, including, but not limited to, coverage of nurs-
29 ing home care, home health care and community-based care;

30 (G) Independent, noncoordinated, hospital-only indemnity insurance or other fixed indemnity in-
31 surance;

32 (H) Short term health insurance policies that are in effect for periods of 12 months or less, in-
33 cluding the term of a renewal of the policy;

34 (I) Dental only coverage;

35 (J) Vision only coverage;

36 (K) Stop-loss coverage that meets the requirements of ORS 742.065;

37 (L) Coverage issued as a supplement to liability insurance;

38 (M) Insurance arising out of a workers' compensation or similar law;

39 (N) Automobile medical payment insurance or insurance under which benefits are payable with
40 or without regard to fault and that is statutorily required to be contained in any liability insurance
41 policy or equivalent self-insurance; or

42 (O) Any employee welfare benefit plan that is exempt from state regulation because of the fed-
43 eral Employee Retirement Income Security Act of 1974, as amended.

44 (c) For purposes of this subsection, renewal of a short term health insurance policy includes the
45 issuance of a new short term health insurance policy by an insurer to a policyholder within 60 days

1 after the expiration of a policy previously issued by the insurer to the policyholder.

2 (19) "Individual coverage waiting period" means a period in an individual health benefit plan
3 during which no premiums may be collected and health benefit plan coverage issued is not effective.

4 (20) "Individual health benefit plan" means a health benefit plan:

5 (a) That is issued to an individual policyholder; or

6 (b) That provides individual coverage through a trust, association or similar group, regardless
7 of the situs of the policy or contract.

8 (21) "Initial enrollment period" means a period of at least 30 days following commencement of
9 the first eligibility period for an individual.

10 (22) "Late enrollee" means an individual who enrolls in a group health benefit plan subsequent
11 to the initial enrollment period during which the individual was eligible for coverage but declined
12 to enroll. However, an eligible individual shall not be considered a late enrollee if:

13 (a) The individual qualifies for a special enrollment period in accordance with 42 U.S.C. 300gg
14 or as prescribed by rule by the Department of Consumer and Business Services;

15 (b) The individual applies for coverage during an open enrollment period;

16 (c) A court issues an order that coverage be provided for a spouse or minor child under an
17 employee's employer sponsored health benefit plan and request for enrollment is made within 30
18 days after issuance of the court order;

19 (d) The individual is employed by an employer that offers multiple health benefit plans and the
20 individual elects a different health benefit plan during an open enrollment period; or

21 (e) The individual's coverage under Medicaid, Medicare, TRICARE, Indian Health Service or a
22 publicly sponsored or subsidized health plan, including, but not limited to, the medical assistance
23 program under ORS chapter 414, has been involuntarily terminated within 63 days after applying for
24 coverage in a group health benefit plan.

25 (23) "Minimal essential coverage" has the meaning given that term in section 5000A(f) of the
26 Internal Revenue Code.

27 (24) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement
28 as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, as amended,
29 29 U.S.C. 1002, that is subject to ORS 750.301 to 750.341.

30 (25) "Preexisting condition exclusion" means:

31 (a) Except for a grandfathered health plan, a limitation or exclusion of benefits or a denial of
32 coverage based on a medical condition being present before the effective date of coverage or before
33 the date coverage is denied, whether or not any medical advice, diagnosis, care or treatment was
34 recommended or received for the condition before the date of coverage or denial of coverage.

35 (b) With respect to a grandfathered health plan, a provision applicable to an enrollee or late
36 enrollee that excludes coverage for services, charges or expenses incurred during a specified period
37 immediately following enrollment for a condition for which medical advice, diagnosis, care or treat-
38 ment was recommended or received during a specified period immediately preceding enrollment. For
39 purposes of this paragraph pregnancy and genetic information do not constitute preexisting condi-
40 tions.

41 (26) "Premium" includes insurance premiums or other fees charged for a health benefit plan,
42 including the costs of benefits paid or reimbursements made to or on behalf of enrollees covered by
43 the plan.

44 (27) "Rating period" means the 12-month calendar period for which premium rates established
45 by a carrier are in effect, as determined by the carrier.

1 (28) "Representative" does not include an insurance producer or an employee or authorized
2 representative of an insurance producer or carrier.

3 (29)(a) "Small employer" means an employer that employed an average of at least one but not
4 more than [100] **50** employees on business days during the preceding calendar year, the majority of
5 whom are employed within this state, and that employs at least one eligible employee on the first
6 day of the plan year.

7 (b) Any person that is treated as a single employer under section 414 (b), (c), (m) or (o) of the
8 Internal Revenue Code of 1986 shall be treated as one employer for purposes of this subsection.

9 (c) The determination of whether an employer that was not in existence throughout the pre-
10 ceding calendar year is a small employer shall be based on the average number of employees that
11 it is reasonably expected the employer will employ on business days in the current calendar year.

12 **SECTION 2.** Section 66, chapter 681, Oregon Laws 2013, is amended to read:

13 **Sec. 66.** (1)(a) The amendments to ORS 743.730 by section 17, **chapter 681, Oregon Laws 2013,**
14 [*of this 2013 Act*] become operative January 2, 2014.

15 (b) The amendments to ORS 743.730 by section 59, **chapter 681, Oregon Laws 2013,** [*of this*
16 *2013 Act*] become operative January [2] **1,** 2016.

17 (2) The amendments to ORS 731.146, 743.734 and 743.822 by sections 9, 20 and 31, **chapter 681,**
18 **Oregon Laws 2013,** [*of this 2013 Act*] become operative January 2, 2014.

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