

Senate Bill 370

Sponsored by Senator BOQUIST (Pre-session filed.)

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**.

Imposes public safety assessment on covered entities. Defines "covered entity." Establishes Public Safety Assessment Fund. Requires certain covered entities to submit copy of return or form that covered entity must submit to obtain exemption from federal taxation if covered entity pays officer or employee more than \$240,000. Applies to calendar years beginning on or after January 1, 2021.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to regulation of certain business entities; creating new provisions; amending ORS 731.026,
3 731.036, 731.804, 743.650, 748.414 and 748.605; repealing ORS 731.381, 748.509, 748.601 and
4 748.603; and prescribing an effective date.

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

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

7 (a) "Covered entity" means any of the following entities that transact business in this
8 state and that, in the aggregate, generate revenue in excess of \$1 million in a calendar year:

9 (A) An insurer, as defined in ORS 731.106, that is incorporated under ORS chapter 65 or
10 that is exempt from taxation under section 501 of the Internal Revenue Code;

11 (B) A fraternal benefit society, as described in ORS 748.106;

12 (C) A religious corporation, as defined in ORS 65.001, or a religious organization, as de-
13 fined in ORS 128.620, that is incorporated under ORS 65.044 to 65.067 or that is exempt from
14 taxation under section 501(c)(3) of the Internal Revenue Code; or

15 (D) A nonprofit corporation that is not otherwise subject to a requirement to file articles
16 of incorporation under ORS 65.051 or obtain an authorization to transact business in this
17 state under ORS 65.701.

18 (b) "Employee remuneration" means applicable employee remuneration, as defined in
19 section 162(m) of the Internal Revenue Code, as amended and in effect on December 31, 2020.

20 (c) "Subject revenue" includes program service revenue, employee remuneration and
21 funds received from a government entity.

22 (d) "Transacts business in this state" means conducting any of these activities in this
23 state:

24 (A) Maintaining, defending or settling any proceeding;

25 (B) Holding meetings of the covered entity's board of directors or shareholders or car-
26 rying on other activities that involve the covered entity's internal affairs;

27 (C) Maintaining bank accounts;

28 (D) Maintaining offices or agencies for transferring, exchanging or registering the cov-
29 ered entity's securities or maintaining trustees or depositories with respect to the securities;

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 (E) Selling through independent contractors;

2 (F) Soliciting or obtaining orders, donations or contributions of other funds, whether
3 through the mail, through employees or agents or otherwise;

4 (G) Creating or acquiring indebtedness, mortgages or security interests in real or per-
5 sonal property;

6 (H) Securing or collecting debts or enforcing mortgages or security interests in property
7 that secures the debts;

8 (I) Owning real or personal property; and

9 (J) Conducting other transactions.

10 (2) In order to fund public safety in this state, an assessment is imposed on all covered
11 entities, to the extent that the subject revenue of the covered entity exceeds \$1 million for
12 the calendar year. The assessment shall be in the amount of two percent of the subject re-
13 venue in excess of \$1 million that the covered entity receives during the calendar year.

14 (3) The assessment imposed under this section is payable no later than April 15 following
15 the calendar year for which it is imposed. The assessment is payable in the form and manner
16 that the Department of Revenue establishes.

17 (4) All revenues from the assessment imposed under this section must, after payment
18 of refunds and administrative costs, be deposited in the Public Safety Assessment Fund es-
19 tablished in section 3 of this 2021 Act.

20 (5) If a covered entity, other than an insurer that is a for-profit entity, pays more than
21 \$240,000 to any of the covered entity's officers or employees during a calendar year, the
22 covered entity shall submit to the Department of Revenue not later than July 1 of the fol-
23 lowing calendar year a copy of any return or form that the covered entity must submit to
24 the Internal Revenue Service as a requirement for the covered entity to obtain an exemption
25 from federal income tax.

26 **SECTION 2.** (1) The Department of Revenue shall collect the assessment required under
27 section 1 of this 2021 Act in the same manner in which the department assesses and collects
28 income taxes under ORS chapter 314. The department may issue a warrant as provided in
29 ORS 314.430 and record the warrant in the County Clerk Lien Record maintained under ORS
30 205.130. A warrant issued under this section has the same force and effect as a warrant is-
31 sued under ORS 314.430.

32 (2) The department by rule shall establish policies and procedures for administering the
33 assessment imposed under section 1 of this 2021 Act.

34 **SECTION 3.** The Public Safety Assessment Fund is established in the State Treasury,
35 separate and distinct from the General Fund. Interest earned by the Public Safety Assess-
36 ment Fund must be credited to the fund. The fund consists of moneys appropriated or
37 transferred to the fund and moneys deposited in the fund under section 1 of this 2021 Act.
38 Moneys in the fund are continuously appropriated to the Department of Public Safety Stan-
39 dards and Training to be used for the purpose of public safety enhancement and distributed
40 in the form of grants equally among:

- 41 (1) The Oregon State Police.
- 42 (2) The State Fire Marshal.
- 43 (3) Local law enforcement agencies.
- 44 (4) Rural fire protection districts.
- 45 (5) The Office of Emergency Management.

1 **SECTION 4. Sections 1 and 2 of this 2021 Act apply to calendar years beginning on or**
 2 **after January 1, 2021.**

3 **SECTION 5.** ORS 731.026 is amended to read:

4 731.026. The Insurance Code applies to:

5 (1) A fraternal benefit society , **to the extent that the fraternal benefit society is not sub-**
 6 **ject to ORS chapter 748***[complying with ORS chapter 748, only as provided in such chapter].*

7 (2) A health care service contractor complying with ORS 750.005 to 750.095, only as provided
 8 in such sections.

9 (3) A legal expense organization complying with ORS 750.505 to 750.715, only as provided in
 10 such sections.

11 (4) A multiple employer welfare arrangement complying with ORS 750.301 to 750.341, only as
 12 provided in such sections.

13 **SECTION 6.** ORS 731.036 is amended to read:

14 731.036. Except as provided in ORS 743.029 or as specifically provided by law, the Insurance
 15 Code does not apply to any of the following to the extent of the subject matter of the exemption:

16 (1) A bail bondsman, other than a corporate surety and its agents.

17 *[(2) A fraternal benefit society that has maintained lodges in this state and other states for 50 years*
 18 *prior to January 1, 1961, and for which a certificate of authority was not required on that date.]*

19 [(3)] (2) A religious organization providing insurance benefits only to its employees, if the or-
 20 ganization is in existence and exempt from taxation under section 501(c)(3) of the federal Internal
 21 Revenue Code on September 13, 1975.

22 [(4)] (3) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a
 23 self-insurance program for tort liability in accordance with ORS 30.282.

24 [(5)] (4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a
 25 self-insurance program for property damage in accordance with ORS 30.282.

26 [(6)] (5) Cities, counties, school districts, community college districts, community college service
 27 districts or districts, as defined in ORS 198.010 and 198.180, that either individually or jointly insure
 28 for health insurance coverage, excluding disability insurance, their employees or retired employees,
 29 or their dependents, or students engaged in school activities, or combination of employees and de-
 30 pendants, with or without employee or student contributions, if all of the following conditions are
 31 met:

32 (a) The individual or jointly self-insured program meets the following minimum requirements:

33 (A) In the case of a school district, community college district or community college service
 34 district, the number of covered employees and dependents and retired employees and dependents
 35 aggregates at least 500 individuals;

36 (B) In the case of an individual public body program other than a school district, community
 37 college district or community college service district, the number of covered employees and depen-
 38 dents and retired employees and dependents aggregates at least 500 individuals; and

39 (C) In the case of a joint program of two or more public bodies, the number of covered em-
 40 ployees and dependents and retired employees and dependents aggregates at least 1,000 individuals;

41 (b) The individual or jointly self-insured health insurance program includes all coverages and
 42 benefits required of group health insurance policies under ORS chapters 743, 743A and 743B;

43 (c) The individual or jointly self-insured program must have program documents that define
 44 program benefits and administration;

45 (d) Enrollees must be provided copies of summary plan descriptions including:

1 (A) Written general information about services provided, access to services, charges and sched-
2 uling applicable to each enrollee's coverage;

3 (B) The program's grievance and appeal process; and

4 (C) Other group health plan enrollee rights, disclosure or written procedure requirements es-
5 tablished under ORS chapters 743, 743A and 743B;

6 (e) The financial administration of an individual or jointly self-insured program must include the
7 following requirements:

8 (A) Program contributions and reserves must be held in separate accounts and used for the ex-
9 clusive benefit of the program;

10 (B) The program must maintain adequate reserves. Reserves may be invested in accordance with
11 the provisions of ORS chapter 293. Reserve adequacy must be calculated annually with proper
12 actuarial calculations including the following:

13 (i) Known claims, paid and outstanding;

14 (ii) A history of incurred but not reported claims;

15 (iii) Claims handling expenses;

16 (iv) Unearned contributions; and

17 (v) A claims trend factor; and

18 (C) The program must maintain adequate reinsurance against the risk of economic loss in ac-
19 cordance with the provisions of ORS 742.065 unless the program has received written approval for
20 an alternative arrangement for protection against economic loss from the Director of the Depart-
21 ment of Consumer and Business Services;

22 (f) The individual or jointly self-insured program must have sufficient personnel to service the
23 employee benefit program or must contract with a third party administrator licensed under ORS
24 chapter 744 as a third party administrator to provide such services;

25 (g) The public body, or the program administrator in the case of a joint insurance program of
26 two or more public bodies, files with the Director of the Department of Consumer and Business
27 Services copies of all documents creating and governing the program, all forms used to communicate
28 the coverage to beneficiaries, the schedule of payments established to support the program and,
29 annually, a financial report showing the total incurred cost of the program for the preceding year.
30 A copy of the annual audit required by ORS 297.425 may be used to satisfy the financial report filing
31 requirement; and

32 (h) Each public body in a joint insurance program is liable only to its own employees and no
33 others for benefits under the program in the event, and to the extent, that no further funds, in-
34 cluding funds from insurance policies obtained by the pool, are available in the joint insurance pool.

35 [(7)] **(6)** All ambulance services.

36 [(8)] **(7)** A person providing any of the services described in this subsection. The exemption un-
37 der this subsection does not apply to an authorized insurer providing such services under an insur-
38 ance policy. This subsection applies to the following services:

39 (a) Towing service.

40 (b) Emergency road service, which means adjustment, repair or replacement of the equipment,
41 tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be operated
42 under its own power.

43 (c) Transportation and arrangements for the transportation of human remains, including all
44 necessary and appropriate preparations for and actual transportation provided to return a
45 decedent's remains from the decedent's place of death to a location designated by a person with

1 valid legal authority under ORS 97.130.

2 [(9)(a)] (8)(a) A person described in this subsection who, in an agreement to lease or to finance
 3 the purchase of a motor vehicle, agrees to waive for no additional charge the amount specified in
 4 paragraph (b) of this subsection upon total loss of the motor vehicle because of physical damage,
 5 theft or other occurrence, as specified in the agreement. The exemption established in this sub-
 6 section applies to the following persons:

7 (A) The seller of the motor vehicle, if the sale is made pursuant to a motor vehicle retail in-
 8 stallment contract.

9 (B) The lessor of the motor vehicle.

10 (C) The lender who finances the purchase of the motor vehicle.

11 (D) The assignee of a person described in this paragraph.

12 (b) The amount waived pursuant to the agreement shall be the difference, or portion thereof,
 13 between the amount received by the seller, lessor, lender or assignee, as applicable, that represents
 14 the actual cash value of the motor vehicle at the date of loss, and the amount owed under the
 15 agreement.

16 [(10)] (9) A self-insurance program for tort liability or property damage that is established by
 17 two or more affordable housing entities and that complies with the same requirements that public
 18 bodies must meet under ORS 30.282 (6). As used in this subsection:

19 (a) "Affordable housing" means housing projects in which some of the dwelling units may be
 20 purchased or rented, with or without government assistance, on a basis that is affordable to indi-
 21 viduals of low income.

22 (b) "Affordable housing entity" means any of the following:

23 (A) A housing authority created under the laws of this state or another jurisdiction and any
 24 agency or instrumentality of a housing authority, including but not limited to a legal entity created
 25 to conduct a self-insurance program for housing authorities that complies with ORS 30.282 (6).

26 (B) A nonprofit corporation that is engaged in providing affordable housing.

27 (C) A partnership or limited liability company that is engaged in providing affordable housing
 28 and that is affiliated with a housing authority described in subparagraph (A) of this paragraph or
 29 a nonprofit corporation described in subparagraph (B) of this paragraph if the housing authority or
 30 nonprofit corporation:

31 (i) Has, or has the right to acquire, a financial or ownership interest in the partnership or lim-
 32 ited liability company;

33 (ii) Has the power to direct the management or policies of the partnership or limited liability
 34 company;

35 (iii) Has entered into a contract to lease, manage or operate the affordable housing owned by
 36 the partnership or limited liability company; or

37 (iv) Has any other material relationship with the partnership or limited liability company.

38 [(11)] (10) Except as provided in ORS 735.500 and 735.510, a person certified by the Department
 39 of Consumer and Business Services to operate a retainer medical practice.

40 **SECTION 7.** ORS 731.804 is amended to read:

41 731.804. (1) Except as otherwise provided in this section, each authorized insurer doing business
 42 in this state shall pay assessments that the Director of the Department of Consumer and Business
 43 Services determines are necessary to support the legislatively authorized budget of the Department
 44 of Consumer and Business Services with respect to functions of the department under the Insurance
 45 Code. The director shall determine the assessments according to one or more percentage rates es-

1 tablished by the director by rule. The director shall specify in the rule when assessments *[shall]*
 2 **must** be made and payments *[shall be]* **are** due. The premium-weighted average of the percentage
 3 rates may not exceed nine-hundredths of one percent of the gross amount of premiums received by
 4 an insurer or the insurer's insurance producers from and under the insurer's policies covering direct
 5 domestic risks, after deducting the amount of return premiums paid and the amount of dividend
 6 payments made to policyholders with respect to such policies. In the case of reciprocal insurers, the
 7 amount of savings paid or credited to the accounts of subscribers *[shall]* **must** be deducted from the
 8 gross amount of premiums. In establishing the percentage rate or rates, the director shall use the
 9 most recent premium data approved by the director. In establishing the amounts to be collected
 10 under this subsection, the director shall take into consideration the expenses of the department for
 11 administering the Insurance Code and the fees collected under subsection (2) of this section.
 12 *[When]* **If** the director establishes two or more percentage rates:

13 (a) Each rate *[shall]* **must** be based on such expenses of the department ascribed by the director
 14 to the line of insurance for which the rate is established.

15 (b) Each rate *[shall]* **must** be applied to the gross amount of premium received by an insurer
 16 or *[its]* **the insurer's** insurance producers for the applicable line of insurance as provided in this
 17 subsection.

18 (2) The director may collect fees for specific services provided by the department under the In-
 19 surance Code according to a schedule of fees established by the director by rule. The director may
 20 collect such fees in advance. In establishing the schedule for fees, the director shall take into con-
 21 sideration the cost of each service for which a fee is imposed.

22 (3)(a) Notwithstanding the provisions of ORS 743A.067 (7)(e) and 743A.067 (9), for the purpose
 23 of mitigating inequity in the health insurance market, the director may assess a fee on any insurer
 24 that offers a health benefit plan, as defined in ORS 743B.005, that is exempt from a provision of ORS
 25 chapter 743A or other provision of the Insurance Code that requires specified coverage by health
 26 benefit plans.

27 (b) Any fees collected under paragraph (a) of this subsection must be the actuarial equivalent
 28 of costs attributed to the provision and administration of the required coverage by an insurer that
 29 is not exempt.

30 (c) *[Nothing in]* This section *[limits]* **does not limit** the authority of the director to enforce the
 31 provisions of ORS chapter 743A if an insurer unlawfully fails to comply.

32 (d) Notwithstanding ORS 646A.628, fees paid in accordance with paragraph (a) of this subsection
 33 *[shall]* **must** be deposited in the General Fund to become available for general governmental ex-
 34 penses.

35 (4) Establishment and amendment of the schedule of fees under subsection (2) of this section are
 36 subject to prior approval of the Oregon Department of Administrative Services and a report to the
 37 Emergency Board prior to adopting the fees and *[shall]* **must** be within the budget authorized by the
 38 Legislative Assembly as that budget may be modified by the Emergency Board.

39 (5) The director may not collect an assessment under subsection (1) of this section from *[any of*
 40 *the following persons:]*

41 *[(a) A fraternal benefit society complying with ORS chapter 748.]*

42 *[(b) Any]* **a person or class of persons designated by the director by rule , other than a**
 43 **fraternal benefit society, as described in ORS 748.106.**

44 (6) The director may not collect an assessment under subsection (1) of this section with respect
 45 to premiums received from any of the following policies:

- 1 (a) Workers' compensation insurance policies.
- 2 (b) Wet marine and transportation insurance policies.
- 3 (c) Any category of policies designated by the director by rule.

4 **SECTION 8.** ORS 743.650 is amended to read:

5 743.650. (1) ORS 743.650 to 743.665 may be known and cited as the "Long Term Care Insurance
6 Act."

7 (2) The purpose of ORS 743.650 to 743.665 is to:

- 8 (a) Promote the public interest in long term care insurance;
- 9 (b) Promote the availability of long term care insurance policies;
- 10 (c) Protect applicants for long term care insurance from unfair or deceptive sales or enrollment
11 practices;
- 12 (d) Establish standards for long term care insurance;
- 13 (e) Facilitate public understanding and comparison of long term care insurance policies;
- 14 (f) Facilitate flexibility and innovation in the development of long term care insurance coverage;

15 and

16 (g) Ensure that Oregon residents who purchase insurance for long term care shall have access
17 to policies providing for a comprehensive range of benefits.

18 (3) The requirements of ORS 743.650 to 743.665[, 748.603] and 750.055 apply to policies and cer-
19 tificates delivered or issued for delivery in this state on or after December 31, 1989. ORS 743.650
20 to 743.665[, 748.603] and 750.055 are not intended to supersede the obligations of entities subject to
21 ORS 743.650 to 743.665[, 748.603] and 750.055 to comply with the substance of other applicable in-
22 surance laws insofar as such laws do not conflict with ORS 743.650 to 743.665[, 748.603] and 750.055,
23 except that laws and rules designed and intended to apply to Medicare supplement insurance poli-
24 cies [shall] **may** not be applied to long term care insurance. A policy that is not advertised, mar-
25 keted or offered as long term care insurance or nursing home insurance is not required to meet the
26 requirements of ORS 743.650 to 743.665[, 748.603] and 750.055.

27 **SECTION 9.** ORS 748.414 is amended to read:

28 748.414. Every society organized or licensed under this chapter is hereby declared to be a
29 charitable and benevolent institution, and all of [its] **the** funds [shall be] **the society receives spe-**
30 **cifically for or expends on charitable purposes are** exempt from all and every state, county, dis-
31 trict, municipal and school tax, other than taxes on real estate and office equipment.

32 **SECTION 10.** ORS 748.605 is amended to read:

33 748.605. Insurance issued or delivered by a fraternal benefit society against the risk of economic
34 loss assumed under a less than fully insured employee health benefit plan is subject to ORS 742.065.
35 Such insurance is [subject to ORS 748.603 but is otherwise] not subject to the provisions of ORS
36 chapter 748.

37 **SECTION 11.** ORS 731.381, 748.509, 748.601 and 748.603 are repealed.

38 **SECTION 12.** This 2021 Act takes effect on the 91st day after the date on which the 2021
39 regular session of the Eighty-first Legislative Assembly adjourns sine die.