

# Enrolled Senate Bill 977

Sponsored by Senator HANNON

CHAPTER .....

AN ACT

Relating to Oregon Insurance Guaranty Association; creating new provisions; and amending ORS 656.506, 656.605, 734.360, 734.510, 734.570, 734.630, 734.635 and 734.695.

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

**SECTION 1.** ORS 734.510 is amended to read:

734.510. As used in ORS 734.510 to 734.710, unless the context requires otherwise:

(1) "Association" means the Oregon Insurance Guaranty Association created by ORS 734.550.

(2) "Board" means the board of directors of the association.

(3) "Controlled insurer" means an insurer 70 percent or more of whose stock is owned by a corporation, or by two or more corporations that are under common ownership.

(4)(a) "Covered claim" means an unpaid claim, including a claim for unearned premiums **and a claim by the Workers' Benefit Fund for payments made pursuant to ORS chapter 656**, that arises out of and is within the coverage and limits of an insurance policy to which ORS 734.510 to 734.710 apply and which is in force at the time of the occurrence giving rise to the unpaid claim, made by a person insured under such policy or by a person suffering injury or damage for which a person insured under such policy is legally liable, if:

(A) The insurer issuing the policy becomes an insolvent insurer after September 9, 1971; and

(B) The claimant or insured is a resident of this state at the time of the occurrence giving rise to the unpaid claim, or the property for which claim arises is permanently located in this state.

(b) "Covered claim" does not include:

(A) Any amount in excess of the applicable limits of liability provided by an insurance policy to which ORS 734.510 to 734.710 apply; [*nor*]

(B) Any amount due any reinsurer, insurer, insurance pool or underwriting association as subrogated recoveries or otherwise[.];

**(C) Except for claims arising out of workers' compensation policies subject to ORS chapter 656, a claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer; or**

**(D) Any first party claim by an insured whose net worth exceeds \$25 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer, provided that an insured's net worth on such date is deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis.**

(5) "Dividend" means any payment made to the stockholders of a controlled insurer, which payment is directly related to ownership of the stock.

(6) "Insolvent insurer" means a member insurer:

(a) Authorized to transact insurance in this state either at the time the policy was issued or at the time of the occurrence giving rise to the unpaid claim; [and]

(b) Against which a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the insurer's domicile after September 9, 1971; and

(c) With respect to which no order, decree, or finding relating to the insolvency of the insurer, whether preliminary or temporary in nature or otherwise, has been issued by a court of competent jurisdiction or by any insurance commissioner, insurance department or similar official or body prior to September 9, 1971, or which was in fact insolvent prior to September 9, 1971, and such de facto insolvency was or should have been known by the chief insurance regulatory official of its domicile.

(7) "Member insurer" means an insurer, including a reciprocal insurer, authorized to transact insurance in this state that writes any kind of insurance to which ORS 734.510 to 734.710 apply.

(8) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which ORS 734.510 to 734.710 apply, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(9) "Plan" means the plan of operation of the association established pursuant to ORS 734.590.

**SECTION 2.** ORS 734.695 is amended to read:

734.695. **(1)** The insured of an insolvent insurer [*shall*] **may** not be personally liable for amounts due any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries or otherwise up to the applicable limits of liability provided by the insurance policy issued by the insolvent insurer.

**(2) Notwithstanding the provisions of subsection (1) of this section, and except for claims arising out of workers' compensation policies subject to ORS chapter 656, the Oregon Insurance Guaranty Association may recover from the following persons the amount of any covered claim paid on behalf of such person under ORS 734.510 to 734.710:**

**(a) Any insured whose net worth exceeds \$25 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under ORS 734.510 to 734.710; and**

**(b) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under ORS 734.510 to 734.710.**

**SECTION 3.** ORS 734.360 is amended to read:

734.360. Except as provided in ORS 734.310 for secured claims, the [*debts and*] claims to be paid in full in delinquency proceedings prior to the payment of any other [*debts or*] claims, and the order of payment, shall be:

**(1) Expenses of administration of the delinquency proceedings and expenses of the Oregon Insurance Guaranty Association or similar organization in another state handling claims in accordance with ORS 734.510 to 734.710;**

*[(2) If the insurer is domiciled in this state, compensation or wages actually owing to salaried employees other than officers of the insurer, for services rendered within three months prior to the commencement of the delinquency proceeding, but not exceeding \$2,000 for each such employee;]*

**(2) All claims under policies, including third party claims and claims under nonassessable policies for unearned premiums, and all claims by the Oregon Insurance Guaranty Association, the Oregon Life and Health Insurance Guaranty Association or any similar organization in another state for payment of covered claims or contractual obligations;**

**(3) [*Taxes*] Claims** legally due and owing by the insurer [*to this state or*] to the United States; [*and*]

*[(4) Debts or claims, including special deposit claims, owing to any person, including this state, who by the laws of this state is entitled to priority.]*

**(4) If the insurer is domiciled in this state, compensation or wages actually owing to salaried employees other than officers of the insurer, for services rendered within three**

**months prior to the commencement of the delinquency proceeding, but not exceeding \$2,000 for each such employee;**

**(5) Claims legally due and owing by the insurer to this state; and**

**(6) Claims, including special deposit claims, owing to any person, including this state, that by the laws of this state is entitled to priority.**

**SECTION 4.** ORS 734.630 is amended to read:

734.630. (1) Any person who recovers on a covered claim under ORS 734.510 to 734.710 thereby assigns the rights of the person under the insurance policy to the Oregon Insurance Guaranty Association to the extent of such recovery. Every person who seeks the protection of ORS 734.510 to 734.710 shall cooperate with the association to the same extent such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insureds of an insolvent insurer for any sums paid, except for those causes of action the insolvent insurer would have had if such sums had been paid by the insolvent insurer. If an insolvent insurer operates on the assessment plan, the payment of claims by the association does not reduce the liability of the insured to the receiver for unpaid assessments.

(2) Periodically the association shall file with the receiver statements of the covered claims paid by the association and estimates of anticipated claims against the association. Such filings shall preserve the rights of the association against the assets of the insolvent insurer.

(3) The receiver shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority **in accordance with ORS 734.360.** *[equal to that to which the claimant would have been entitled in the absence of ORS 734.510 to 734.710 against the assets of the insolvent insurer. The expenses of the association or similar organization in another state in handling claims shall be accorded the same priority as the expenses of administration of the delinquency proceedings.]*

**SECTION 5.** Section 6 of this 2001 Act is added to and made a part of ORS chapter 656.

**SECTION 6. (1) If an insurer defaults in payment of compensation due an injured worker, the Director of the Department of Consumer and Business Services may advance funds from the Workers' Benefit Fund to injured workers who have not received payment of compensation due from the insurer in default.**

**(2) The maximum expenditures that may be made under this section may not exceed the amount of securities on deposit for the insurer pursuant to ORS 731.628.**

**(3) The director shall adopt rules to regulate, manage and disburse moneys in the Workers' Benefit Fund for the purposes of subsection (1) of this section. The rules shall include but not be limited to eligibility criteria, procedures for distributing funds, accounting procedures and a maximum expenditure limitation on payments made under subsection (1) of this section from the fund.**

**SECTION 7.** ORS 656.506 is amended to read:

656.506. (1) As used in this section:

(a) "Employee" means a subject worker as defined in ORS 656.005 (28).

(b) "Employer" means a subject employer as defined in ORS 656.005 (27).

(2) Every employer shall retain from the moneys earned by all employees an amount determined by the Director of the Department of Consumer and Business Services for each hour or part of an hour the employee is employed and pay the money retained in the manner and at such intervals as the Director of the Department of Consumer and Business Services shall direct.

(3) In addition to all moneys retained under subsection (2) of this section, the director shall assess each employer an amount equal to that assessed pursuant to subsection (2) of this section. The assessment shall be paid in such manner and at such intervals as the director may direct.

(4) Moneys collected pursuant to subsections (2) and (3) of this section, and any accrued cash balances, shall be deposited by the Department of Consumer and Business Services into the Workers' Benefit Fund. Subject to the limitations in subsections (2) and (3) of this section, the amount of the hourly assessments provided in subsections (2) and (3) of this section annually may be adjusted to meet the needs of the Workers' Benefit Fund for the expenditures of the department in

carrying out its functions and duties pursuant to subsection (7) of this section and ORS 656.622, 656.625, 656.628 and 656.630 **and section 6 of this 2001 Act**. Factors to be considered in making such adjustment of the assessments shall include, but not be limited to, the cash balance as determined by the director and estimated expenditures and revenues of the Workers' Benefit Fund.

(5) It is the intent of the Legislative Assembly that the department set rates for the collection of assessments pursuant to subsections (2) and (3) of this section in a manner so that at the end of the period for which the rates shall be effective, the cash balance shall be an amount approximating 12 months of projected expenditures from the Workers' Benefit Fund in regard to its functions and duties under subsection (7) of this section and ORS 656.622, 656.625, 656.628 and 656.630 **and section 6 of this 2001 Act**, in a manner that minimizes the volatility of the rates assessed. The department may set the assessment rate at a higher level if the department determines that a higher rate is necessary to avoid unintentional program or benefit reductions in the time period immediately following the period for which the rate is being set.

(6) Every employer required to pay the assessments referred to in this section shall make and file a quarterly report of employee hours worked and amounts due under this section upon a combined quarterly report form prescribed by the Department of Revenue. The report shall be filed with the Department of Revenue at the times and in the manner prescribed in ORS 316.168 and 316.171.

(7) There is established a Retroactive Program for the purpose of providing increased benefits to claimants or beneficiaries eligible to receive compensation under the benefit schedules of ORS 656.204, 656.206, 656.208 and 656.210 which are lower than currently being paid for like injuries. However, benefits payable under ORS 656.210 shall not be increased by the Retroactive Program for claimants whose injury occurred on or after April 1, 1974. Notwithstanding the formulas for computing benefits provided in ORS 656.204, 656.206, 656.208 and 656.210, the increased benefits payable under this subsection shall be in such amount as the director considers appropriate. The director annually shall compute the amount which may be available during the succeeding year for payment of such increased benefits and determine the level of benefits to be paid during such year. If, during such year, it is determined by the director that there are insufficient funds to increase benefits to the level fixed by the director, the director may reduce the level of benefits payable under this subsection. The increase in benefits to workers shall be payable in the first instance by the insurer or self-insured employer subject to reimbursement from the Workers' Benefit Fund by the director. If the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims of subject workers, including Retroactive Program benefits, such benefits shall be payable in the first instance by the Oregon Insurance Guaranty Association, subject to reimbursement from the Workers' Benefit Fund by the director.

**SECTION 8.** ORS 656.605 is amended to read:

656.605. (1) The Workers' Benefit Fund is created in the State Treasury, separate and distinct from the General Fund. Moneys in the fund shall be invested in the same manner as other state moneys and investment earnings shall be credited to the fund. The fund shall consist of the following:

- (a) Moneys received pursuant to ORS 656.506.
  - (b) Moneys recovered under ORS 656.054.
  - (c) Fines and penalties recovered under ORS 656.735.
  - (d) All moneys received by the Director of the Department of Consumer and Business Services pursuant to law or from any other source for purposes for which the fund may be expended.
- (2) Moneys in the Workers' Benefit Fund may be expended for the following purposes:
- (a) Expenses of programs under ORS 656.506, 656.622, 656.625, 656.628 and 656.630 **and section 6 of this 2001 Act**.
  - (b) Proceedings against noncomplying employers pursuant to ORS 656.054 and 656.735.
  - (c) Expenses of vocational assistance on claims, the cost of which was imposed pursuant to section 15, chapter 600, Oregon Laws 1985.

(3) Subject to the following provisions, all moneys in the fund are appropriated continuously to the Director of the Department of Consumer and Business Services to carry out the activities for which the fund may be expended:

(a) Moneys received pursuant to ORS 656.054 and 656.735 and transfers made pursuant to ORS 705.148 may be expended only to carry out the provisions of ORS 656.054 and 656.735 and section 15, chapter 600, Oregon Laws 1985.

(b) Moneys received pursuant to ORS 656.506 and the transfers of unexpended and unobligated moneys in the Retroactive Reserve, Reemployment Assistance Reserve, Reopened Claims Reserve and Handicapped Workers Reserve referred to in ORS 656.506, 656.622, 656.625 and 656.628 (All 1993 Edition) may be expended only to carry out the programs referred to in ORS 656.506, 656.622, 656.625, 656.628 and 656.630.

(4) Notwithstanding any other provision of this chapter, if the director determines at any time that there are insufficient moneys in the Workers' Benefit Fund to pay the expenses of programs for which expenditure of the fund is authorized, the director may reduce the level of benefits payable accordingly.

**SECTION 9.** ORS 734.570 is amended to read:

734.570. The Oregon Insurance Guaranty Association shall:

(1) Be obligated to pay covered claims existing at the time of determination of insolvency of an insurer or arising within 30 days after the determination of insolvency. Except for covered claims arising out of workers' compensation policies, such obligation shall include only that amount of each covered claim that is less than \$300,000. The association shall pay the full amount of any covered claim arising out of a workers' compensation policy, **less any amount paid on a covered claim by the Workers' Benefit Fund pursuant to ORS chapter 656.** In no event shall the association be obligated in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises, or for claims arising after the policy expiration, policy replacement by the insured or policy cancellation caused by the insured.

(2) Be the insurer to the extent of the association's obligation on the covered claims and to such extent have all the rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent.

(3) Assess member insurers the amounts necessary to pay the expenses incurred by the association in meeting its obligations and exercising its duties and powers under ORS 734.510 to 734.710. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year, but shall in no event exceed in any one year two percent of the member insurer's net direct written premiums for the preceding calendar year. Each member insurer shall be notified of an assessment not later than the 30th day before the day it is due. If the funds of the association do not provide in any one year an amount sufficient to pay the obligations and expenses of the association, the funds available shall be prorated among the obligations and expenses, and the unpaid portions shall be paid as soon thereafter as funds become available. If an assessment would cause a member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance, the association may exempt from or defer payment of the assessment, in whole or in part, by the member insurer. However, if the member insurer is a controlled insurer, the association, in making determinations regarding the exemption or deferral of assessments, shall treat all dividends paid during the three calendar years immediately preceding the year in which the assessment is made as assets of the insurer just as if such dividends had not been paid. Each member insurer designated as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer in its capacity as a servicing facility.

(4) Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation, and review settlements, releases and

judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(5) Reimburse servicing facilities and employees of the association for obligations and expenses incurred and paid in the handling of claims on behalf of the association, and pay all other expenses the association incurs in carrying out ORS 734.510 to 734.710.

**SECTION 10.** ORS 734.635 is amended to read:

734.635. (1) Not later than 120 days from the date the order of liquidation of a member insurer is filed in the office of the clerk of the court by which the order was made, that insurer's receiver shall make application to the court for approval of a proposal to disburse the insurer's marshalled assets to the Oregon Insurance Guaranty Association from time to time as those assets become available.

(2) A proposal made by a receiver under subsection (1) of this section shall include, but not be limited to, provisions for:

(a) Reserving amounts for the payment of those [*debts and*] claims described in ORS 734.360;

(b) Disbursing the marshalled assets of the insolvent insurer to the association in an amount estimated to be at least equal to the claim payments to be made by the association for which the association could assert a claim against the insolvent insurer;

(c) Disbursing the marshalled assets in the amount available when the marshalled assets do not equal the amount of the claim payments to be made by the association for which the association could assert a claim against the insolvent insurer;

(d) Securing an agreement from the association to return to the receiver any assets previously disbursed that may be required to pay the claims of secured creditors and the [*debts and*] claims described in ORS 734.360; and

(e) A complete report by the association to the receiver accounting for all assets disbursed to the association under this section, expenditures made from those assets and any interest earned by the association on those assets.

(3) When an insurer's receiver intends to make application to a court for approval of a proposal to disburse the insurer's marshalled assets to the association under this section, the receiver shall give notice of the application, at least 30 days prior to filing the application with the court, to the insurance supervisory official and the insurance guaranty agency that performs functions similar to that of the association of each state in which the insolvent insurer was authorized.

**Passed by Senate June 21, 2001**

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Secretary of Senate

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President of Senate

**Passed by House July 2, 2001**

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Speaker of House

**Received by Governor:**

.....M,....., 2001

**Approved:**

.....M,....., 2001

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2001

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Secretary of State