

Enrolled
House Bill 2186

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Special Districts Association of Oregon)

CHAPTER

AN ACT

Relating to workers' compensation coverage for self-insured public bodies; amending ORS 656.430.

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

SECTION 1. ORS 656.430 is amended to read:

656.430. (1) Upon determining that an employer has qualified as a self-insured employer under ORS 656.407, the Director of the Department of Consumer and Business Services shall issue a certificate to that effect to the employer.

(2) Coverage of a self-insured employer is effective on the date of certification unless a later date is specified in the certificate.

(3) Two or more entities [shall] **may** not be included in the certification of one employer unless in each entity the same person, or group of persons, or corporation owns a majority interest. If an entity owns a majority interest in another entity which in turn owns the majority interest in another entity, all entities so related may be combined regardless of the number of entities in succession. If more than one entity is included in the certification of one employer, each entity included is jointly and severally liable for any compensation and other amounts due the Department of Consumer and Business Services under this chapter by any entity included in the certification.

(4) In the term "majority interest," as used in this section, "majority" means more than 50 percent.

(5) If an entity other than a partnership:

(a) Has issued voting stock, "majority interest" means a majority of the issued voting stock;

(b) Has not issued voting stock, "majority interest" means a majority of the members; or

(c) Has not issued voting stock and has no members, "majority interest" means a majority of the board of directors or comparable governing body.

(6) If the entity is a partnership, majority interest [shall] **must** be determined in accordance with the participation of each general partner in the profits of the partnership.

(7)(a) Notwithstanding any other provision of this section, the director may certify five or more subject employers as a self-insured employer group, which [shall be considered] **is** an employer for purposes of this chapter, if:

(A) The director finds that the employers as a group meet the requirements of ORS 656.407 (1)(b) and (2);

(B) The director determines that the employers as a group meet the insurance coverage retention and combined net worth requirements adopted by the director by rule;

(C) The director finds that the grouping is likely to improve accident prevention and claims handling for the employer;

(D) Each employer executes and files with the designated entity a written agreement, in such form as the director may prescribe, in which:

(i) The employer agrees to be jointly and severally liable for the payment of any compensation and other amounts due to the Department of Consumer and Business Services under this chapter incurred by a member of the group; or

(ii) The employer, if a city, county, special district described and listed in ORS 198.010 or 198.180, translator district formed under ORS 354.605 to 354.715, weed control district organized under ORS 569.350 to 569.445, intergovernmental agency created under ORS 225.050, school district as defined in ORS 255.005 (9), public housing authority created under ORS chapter 456 or regional council of governments created under ORS chapter 190, agrees to be individually liable for the payment of any compensation and other amounts due to the department under this chapter incurred by the employer during the period of group self-insurance;

(E) The director finds that the employer group is organized as a corporation or cooperative pursuant to ORS chapter 60, 62 or 65, is an intergovernmental entity created under ORS 190.003 to 190.130 **or is a self-insurance program under ORS 30.282 (3)**, and the bylaws **of the employer group** require the [governing] **employer group** to obtain fidelity bonds;

(F) The director finds that the employer group has designated an entity responsible for:

(i) Centralized claims processing in accordance with paragraph (b) of this subsection; and

(ii) Payroll records, safety requirements, recording and submitting assessments and contributions and making such other reports as the director may require; and

(G) The employer has presented a method approved by the director to notify the department of:

(i) The commencement or termination of membership by employers in the group, and the effect thereof on the net worth of the employers in the group; and

(ii) Whether an employer who terminates membership in the group continues to be a subject employer; and

(b) Except for employer groups composed of cities, counties, special districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 and regional councils of governments created under ORS chapter 190, a group administrator may not be a group member or a member of the board of the group.

(8) A self-insured employer must have excess insurance coverage appropriate for the employer's potential liability under this chapter with an insurer authorized to do business in this state. A self-insured employer certified prior to November 1, 1981, must have excess insurance coverage appropriate for the employer's potential liability under this chapter either with an insurer authorized to do business in this state or with any other insurer from whom such insurance can be obtained pursuant to ORS 744.305 to 744.405 (1985 Replacement Part). Evidence of such coverage must be submitted at the time application is made for self-insured certification in the form of an insurance binder providing the appropriate coverage effective the date of certification. The policy providing such coverage must be filed with the director not later than 30 days after the date the coverage is effective. Any changes in the insurer or the coverage must be filed with the department not later than 30 days after the effective date of the change. With respect to such coverage:

(a) The policy must include a provision, approved by the director, for reimbursement to the department of all expenses paid by the department on behalf of the employer pursuant to ORS 656.614 (1) and 656.443 in the same manner as if the department were the insured employer, subject to the policy limitations on amounts and limits of liability to the insured employer; and

(b) The period of coverage must be continuous and remain in effect until the certification is revoked or canceled.

(9) Notwithstanding ORS 656.440, the director may revoke the certification of any self-insured employer after giving 30 days' written notice if the employer:

(a) Fails to comply with subsection (8) of this section;

(b) In the case of an employer described in subsection (7) of this section, fails to comply with that subsection; or

(c) Fails to comply with rules adopted by the director as required by subsection (11) of this section.

(10) A self-insured employer must have an occupational safety and health loss control program as required by ORS 654.097.

(11) The director, by rule shall:

(a) Prescribe methods for determining and approving net worth.

(b) Prescribe the types and approve the retention and limitation levels of excess insurance policies.

(c) Establish reporting requirements.

(d) Prescribe information to be submitted in applications for self-insured employer certifications.

(e) Prescribe the form and manner of reporting commencement or termination in a self-insured employer group.

(f) Prescribe the form, amount and manner for establishing and operating a common claims fund.

(g) Prescribe such other requirements as the director considers necessary so that employers certified as self-insured employers will meet the financial responsibilities under this chapter.

(12) For the purpose of certification as a self-insured employer group, cities, counties, special districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 and regional councils of governments created under ORS chapter 190 shall be considered by the director to be of the same industry.

(13) Notwithstanding subsection (8) of this section, a public utility with assets of more than \$500 million may obtain excess insurance coverage from an eligible surplus lines insurer. As used in this subsection, "public utility" has the meaning given that term in ORS 757.005.

Passed by House March 1, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 11, 2017

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State