

# Senate Bill 116

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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 **as introduced**.

Authorizes Director of Department of Consumer and Business Services to establish one or more market assistance plans or joint underwriting associations to provide commercial liability insurance under certain circumstances.

## A BILL FOR AN ACT

1  
2 Relating to commercial liability insurance; amending ORS 735.200, 735.205, 735.210, 735.215, 735.220,  
3 735.225, 735.230, 735.235, 735.240, 735.245, 735.250 and 735.260; and repealing ORS 735.265.

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

5 **SECTION 1.** ORS 735.200 is amended to read:

6 735.200. (1) The Legislative Assembly finds that:

7 (a) [*Some*] **Oregon** businesses and service providers [*in Oregon have experienced*] **occasionally**  
8 **experience** major problems in [*both*] the availability [*and*] **or** affordability of **one or more sub-**  
9 **classes of** commercial liability insurance. [*Premiums for such insurance policies have recently grown*  
10 *as much as 500 percent and the availability of such insurance in Oregon markets has greatly dimin-*  
11 *ished.*]

12 (b) These businesses and service providers are essential to achieve goals such as increased  
13 workforce productivity, family self-sufficiency and the maintenance and improvement of the health  
14 of the citizens of Oregon. The lack of adequate commercial liability insurance threatens these busi-  
15 nesses and services.

16 (2) The Legislative Assembly therefore declares it is the purpose of ORS 735.200 to 735.260 to  
17 remedy the problem of unavailable **or unaffordable** commercial liability insurance for these busi-  
18 nesses and service providers by authorizing the Director of the Department of Consumer and Busi-  
19 ness Services to [*assist in the establishment of a*] **establish** market assistance [*plan for providing*]  
20 **plans to provide** commercial liability insurance for these businesses and service providers, or, if  
21 necessary, by requiring all insurers authorized to write commercial liability insurance in Oregon to  
22 be members of one or more joint underwriting associations created to provide commercial liability  
23 insurance for these businesses and service providers.

24 **SECTION 2.** ORS 735.205 is amended to read:

25 735.205. As used in ORS 735.200 to 735.260:

26 (1) "Joint underwriting association" means a mechanism [*requiring*] **through which authorized**  
27 casualty insurers [*doing business in Oregon to*] provide commercial liability insurance to certain  
28 businesses and service providers on either an assigned risk basis or through a joint underwriting  
29 pool underwritten to standards adopted under the Insurance Code.

30 (2) "Market assistance plan" means a mechanism through which [*admitted*] **authorized** casualty

**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 insurers [*in this state provide commercial liability insurance for classes of risks designated by the Di-*  
 2 *rector of the Department of Consumer and Business Services*] **assist businesses and service pro-**  
 3 **viders in obtaining one or more subclasses of commercial liability insurance designated by**  
 4 **the Director of the Department of Consumer and Business Services that are unavailable or**  
 5 **unaffordable in the voluntary insurance market.**

6 **SECTION 3.** ORS 735.210 is amended to read:

7 735.210. (1) [*After a public hearing,*] The Director of the Department of Consumer and Business  
 8 Services may [*by rule require*] **order** insurers authorized to write and writing commercial liability  
 9 insurance in this state to form [*a*] **one or more** market assistance [*plan*] **plans** [*to assist businesses*  
 10 *and service providers unable to purchase*] **for one or more** [*specified classes*] **subclasses** of com-  
 11 mercial liability insurance [*in adequate amounts from either the admitted or nonadmitted market*].

12 (2) [*The*] **Each** market assistance plan shall operate under a plan of operations prepared by  
 13 [*admitted*] **the director after consulting with authorized** insurers, eligible surplus line insurers  
 14 and insurance producers [, *and approved by the director*].

15 **SECTION 4.** ORS 735.215 is amended to read:

16 735.215. (1) The Director of the Department of Consumer and Business Services may [*mandate*]  
 17 **order** the formation of a joint underwriting association under ORS 735.220 if [*after directing the*  
 18 *formation of a market assistance plan and allowing it a reasonable time to alleviate insurance avail-*  
 19 *ability problems, the director finds that*]:

20 (a) **The director holds a hearing and receives comments on the establishment of a joint**  
 21 **underwriting association; and**

22 (b) **The director finds that:**

23 [(a)] (A) There exist in Oregon certain businesses or service providers for which [*no commercial*  
 24 *liability insurance is available*] **one or more subclasses of commercial liability insurance are**  
 25 **unavailable or unaffordable;** and

26 [(b)] (B) There is a need in Oregon for the goods or services provided by these businesses or  
 27 service providers and the lack of available **or affordable** commercial liability insurance will cause  
 28 a substantial number of the entities to cease operations within the state.

29 [(2) *Notwithstanding subsection (1) of this section, if the lack of availability of insurance is due to*  
 30 *legitimate insurance underwriting considerations, including past claims experience, licensing noncom-*  
 31 *pliance or inadequate risk management, formation of a joint underwriting association shall not be ap-*  
 32 *propriate.*]

33 [(3) *The director may make the findings required under subsection (1) of this section only after*  
 34 *conducting a public hearing according to the applicable provisions of ORS chapter 183.*]

35 (2) The director [*must*] **shall** specify the [*specific classes of business or lines of*] **subclasses of**  
 36 **commercial liability** insurance determined to be unavailable **or unaffordable.**

37 [(4)] (3) At least once [*each*] **a** year, the director shall hold a public hearing to determine if [*the*  
 38 *classes of business or lines*] **subclasses** of insurance offered by [*the*] **each** joint underwriting asso-  
 39 ciation **formed under subsection (1) of this section** are still unavailable **or unaffordable** in the  
 40 voluntary insurance market. **If the director determines that** [*If*] any [*class or line*] **subclass** is  
 41 [*found to be*] available **or affordable, the director shall direct** the joint underwriting association  
 42 [*shall*] **to cease** [*to underwrite such*] **underwriting that** [*class of business or line*] **subclass** of in-  
 43 surance.

44 **SECTION 5.** ORS 735.220 is amended to read:

45 735.220. [*After finding under ORS 735.215 that there is a need in Oregon for a joint underwriting*

1 association, the Director of the Department of Consumer and Business Services may form and put into  
 2 operation] **A joint underwriting association established under ORS 735.215** is a temporary,  
 3 nonprofit, nonexclusive joint underwriting association constituting a legal entity separate and dis-  
 4 tinct from its members for **one or more subclasses** of commercial liability insurance subject to the  
 5 conditions and limitations contained in the Insurance Code. *[All funds and reserves of the association*  
 6 *shall be separately held and invested.]* **Except as provided in ORS 735.245 (3), each association**  
 7 **shall maintain all funds and reserves in a separate and distinct fund for each subclass.**

8 **SECTION 6.** ORS 735.225 is amended to read:

9 735.225. *[The]* A joint underwriting association established under ORS 735.220 shall *[be com-*  
 10 *prised of]* **comprise** all insurers authorized to write and who are writing, **within this state on a**  
 11 **direct basis, the subclass or subclasses** of commercial liability insurance *[within this state on a*  
 12 *direct basis],* including the commercial liability portions of multiperil policies, **for which the joint**  
 13 **underwriting association is formed.** *[Every such]* **Each** insurer shall remain a member of the as-  
 14 sociation as a condition of its authority to continue to transact insurance in this state.

15 **SECTION 7.** ORS 735.230 is amended to read:

16 735.230. The board of directors of *[the]* **each** joint underwriting association shall engage the  
 17 services of an independent actuarial firm to develop and recommend *[actuarially sound]* rates, rating  
 18 plans, rating rules and classifications **for each subclass of commercial liability insurance for**  
 19 **which the association is formed.** The Director of the Department of Consumer and Business Ser-  
 20 vices shall approve rates filed by *[the]* **each** joint underwriting association *[in accordance with]* **ac-**  
 21 **cording to the standards established in** ORS 737.310. *[All rates approved for the joint underwriting*  
 22 *association shall be actuarially sound and calculated to be self-supporting.]*

23 **SECTION 8.** ORS 735.235 is amended to read:

24 735.235. *[The]* (1) **Each** joint underwriting association formed under ORS 735.220 shall be under  
 25 the administrative control of a seven person board of directors appointed by the Governor[.] **as**  
 26 **follows:**

- 27 (a) Two directors shall represent *[insurance carriers]* **insurers** participating in the association;
  - 28 (b) One director shall represent insurance producers;
  - 29 (c) Three directors shall represent the affected classes of insureds; and
  - 30 (d) One director shall be a public member with no ties to the insurance industry.
- 31 (2) The board shall elect one of its members as chairperson.

32 **SECTION 9.** ORS 735.240 is amended to read:

33 735.240. *[The]* **Each** joint underwriting association shall file an annual statement prepared by  
 34 an independent certified public accountant containing a financial statement, a summary of its  
 35 transactions and operations for the prior year and other information as prescribed by the Director  
 36 of the Department of Consumer and Business Services by rule.

37 **SECTION 10.** ORS 735.245 is amended to read:

38 735.245. (1) Upon a determination of *[the]* a board of directors that the joint underwriting asso-  
 39 ciation will be unable to pay *[its]* **the** outstanding lawful obligations **of a subclass of insurance**  
 40 **offered by the association** as they mature, the board shall certify the existence of this condition  
 41 to the Director of the Department of Consumer and Business Services. A schedule for policyholder  
 42 surcharges shall be submitted by the board at the time of certification. **The surcharges shall apply**  
 43 **only to the policyholders of the affected subclass of insurance.**

44 (2) The surcharge schedule shall become final 30 days after certification unless the director  
 45 finds, *after a public hearing,* that the surcharge amounts are unreasonable or unjustifiable.

1 [Such] **The** surcharges may be adjusted to take into consideration the past and prospective loss and  
 2 expense experience in different geographical areas within the state. [Such] **The** surcharges shall be  
 3 in addition to and not in lieu of the premiums charged for the coverages provided.

4 (3) Moneys collected in accordance with subsection (2) of this section shall be held in a fund  
 5 separate from other joint underwriting association funds. [Such] **The** funds shall be invested in ac-  
 6 cordance with applicable law governing publicly held trust funds. The association shall file an an-  
 7 nual financial statement covering [such] **the** funds.

8 (4) Surcharge funds shall be subject to the control of the board of directors and may be used to  
 9 satisfy the legal obligations of the joint underwriting association **with respect to the subclass of**  
 10 **insurance for which the surcharge was applied.**

11 (5) No part of the profit [or loss] of the joint underwriting association [shall] **may** inure to the  
 12 benefit of any member insurer [or be an obligation of any member insurer].

13 **SECTION 11.** ORS 735.250 is amended to read:

14 735.250. There shall be no liability or cause of action against any member insurer, self-insurer,  
 15 or its agents or employees, [the] **a** joint underwriting association or its agents or employees, mem-  
 16 bers of the board of directors, the Department of Consumer and Business Services or its represen-  
 17 tatives for any action taken by or statement made by them in performance of their powers and  
 18 duties under ORS 735.210 to 735.260.

19 **SECTION 12.** ORS 735.260 is amended to read:

20 735.260. The Director of the Department of Consumer and Business Services may adopt [all]  
 21 rules [necessary to insure the efficient, equitable operation of the market assistance plan or the joint  
 22 underwriting association] **to govern market assistance plans and joint underwriting associ-**  
 23 **ations**, including but not limited to rules requiring or limiting certain policy provisions.

24 **SECTION 13.** ORS 735.265 is repealed.  
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