

HB 2277-2
(LC 433)
2/20/23 (TSB/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR (at the request of Department of
Consumer and Business Services)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2277**

1 On page 1 of the printed bill, delete lines 3 and 4 and insert “ORS 744.702,
2 744.704, 744.706, 744.714 and 744.740; and prescribing an effective date.”.

3 Delete lines 6 through 29 and delete pages 2 through 7 and insert:

4 **“SECTION 1.** ORS 744.702 is amended to read:

5 “744.702. (1) Subject to ORS 744.704, a person [*shall*] **may** not transact
6 business or purport or offer to transact business as a third party adminis-
7 trator in this state unless the person holds a third party administrator li-
8 cense issued by the Director of the Department of Consumer and Business
9 Services.

10 “(2) For purposes of ORS 744.700 to 744.740, a person transacts or purports
11 or offers to transact business as a third party administrator when the person
12 directly or indirectly solicits or effects coverage of, underwrites, collects
13 charges or premiums from, or adjusts or settles claims on, residents of this
14 state or residents of another state from offices in this state, in connection
15 with life insurance or health insurance coverage.

16 “(3) [*Nothing in*] ORS 744.700 to 744.740 [*exempts*] **do not exempt** a third
17 party administrator from any other applicable licensing **or registration** re-
18 quirement when the third party administrator performs the functions of
19 [*an*] **a pharmacy benefit manager**, insurance producer, adjuster or insur-
20 ance consultant.

21 **“SECTION 2.** ORS 744.704 is amended to read:

1 “744.704. (1) The following persons are exempt from the licensing re-
2 quirement for third party administrators in ORS 744.702 and from all other
3 provisions of ORS 744.700 to 744.740 applicable to third party administrators:

4 “(a) A person licensed under ORS 744.521 to engage in business as an
5 adjuster, whose activities are limited to adjustment of claims and whose ac-
6 tivities do not include the activities of a third party administrator.

7 “(b) A person licensed as an insurance producer as required by ORS
8 744.053 and authorized to transact life or health insurance in this state,
9 whose activities are limited exclusively to the sale of insurance and whose
10 activities do not include the activities of a third party administrator.

11 “(c) An employer acting as a third party administrator on behalf of:

12 “(A) The employer’s employees;

13 “(B) The employees of one or more subsidiary or affiliated corporations
14 of the employer; or

15 “(C) The employees of one or more persons with a dealership, franchise,
16 distributorship or other similar arrangement with the employers.

17 “(d) A union, or an affiliate thereof, acting as a third party administrator
18 on behalf of the union’s or the affiliate’s members.

19 “(e) An insurer that is authorized to transact insurance in this state with
20 respect to a policy issued and delivered in and [*pursuant to*] **under** the laws
21 of this state or another state, **except as provided in ORS 744.714 (2)**.

22 “(f) A creditor acting on behalf of the creditor’s debtors with respect to
23 insurance covering a debt between the creditor and the creditor’s debtors.

24 “(g) A trust and the trustees, agents and employees of the trust, when
25 acting pursuant to the trust, if the trust is established in conformity with
26 29 U.S.C. 186.

27 “(h) A trust exempt from taxation under section 501(a) of the Internal
28 Revenue Code, the trust’s trustees and employees acting pursuant to the
29 trust, or a voluntary employees beneficiary association described in section
30 501(c) of the Internal Revenue Code, the association’s agents and employees

1 and a custodian and the custodian's agents and employees acting pursuant
2 to a custodian account meeting the requirements of section 401(f) of the
3 Internal Revenue Code.

4 “(i) A financial institution that is subject to supervision or examination
5 by federal or state financial institution regulatory authorities, or a mortgage
6 lender, to the extent the financial institution or mortgage lender collects and
7 remits premiums to licensed insurance producers or authorized insurers in
8 connection with loan payments.

9 “(j) A company that issues credit cards and advances for and collects
10 premiums or charges from the company's credit card holders who have au-
11 thorized collection. The exemption under this paragraph applies only if the
12 company does not adjust or settle claims.

13 “(k) A person who adjusts or settles claims in the normal course of
14 practice or employment as an attorney at law. The exemption under this
15 subsection applies only if the person does not collect charges or premiums
16 in connection with life insurance or health insurance coverage.

17 “(L) A person who acts solely as an administrator of one or more bona
18 fide employee benefit plans established by an employer or an employee or-
19 ganization, or both, for which the Insurance Code is preempted pursuant to
20 the Employee Retirement Income Security Act of 1974. A person to whom
21 this paragraph applies must comply with the requirements of ORS 744.714.

22 “(m) An entity or association owned by or composed of like employers
23 who administer partially or fully self-insured plans for employees of the em-
24 ployers or association members.

25 “(n) A trust established by a cooperative body formed between cities,
26 counties, districts or other political subdivisions of this state, or between
27 any combination of such entities, and the trustees, agents and employees
28 acting pursuant to the trust.

29 “(o) Any person designated by the Director of the Department of Con-
30 sumer and Business Services by rule.

1 “(2) A third party administrator is not required to be licensed as a third
2 party administrator in this state if the following conditions are met:

3 “(a) The third party administrator has its principal place of business in
4 another state;

5 “(b) The third party administrator is not soliciting business as a third
6 party administrator in this state; and

7 “(c) In the case of any group policy or plan of insurance serviced by the
8 third party administrator, the lesser of five percent or 100 certificate holders
9 reside in this state.

10 “**SECTION 3.** ORS 744.706 is amended to read:

11 “744.706. (1) In order to obtain a license to transact business as a third
12 party administrator, an applicant shall apply for the license on a form pre-
13 scribed by the Director of the Department of Consumer and Business
14 Services[, *with payment of any fee required for the application*] **and shall pay**
15 **the fee specified in subsection (3) of this section.**

16 “(2) The director may request biographical, organizational, locational, fi-
17 nancial, employment and any other information on the application form that
18 the director determines to be relevant to the evaluation of applications and
19 to the granting of the license, including satisfactory evidence that the in-
20 surance required under ORS 744.726 has been procured and is in effect. The
21 director may also require a statement of the business plan of the applicant.

22 “**(3) The fee to obtain or renew a third party administrator license**
23 **under ORS 744.700 to 744.740 is the greater of:**

24 “(a) \$200 per year; or

25 “(b) **An amount the director specifies by rule as the amount nec-**
26 **essary to reimburse the Department of Consumer and Business Ser-**
27 **vices for the cost of administering ORS 744.700 to 744.740, as**
28 **apportioned annually among applicants for new licenses and renewals.**

29 “**SECTION 4.** ORS 744.714 is amended to read:

30 “744.714. (1) A person who is exempt from the requirement [*of a*] **to ob-**

1 **tain a** license as a third party administrator under ORS 744.704 because the
2 person acts solely as an administrator of one or more bona fide employee
3 benefit plans established by an employer or an employee organization, or
4 both, for which the Insurance Code is preempted [*pursuant to*] **under** the
5 Employee Retirement Income Security Act of 1974, shall register with the
6 Director of the Department of Consumer and Business Services annually,
7 verifying the status of the person as qualifying for the exemption.

8 **“(2) A health insurer that, either directly or through an affiliate,**
9 **acts as a third party administrator for one or more bona fide employee**
10 **benefit plans that provide health benefits to residents of this state and**
11 **for which the Employee Retirement Income Security Act of 1974 pre-**
12 **empts the Insurance Code shall register as provided in subsection (1)**
13 **of this section and provide the director, at least annually, with the**
14 **names and contact information for all bona fide employee benefit**
15 **plans for which the insurer acts as a third party administrator. In-**
16 **formation the director receives under this subsection is confidential**
17 **as provided in ORS 705.137.**

18 **“SECTION 5.** ORS 744.740 is amended to read:

19 **“744.740. (1) An insurer [*who*] **that** uses the services of a third party ad-**
20 **ministrator is responsible for determining the benefits, premium rates,**
21 **underwriting criteria and claims payment procedures applicable to the cov-**
22 **erage and for securing any reinsurance. The **insurer shall provide the** rules**
23 **pertaining to such matters [*must be provided*] in writing [*by the insurer*] to**
24 **the third party administrator.**

25 **“(2) An insurer [*is solely responsible for providing competent adminis-***
26 ***tration of its programs.*] **that uses the services of a third party adminis-****
27 **trator is responsible for the acts of the third party administrator and**
28 **for providing at the request of the Director of the Department of**
29 **Consumer and Business Services any books and records that are rele-**
30 **vant to the acts of the insurer or of the third party administrator.**

1 **“(3) The insurer and the third party administrator shall provide in**
2 **a written agreement that the third party administrator shall avoid**
3 **deceptive statements in communications with claimants as to the**
4 **scope of the third party administrator’s responsibilities, and the re-**
5 **sponsibilities of any other insurer, for claims and premiums.**

6 **“(4) If the insurer and the third party administrator disagree as to**
7 **whether the insurer or the third party administrator must fulfill a**
8 **lawful obligation with respect to a policy, certificate or claim, the**
9 **insurer shall fulfill the obligation.**

10 **“(5) An insurer shall ensure that a third party administrator that**
11 **administers the insurer’s programs under ORS 744.700 to 744.740 shall**
12 **perform the administration competently.**

13 **“[(3)] (6) [When] If a third party administrator administers benefits for**
14 **more than 100 certificate holders on behalf of an insurer, the insurer shall**
15 **conduct a review of the operations of the third party administrator at least**
16 **annually.**

17 **“SECTION 6. (1) The amendments to ORS 744.702, 744.704, 744.706,**
18 **744.714 and 744.740 by sections 1 to 5 of this 2023 Act become operative**
19 **on January 2, 2024.**

20 **“(2) The Director of the Department of Consumer and Business**
21 **Services may adopt rules and take any other action before the opera-**
22 **tive date specified in subsection (1) of this section that is necessary**
23 **to enable the director, on and after the operative date specified in**
24 **subsection (1) of this section, to undertake and exercise all of the du-**
25 **ties, functions and powers conferred on the director by the amend-**
26 **ments to ORS 744.702, 744.704, 744.706, 744.714 and 744.740 by sections 1**
27 **to 5 of this 2023 Act.**

28 **“SECTION 7. This 2023 Act takes effect on the 91st day after the**
29 **date on which the 2023 regular session of the Eighty-second Legislative**
30 **Assembly adjourns sine die.”.**

