

February 15, 2017

Oregon State Legislature
Senate Committee on Business and Transportation

*sent via email to:
committee members*

**RE: SB 97, Group-Wide Supervisor for Internationally Active Insurance Group -
NAMIC's written testimony SUPPORT IF AMENDED**

Dear Senator Beyer, Chair; Senator Thomsen, Vice-Chair; and honorable members of the Senate Committee on Business and Transportation:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the Senate Committee on Business and Transportation for the February 15, 2017, public hearing.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 153 members who write property/casualty in the State of Oregon, which represents 44% of the insurance marketplace.

NAMIC has been extensively involved in this project at the national level, and we have worked closely with the National Association of Insurance Commissioners (NAIC), international regulators, and insurers to draft a model act that addresses the needs of all interested stakeholders.

One of the challenges with implementing any model act is translating and rewriting provisions from the model act so that they squarely fit within the state's statutory and regulatory framework. That is the task we are confronted with here.

NAMIC has reached out to the Oregon Division of Financial Regulation, Department of Consumer and Business Services and is the process of collaboratively working on amendments with the Division to the pending legislation that would address insurer concerns about key confidentiality protections left out of the current draft of SB 97. As one can readily appreciate,

protecting and safeguarding an insurer's trade secrets, proprietary information, and intellectual property rights, which are of great value to insurers and assist them in providing insurance consumers with competitive products in Oregon's robust insurance marketplace, is of paramount importance to the insurance industry. Consequently, we appreciate the Division's receptiveness to our concerns and willingness to work with us on amendments, and respectfully request that this committee consider NAMIC's proposed amendments to the bill.

NAMIC has shared with the Division the attached mock-up draft amendments to the bill. (Please see attached revised bill language). NAMIC's suggested revisions to SB 97 would make the bill conform to the NAIC Model that state regulators, including Oregon's regulator, participated in drafting after extensive and thoughtful dialogue on this important regulatory issue.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs
Western Region

[Mock-Up Draft Amendments]

The following has special meaning:
green underline denotes added text
~~red struck out text denotes deleted text~~

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2017 OR S 97

Author: Office of the Governor
Version: Prefiled
Version Date: 01/09/2017

79th OREGON LEGISLATIVE ASSEMBLY--2017 Regular Session

Senate Bill 97

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Department of Consumer and Business Services)

SUMMARY

Provides that Director of Department of Consumer and Business Services must act as, or acknowledge another regulatory official as, group-wide supervisor for internationally active insurance group. Specifies criteria for and conditions under which director must assume authority to act as group-wide supervisor or acknowledge other regulatory official's authority as group-wide supervisor. Specifies actions director may take as group-wide supervisor.

Requires insurer or insurance group to submit corporate governance annual disclosure to director, or other regulatory official in lead state, by June 1 of each year. Specifies corporate level of organization at which insurer or insurance group may choose to make corporate governance annual disclosure.

Specifies confidentiality requirements for documents, materials and other information that director receives, obtains, creates or discloses to, or receives in disclosure from, another person. Specifies conditions under which director may share documents, materials or other information and requirements for recipients of shared documents, materials or other information.

Becomes operative on January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to modernizing insurance corporate governance; creating new provisions; amending ORS 732.548 and 732.650; and declaring an emergency.

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

SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS 732.517 to 732.592.

SECTION 2. (1) The Director of the Department of Consumer and Business Services shall:

(a) Act, in accordance with the provisions of this section, as the group-wide supervisor for any internationally active insurance group; or

(b) Acknowledge another regulatory official as the group-wide supervisor for an internationally active insurance group if the internationally active insurance group:

(A) Does not have substantial insurance operations in the United States;

(B) Has substantial insurance operations in the United States but not in this state; or

(C) Has substantial insurance operations in this state but the director determines under criteria set forth in subsections (2) and (6) of this section that the other regulatory official is the appropriate group-wide supervisor.

(2) The director, in cooperation with other state, federal and international regulatory agencies, shall identify a single group-wide supervisor for each internationally active insurance group. The director may determine that the director is the appropriate group-wide supervisor for an internationally active insurance group with substantial insurance operations in this state or the director may determine that another regulatory official is the appropriate group-wide supervisor. In making the determination, the director shall consider:

(a) Where the insurers that have the largest share of the internationally active insurance group's written premiums, assets or liabilities are domiciled;

(b) Where the top-tier insurers within the internationally active insurance group's insurance holding company system are domiciled;

(c) Where the internationally active insurance group has executive offices or the group's largest operational offices;

(d) Whether another regulatory official is acting, or seeks to act, as the group-wide supervisor for the internationally active insurance group under a regulatory system that the director determines is:

(A) Substantially similar to the regulations set forth in the Insurance Code; or

(B) Otherwise sufficient to enable the regulatory official to engage in group-wide supervision and enterprise risk analysis and to cooperate with other regulatory officials; and

(e) Whether another regulatory official that is acting, or seeks to act, as the group-wide supervisor provides the director with a reasonable degree of reciprocal acknowledgment and cooperation.

(3) A regulatory official that the director determines under subsection (2) of this section is the appropriate group-wide supervisor for an internationally active insurance group may in turn acknowledge a different regulatory official as the appropriate group-wide supervisor. Before acknowledging another regulatory official as an appropriate group-wide supervisor, a regulatory official shall:

(a) Consider the criteria set forth in subsection (2) of this section;

(b) Cooperate with and obtain acknowledgment from other regulatory officials with responsibility for supervising the internationally active insurance group; and

(c) Consult with the internationally active insurance group.

(4) Notwithstanding any other provision of this section or section 3 of this 2017 Act, the director shall acknowledge another regulatory official that is acting as a group-wide supervisor for an internationally active insurance group unless a material change in the internationally active insurance group requires the director to make a determination under subsection (2) of this section as to the appropriate group-wide supervisor for the internationally active insurance group. For purposes of this determination, a material change is:

(a) Insurers domiciled within this state come to hold the largest share of the internationally active insurance group's written premiums, assets or liabilities; or

(b) The top-tier insurers within the internationally active insurance group's insurance holding company system become domiciled in this state.

(5) The director, in accordance with ORS 732.584, may order an insurer registered under ORS 732.551 to produce any information the director requires to determine whether the director may act as, or must acknowledge another regulatory official as, the group-wide supervisor for an internationally active insurance group. Before determining that the director is the appropriate group-wide supervisor for an internationally active insurance group, the director shall inform the insurer that provided the information and the controlling entity within the internationally active insurance group, and give the internationally active insurance group at least 30 days in which to provide any additional information that may relate to the director's determination. The director shall identify internationally active insurance groups for which the director acts as the group-wide supervisor on the Department of Consumer and Business Services website.

(6) As the group-wide supervisor for an internationally active insurance group, the director may:

(a) Assess enterprise risks within the internationally active insurance group to evaluate whether persons who manage members of the internationally active insurance group that are engaged in transacting insurance have identified the members' material financial condition and liquidity risks and have established reasonable and effective mitigation measures;

(b) Request from any member of an internationally active insurance group subject to the director's supervision information that is necessary and appropriate to enable the director to assess enterprise risk for the member, including information about the member's:

(A) Governance, risk assessment and management;

(B) Capital adequacy; and

(C) Material intercompany transactions;

(c) Require members of internationally active insurance groups to develop and implement reasonable measures to enable the members to timely recognize and mitigate enterprise risks and, if necessary, assist the members or ask regulatory officials in jurisdictions in which the members are domiciled to compel the members to develop and implement the measures;

(d) Communicate and share information, including through a supervisory college described in ORS 732.571, with other state, federal and international regulatory agencies that have authority over members of internationally active insurance groups, subject to the confidentiality provisions of ORS 705.137, 705.138, 705.139 and 732.586;

(e) Enter into agreements with, or obtain information from, any insurer registered under ORS 732.551, any member of an internationally active insurance group or any other state, federal or international regulatory agency with authority over the internationally active insurance group in order to clarify or provide a basis for the director's authority as a groupwide supervisor, provided that the agreements or information:

(A) Enable the director to resolve disputes with other regulatory officials; and

(B) Will not serve as evidence in any proceeding that an insurer or person within an insurance holding company system that is not domiciled or organized in this state is transacting insurance in this state or is otherwise subject to the jurisdiction of this state; or

(f) Perform any other activities the director deems necessary to exercise the functions of a group-wide supervisor, provided the activities are consistent with the authority and the purposes set forth in this section.

(7)(a) The director may cooperate, including through a supervisory college described in ORS 732.571, with another regulatory official from a jurisdiction that the National Association of Insurance Commissioners has not accredited in the regulatory official's role as a group-wide supervisor if:

(A) The director acknowledges the regulatory official as a group-wide supervisor;

(B) The director's cooperation complies with the laws of this state; and

(C) The regulatory official cooperates with the director's activities as a group-wide supervisor for other internationally active insurance groups as appropriate.

(b) The director may refuse to acknowledge and cooperate with a regulatory official who does not reciprocate the director's acknowledgment and cooperation under this subsection.

(8) The director may enter into agreements with or obtain information from an insurer registered under ORS 732.551, an affiliate of the insurer and any other state, federal or international regulatory agency if the agreement or information clarifies or provides the basis for a regulatory official's authority as a group-wide supervisor.

(9) An insurer that is subject to this section, or that is a member of an internationally active insurance group that is subject to this section, shall pay the director's reasonable expenses of administering this section, including expenses associated with engaging attorneys, actuaries or other professionals and reasonable travel expenses.

SECTION 3. An insurance holding company system that is not an internationally active insurance group may request that the Director of the Department of Consumer and Business Services determine or acknowledge a group-wide supervisor for the insurance holding company system in accordance with section 2 of this 2017 Act.

SECTION 4. Sections 5 to 8 of this 2017 Act are added to and made a part of ORS 732.650 to 732.672.

SECTION 5. (1) An insurer, or the insurance group of which an insurer is a member, not later than June 1 of each year shall submit to the Director of the Department of Consumer and Business Services, or to the chief insurance regulatory official in the state that the director determines is the lead state for the insurance group, a corporate governance annual disclosure that has the information described in section 6 of this 2017 Act. The director shall determine the lead state in accordance with procedures that the director adopts by rule after considering procedures that are set forth in a financial analysis handbook that the National Association of Insurance Commissioners has adopted. An insurer or a member of an insurance group that is not subject to the requirement under this subsection to submit a disclosure shall nevertheless submit the disclosure at the director's request.

(2) The chief executive officer or corporate secretary of an insurer or insurance group shall sign the corporate governance annual disclosure and attest that to the best of the officer's or secretary's belief and knowledge the insurer or insurance group has implemented the corporate governance practices identified in the disclosure and that the insurer's or insurance group's board of directors, or an appropriate committee of the board of directors, has received a copy of the disclosure.

(3)(a) An insurer or insurance group that submits a corporate governance annual disclosure under subsection (1) of this section may provide information in the disclosure:

(A) At the level of the individual legal entity, an intermediate holding company or the controlling parent company, depending on how the insurer or insurance group has structured corporate governance;

(B) At the level at which the insurer or insurance group determines the extent to which the insurer or insurance group will accept risk;

(C) At the level at which the insurer or insurance group collectively oversees or coordinates and exercises supervision over the insurer's or insurance group's earnings, capital, liquidity operations and reputation; or

(D) At the level at which legal liability for failing in the duties of general corporate governance would occur.

(b) An insurer or insurance group that determines the level at which the insurer or insurance group provides information in the corporate governance annual disclosure under paragraph (a)(B), (C) or (D) of this subsection shall indicate which criteria the insurer or insurance group used for the disclosure and explain any subsequent changes in the level at which the disclosure occurs.

(4) The director shall review the corporate governance annual disclosure and any other information the director obtains by request through the lead state as determined by the procedures within the most recent Financial Analysis Handbook referenced in Paragraph A of the section. under procedures the director adopts by rule.

(5) An insurer or insurance group that provides information that is substantially similar to the information required under this section or section 6 of this 2017 Act in other documents that the insurer or insurance group submits to the director, including proxy statements in conjunction with Form B requirements or other state or federal filings, need not duplicate the information in the corporate governance annual disclosure, but must include in the documents the insurer or insurance group submits to the director a cross-reference to documents that have the required information.

SECTION 6. (1) An insurer or insurance group has discretion as to the form and content of the insurer's or insurance group's responses to inquiries in a corporate governance annual disclosure so long as the responses provide information the Director of the Department of Consumer and Business Services requires to understand the insurer's or insurance group's corporate governance structure, policies and practices. The director may request additional information the director deems material and necessary to enable a clear understanding of the corporate governance policies and the reporting, information systems or controls that implement the policies.

(2) Notwithstanding the discretion permitted to an insurer or insurance group under subsection (1) of this section, the insurer or insurance group shall prepare the corporate governance annual disclosure in a manner consistent with rules the director adopts under section 5 of this 2017 Act. The insurer or insurance group shall maintain documentation and supporting information for the corporate governance annual disclosure and make the documentation and supporting information available during an examination of the insurer or insurance group or otherwise at the director's request.

SECTION 7. (1)(a) Documents, materials or other information, including a corporate governance annual disclosure, that the Director of the Department of Consumer and Business Services discloses to, or receives in a submission or disclosure from, another person or otherwise possesses, controls, obtains or creates in accordance with section 5 or 6 of this 2017 Act is proprietary and contain trade secrets, confidential and privileged and is not subject to:

(A) Disclosure under ORS 192.410 to 192.505;

(B) Subpoena; or

(C) Discovery and is not admissible in evidence in a private civil action.

(b) The director may use documents, materials or other information described in paragraph (a) of this subsection in any regulatory or legal action to carry out the director's official duties without the prior written consent of the insurer or insurance group that provided or served as a source or subject of the documents, materials or other information but the director may not otherwise make the documents, materials or other information available to the public without prior written consent from the insurer or insurance group. Nothing in this section shall be construed to require written consent of the insurer before the Commissioner may share or receive confidential documents, materials, or other CGAD-related information pursuant to Subsection C below to assist in the performance of the Commissioner's regulator duties.

(c) The director, any person that acted under the director's authority in an examination or other regulatory action or any person that under section 5 or 6 of this 2017 Act received shared documents, materials or other information described in paragraph (a) of this subsection may not testify concerning the documents, materials or other information in any private civil action.

(2)(a) The director, in performing the director's regulatory duties, may:

(A) Share documents, materials and other information described in subsection (1)(a) of this section, including the confidential and privileged documents, materials, or information in or related to a corporate governance annual disclosure, including proprietary and trade secret documents and materials with other state, federal or international regulatory agencies, including members of a supervisory college described in ORS 732.571, with the National

Association of Insurance Commissioners and with consultants identified in section 8 of this 2017 Act if a regulatory agency, the association or a consultant requests the documents, materials or other information and:

(i) Agrees in writing to keep the documents, materials and other information confidential and maintain the privileged status of the CGAD-related documents; and

(ii) Verifies in writing that the regulatory agency, the association or the consultant has legal authority to keep the documents, materials and other information confidential.

(B) Receive documents, materials and other information including otherwise confidential and privileged documents, materials or information, including proprietary and trade-secret information described in subsection (1)(a) of this section from the National Association of Insurance Commissioners and other state, federal and international regulatory agencies, including members of a supervisory college described in ORS 732.571. and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information

(b) The director shall keep confidential any documents, materials or other information the director receives from any of the persons described in paragraph (a)(B) of this subsection in accordance with the laws that apply to the confidentiality of the documents, materials or other information in the jurisdiction in which the person that is the source or subject of the documents, materials or other information is domiciled or exercises regulatory authority.

(3) The director's or another person's disclosure of documents, materials or other information described in this section does not waive any privilege or claim of confidentiality that otherwise applies to the documents, materials or other information.

SECTION 8. (1)(a) The Director of the Department of Consumer and Business Services, at the expense of the insurer or insurance group from which the director receives a corporate governance annual disclosure, may retain a consultant, including an attorney, actuary, accountant or other expert, whenever the director reasonably requires assistance to review the corporate governance annual disclosure or related information and to evaluate the insurer's or insurance group's compliance with sections 5, 6, 7 and 8 of this 2017 Act.

(b) A consultant that the director retains under paragraph (a) of this subsection shall:

(A) Act solely under the director's supervision;

(B) Serve only in an advisory capacity; and

(C) Comply with the requirements for confidentiality set forth for the director in section 7 of this 2017 Act.

(2) The director may not retain a consultant unless the consultant demonstrates to the director that the consultant:

(a) Does not have a conflict of interest; and

(b) Has internal procedures that enable the consultant to:

(A) Monitor and avoid conflicts of interest; and

(B) Comply with the requirements for confidentiality set forth for the director in section 7 of this 2017 Act.

(3) The director shall enter into a written agreement with a consultant that the director retains under subsection (1) of this section, or with the National Association of Insurance Commissioners if the director consults with the association, that specifies how the consultant or association may share and use documents, materials or other information described in section 7 (1)(a) of this 2017 Act. The terms of the agreement must require the consultant or association to obtain written permission from the insurer or insurance group that is the source or subject of the

documents, materials or other information before making the documents, materials or other information public and must specify:

(a) Procedures and protocols for keeping the documents, materials and other information secure and confidential;

(b) Conditions under which the consultant or the association may share the documents, materials or other information, including requirements that the recipient of the documents, materials or other information must:

(A) Agree in writing to keep the documents, materials and other information secure and confidential; and

(B) Verify in writing that the consultant or association has legal authority to keep the documents, materials or other information secure and confidential;

(c) That the consultant or association may share the documents, materials and other information only with regulatory agencies in states that are domiciles of the insurer that is the source or subject of the documents, materials or other information or of an insurer within the insurance group that is the source or subject of the documents, materials or other information;

(d) That the director retains ownership and control of the documents, materials or other information and that the consultant or association may use the documents, materials or other information only in accordance with the director's specifications or under the director's supervision;

(e) That the consultant or association may not store the documents, materials or other information in a permanent database or another form after the consultant or association completes the consultation or finishes assisting the director;

(f) That the consultant or association must immediately notify the director and the insurer or insurance group that is the source or subject of the documents, materials or other information if the consultant or association receives a subpoena or other request to disclose or produce the documents, materials or other information; and

(g) That the consultant or association agrees to permit the insurer or insurance group that is the source or subject of the documents, materials or other information to intervene in any administrative or judicial proceeding that might require the consultant or association to disclose or produce the documents, materials or other information.

SECTION 9. ORS 732.548 is amended to read:

732.548. As used in ORS 732.517 to 732.592:

(1) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

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

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

(4) "Group-wide supervisor" means a regulatory official that has the authority to conduct and coordinate supervisory activities for an internationally active insurance group under section 2 of this 2017 Act.

~~(4)~~ (5) “Insurance holding company system” means two or more affiliated persons, one or more of which is an insurer, and includes a financial holding company as described in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

~~(5)~~ (6) “Insurer” has the meaning given that term in ORS 731.106 but does not include an agency, authority or instrumentality of the United States, the Commonwealth of Puerto Rico, another state or a political subdivision of another state.

(7) “Internationally active insurance group” means an insurance holding company system that includes an insurer that is registered under ORS 732.551 and that:

(a) Writes premiums in three or more countries;

(b) Writes 10 percent or more of the insurance holding company system’s total gross written premiums outside the United States; and

(c) Has \$50 billion or more of total assets, or \$10 billion or more of total gross written premiums, based on a three-year rolling average.

~~(6)(a)~~ (8)(a) “Person” means an individual, corporation, limited liability company, partnership, association, joint stock company, trust, or unincorporated organization, or a similar an entity or combination of entities ~~that are similar to the entities~~ described in this ~~subsection~~ paragraph.

(b) “Person” does not include:

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

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

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

~~(8)~~ (10) “Subsidiary” means an affiliate that a person controls directly or indirectly through one or more intermediaries.

~~(9)~~ (11) “Voting security” means a security that entitles the owner or holder of the security to vote at a meeting of shareholders, including a security that is convertible into a voting security or that is evidence of a right to acquire a voting security.

SECTION 10. ORS 732.650 is amended to read:

732.650. As used in ORS 732.650 to 732.672:

(1) “Corporate governance annual disclosure” means a report that an insurer or insurance group files with the Director of the Department of Consumer and Business Services in accordance with sections 5 and 6 of this 2017 Act.

~~(4)~~ (2) “Insurance group” means insurers and affiliates within an insurance holding company system, as defined in ORS 732.548.

~~(2)~~ (3) “Insurer” has the meaning given that term in ORS 732.548.

~~(3)~~ (4) "Own risk and solvency assessment" means a confidential internal assessment of the material and relevant risks associated with an insurer's or insurance group's business plan and of the sufficiency of capital resources to support the business plan that the insurer or insurance group conducts and that is appropriate for the nature, scale and complexity of the insurer or insurance group.

~~(4)~~ (5) "Own Risk and Solvency Assessment Guidance Manual" means the Own Risk and Solvency Assessment Guidance Manual that the National Association of Insurance Commissioners develops and adopts and that the Director of the Department of Consumer and Business Services by rule or order designates as guidance and standards for completing an own risk and solvency assessment.

~~(5)~~ (6) "Own risk and solvency assessment summary report" means a confidential high-level summary of an insurer's or insurance group's own risk and solvency assessment.

SECTION 11. (1) Sections 2, 3, 5, 6, 7 and 8 of this 2017 Act and the amendments to ORS 732.548 and 732.650 by sections 9 and 10 of this 2017 Act become operative January 1, 2018.

(2) The Director of the Department of Consumer and Business Services may adopt rules and take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director, on and after the operative date specified in subsection

(1) of this section, to exercise all of the duties, powers and functions conferred on the director by sections 2, 3, 5, 6, 7 and 8 of this 2017 Act and the amendments to ORS 732.548 and 732.650 by sections 9 and 10 of this 2017 Act.

SECTION 12. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

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