

House Bill 2718

Sponsored by COMMITTEE ON BUSINESS, LABOR AND CONSUMER AFFAIRS (at the request of Northwest Natural)

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 certain public utilities to obtain workers' compensation excess insurance coverage from eligible surplus lines insurers.

A BILL FOR AN ACT

1
2 Relating to workers' compensation excess insurance coverage for public utilities; amending ORS
3 656.430.

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

5 **SECTION 1.** ORS 656.430 is amended to read:

6 656.430. (1) Upon determining that an employer has qualified as a self-insured employer under
7 ORS 656.407, the Director of the Department of Consumer and Business Services shall issue a cer-
8 tificate to that effect to the employer.

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

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

18 (4) In the term "majority interest," as used in this section, "majority" means more than 50 per-
19 cent.

20 (5) If an entity other than a partnership:

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

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

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

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

27 (7) Notwithstanding any other provision of this section, the director may certify five or more
28 subject employers as a self-insured employer group, which shall be considered an employer for pur-
29 poses of this chapter, if:

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

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 (b) The director determines that:

2 (A) If the employers as a group have insurance coverage with a retention of \$100,000 or more,
3 the employers have a combined net worth of \$1 million or more; or

4 (B) If the employers as a group have insurance coverage with a retention of less than \$100,000,
5 the employers have a combined net worth at least equal to the proportion of \$1 million that the
6 retention bears to \$100,000;

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

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

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

14 (B) The employer, if a city, county, special district described and listed in ORS 198.010 or
15 198.180, translator district formed under ORS 354.605 to 354.715, weed control district organized
16 under ORS 570.505 to 570.575, intergovernmental agency created under ORS 225.050, school district
17 as defined in ORS 255.005 (8), public housing authority created under ORS chapter 456 or regional
18 council of governments created under ORS chapter 190, agrees to be individually liable for the
19 payment of any compensation and other amounts due to the department under this chapter incurred
20 by the employer during the period of group self-insurance;

21 (e) The director finds that the employer group is organized as a corporation or cooperative
22 pursuant to ORS chapter 60, 62 or 65, is an intergovernmental entity created under ORS 190.003 to
23 190.130 and the bylaws require the governing group to obtain fidelity bonds;

24 (f) The director finds that the employer group has designated an entity within or for the group
25 responsible for centralized claims processing, payroll records, safety requirements, recording and
26 submitting assessments and contributions and making such other reports as the director may re-
27 quire; and

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

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

31 (B) Whether an employer who terminates membership in the group continues to be a subject
32 employer.

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

44 (a) The policy must include a provision, approved by the director, for reimbursement to the de-
45 partment of all expenses paid by the department on behalf of the employer pursuant to ORS 656.614

1 (1) and 656.443 in the same manner as if the department were the insured employer, subject to the
2 policy limitations on amounts and limits of liability to the insured employer; and

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

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

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

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

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

12 (11) The director, by rule shall:

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

14 (b) Prescribe the types and approve the retention and limitation levels of excess insurance pol-
15 icies.

16 (c) Establish reporting requirements.

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

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

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

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

23 (12) For the purpose of certification as a self-insured employer group, cities, counties, special
24 districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school
25 districts as defined in ORS 255.005 (8), public housing authorities created under ORS chapter 456
26 and regional councils of governments created under ORS chapter 190 shall be considered by the
27 director to be of the same industry.

28 **(13) Notwithstanding subsection (8) of this section, a public utility with assets of more**
29 **than \$500 million may obtain excess insurance coverage from an eligible surplus lines**
30 **insurer. As used in this subsection, "public utility" has the meaning given that term in ORS**
31 **757.005.**

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