

# Senate Bill 608

Sponsored by COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC DEVELOPMENT (at the request of Oregon Insurance Guaranty Association)

## 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**.

Modifies provisions for payment of claims under certain insurance policies due to insolvency of insurer.

## A BILL FOR AN ACT

Relating to insurers; amending ORS 734.360, 734.510, 734.630 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, 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) A claim filed with the guaranty fund 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 \$10 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:

**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.

(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) 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 \$10 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) Covered claims as defined in ORS 734.510 (4)(a) and (b) and as provided in ORS 734.570;**

**(3) Taxes 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**

1 **salaried employees other than officers of the insurer, for services rendered within three**  
 2 **months prior to the commencement of the delinquency proceeding, but not exceeding \$2,000**  
 3 **for each such employee;**

4 **(5) Taxes and other debts legally due and owing by the insurer to this state; and**

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

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

8 734.630. (1) Any person who recovers on a covered claim under ORS 734.510 to 734.710 thereby  
 9 assigns the rights of the person under the insurance policy to the Oregon Insurance Guaranty As-  
 10 sociation to the extent of such recovery. Every person who seeks the protection of ORS 734.510 to  
 11 734.710 shall cooperate with the association to the same extent such person would have been re-  
 12 quired to cooperate with the insolvent insurer. The association shall have no cause of action against  
 13 the insureds of an insolvent insurer for any sums paid, except for those causes of action the insol-  
 14 vent insurer would have had if such sums had been paid by the insolvent insurer. If an insolvent  
 15 insurer operates on the assessment plan, the payment of claims by the association does not reduce  
 16 the liability of the insured to the receiver for unpaid assessments.

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

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