

## SENATE AMENDMENTS TO SENATE BILL 608

By COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC DEVELOPMENT

March 27

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest of the line and insert  
2 "creating new provisions; and amending ORS 656.506, 656.605, 734.360, 734.510, 734.570, 734.630,  
3 734.635 and 734.695."

4 In line 10, after "premiums" insert "and a claim by the Workers' Benefit Fund for payments  
5 made pursuant to ORS chapter 656".

6 In line 23, after "(C)" insert "Except for claims arising out of workers' compensation policies  
7 subject to ORS chapter 656," and delete "guaranty fund" and insert "association".

8 In line 25, delete "\$10 million" and insert "\$25 million".

9 On page 2, line 22, after "(2)" insert "Notwithstanding the provisions of subsection (1) of this  
10 section, and except for claims arising out of workers' compensation policies subject to ORS chapter  
11 656,".

12 In line 24, delete "\$10 million" and insert "\$25 million".

13 In line 32, delete "debts and".

14 In line 33, delete "debts or".

15 Delete line 41 and insert:

16 "(2) All claims under policies, including third party claims and claims under nonassessable pol-  
17 icies for unearned premiums, and all claims by the Oregon Insurance Guaranty Association, the  
18 Oregon Life and Health Insurance Guaranty Association or any similar organization in another state  
19 for payment of covered claims or contractual obligations;".

20 In line 42, delete "Taxes" and insert "Claims".

21 On page 3, line 4, delete "Taxes and other debts" and insert "Claims".

22 In line 5, delete "Debts or".

23 After line 25, insert:

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

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

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

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

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

2       “656.506. (1) As used in this section:

3       “(a) ‘Employee’ means a subject worker as defined in ORS 656.005 (28).

4       “(b) ‘Employer’ means a subject employer as defined in ORS 656.005 (27).

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

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

12       “(4) Moneys collected pursuant to subsections (2) and (3) of this section, and any accrued cash  
13 balances, shall be deposited by the Department of Consumer and Business Services into the Workers’  
14 Benefit Fund. Subject to the limitations in subsections (2) and (3) of this section, the amount of the  
15 hourly assessments provided in subsections (2) and (3) of this section annually may be adjusted to  
16 meet the needs of the Workers’ Benefit Fund for the expenditures of the department in carrying out  
17 its functions and duties pursuant to subsection (7) of this section and ORS 656.622, 656.625, 656.628  
18 and 656.630 **and section 6 of this 2001 Act**. Factors to be considered in making such adjustment  
19 of the assessments shall include, but not be limited to, the cash balance as determined by the di-  
20 rector and estimated expenditures and revenues of the Workers’ Benefit Fund.

21       “(5) It is the intent of the Legislative Assembly that the department set rates for the collection  
22 of assessments pursuant to subsections (2) and (3) of this section in a manner so that at the end of  
23 the period for which the rates shall be effective, the cash balance shall be an amount approximating  
24 12 months of projected expenditures from the Workers’ Benefit Fund in regard to its functions and  
25 duties under subsection (7) of this section and ORS 656.622, 656.625, 656.628 and 656.630 **and section**  
26 **6 of this 2001 Act**, in a manner that minimizes the volatility of the rates assessed. The department  
27 may set the assessment rate at a higher level if the department determines that a higher rate is  
28 necessary to avoid unintentional program or benefit reductions in the time period immediately fol-  
29 lowing the period for which the rate is being set.

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

34       “(7) There is established a Retroactive Program for the purpose of providing increased benefits  
35 to claimants or beneficiaries eligible to receive compensation under the benefit schedules of ORS  
36 656.204, 656.206, 656.208 and 656.210 which are lower than currently being paid for like injuries.  
37 However, benefits payable under ORS 656.210 shall not be increased by the Retroactive Program for  
38 claimants whose injury occurred on or after April 1, 1974. Notwithstanding the formulas for com-  
39 puting benefits provided in ORS 656.204, 656.206, 656.208 and 656.210, the increased benefits payable  
40 under this subsection shall be in such amount as the director considers appropriate. The director  
41 annually shall compute the amount which may be available during the succeeding year for payment  
42 of such increased benefits and determine the level of benefits to be paid during such year. If, during  
43 such year, it is determined by the director that there are insufficient funds to increase benefits to  
44 the level fixed by the director, the director may reduce the level of benefits payable under this  
45 subsection. The increase in benefits to workers shall be payable in the first instance by the insurer

1 or self-insured employer subject to reimbursement from the Workers' Benefit Fund by the director.  
2 If the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and  
3 the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims  
4 of subject workers, including Retroactive Program benefits, such benefits shall be payable in the  
5 first instance by the Oregon Insurance Guaranty Association, subject to reimbursement from the  
6 Workers' Benefit Fund by the director.

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

8 "656.605. (1) The Workers' Benefit Fund is created in the State Treasury, separate and distinct  
9 from the General Fund. Moneys in the fund shall be invested in the same manner as other state  
10 moneys and investment earnings shall be credited to the fund. The fund shall consist of the follow-  
11 ing:

12 "(a) Moneys received pursuant to ORS 656.506.

13 "(b) Moneys recovered under ORS 656.054.

14 "(c) Fines and penalties recovered under ORS 656.735.

15 "(d) All moneys received by the Director of the Department of Consumer and Business Services  
16 pursuant to law or from any other source for purposes for which the fund may be expended.

17 "(2) Moneys in the Workers' Benefit Fund may be expended for the following purposes:

18 "(a) Expenses of programs under ORS 656.506, 656.622, 656.625, 656.628 and 656.630 **and section**  
19 **6 of this 2001 Act.**

20 "(b) Proceedings against noncomplying employers pursuant to ORS 656.054 and 656.735.

21 "(c) Expenses of vocational assistance on claims, the cost of which was imposed pursuant to  
22 section 15, chapter 600, Oregon Laws 1985.

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

26 "(a) Moneys received pursuant to ORS 656.054 and 656.735 and transfers made pursuant to ORS  
27 705.148 may be expended only to carry out the provisions of ORS 656.054 and 656.735 and section  
28 15, chapter 600, Oregon Laws 1985.

29 "(b) Moneys received pursuant to ORS 656.506 and the transfers of unexpended and unobligated  
30 moneys in the Retroactive Reserve, Reemployment Assistance Reserve, Reopened Claims Reserve  
31 and Handicapped Workers Reserve referred to in ORS 656.506, 656.622, 656.625 and 656.628 (All 1993  
32 Edition) may be expended only to carry out the programs referred to in ORS 656.506, 656.622,  
33 656.625, 656.628 and 656.630.

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

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

39 "734.570. The Oregon Insurance Guaranty Association shall:

40 "(1) Be obligated to pay covered claims existing at the time of determination of insolvency of  
41 an insurer or arising within 30 days after the determination of insolvency. Except for covered claims  
42 arising out of workers' compensation policies, such obligation shall include only that amount of each  
43 covered claim that is less than \$300,000. The association shall pay the full amount of any covered  
44 claim arising out of a workers' compensation policy, **less any amount paid on a covered claim**  
45 **by the Workers' Benefit Fund pursuant to ORS chapter 656.** In no event shall the association

1 be obligated in an amount in excess of the obligation of the insolvent insurer under the policy from  
2 which the claim arises, or for claims arising after the policy expiration, policy replacement by the  
3 insured or policy cancellation caused by the insured.

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

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

28 “(4) Investigate claims brought against the association and adjust, compromise, settle and pay  
29 covered claims to the extent of the association’s obligation, and review settlements, releases and  
30 judgments to which the insolvent insurer or its insureds were parties to determine the extent to  
31 which such settlements, releases and judgments may be properly contested.

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

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

36 “734.635. (1) Not later than 120 days from the date the order of liquidation of a member insurer  
37 is filed in the office of the clerk of the court by which the order was made, that insurer’s receiver  
38 shall make application to the court for approval of a proposal to disburse the insurer’s marshalled  
39 assets to the Oregon Insurance Guaranty Association from time to time as those assets become  
40 available.

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

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

44 “(b) Disbursing the marshalled assets of the insolvent insurer to the association in an amount  
45 estimated to be at least equal to the claim payments to be made by the association for which the

1 association could assert a claim against the insolvent insurer;

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

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

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

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

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