

Senate Bill 632

Sponsored by Senator METSGER

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 laws regulating Oregon Insurance Guaranty Association.

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A BILL FOR AN ACT

Relating to Oregon Insurance Guaranty Association; creating new provisions; and amending ORS 734.510, 734.520, 734.570, 734.580, 734.630, 734.640, 734.690 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) "Claimant" means a person insured under an insurance policy to which ORS 734.510 to 734.710 apply or a person suffering injury or damage for which a person insured under a policy to which ORS 734.510 to 734.710 apply is legally liable.

~~[(3)]~~ **(4)** "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)]~~ **(5)(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, **a claim under a pre-insolvency settlement agreement and a derivative claim of a third party claimant**, 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]~~ **that** 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]~~ **claimant**, 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 **or claim** giving rise to the unpaid claim **against the association**, 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;

(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

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 (D) Any first party claim by an insured whose net worth exceeds \$25 million on December 31
 2 of the year next preceding the date the insurer becomes an insolvent insurer, provided that an in-
 3 sured's net worth on such date is deemed to include the aggregate net worth of the insured and all
 4 of its subsidiaries as calculated on a consolidated basis. **This subparagraph applies to one insured**
 5 **under the policy and may not be construed to exclude covered claims of other qualified in-**
 6 **sureds under the same policy.**

7 [(5)] (6) "Dividend" means any payment made to the stockholders of a controlled insurer, which
 8 payment is directly related to ownership of the stock.

9 [(6)] (7) "Insolvent insurer" means a member insurer:

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

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

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

19 [(7)] (8) "Member insurer" means an insurer, including a reciprocal insurer, authorized to
 20 transact insurance in this state that writes any kind of insurance to which ORS 734.510 to 734.710
 21 apply.

22 [(8)] (9) "Net direct written premiums" means direct gross premiums written in this state on
 23 insurance policies to which ORS 734.510 to 734.710 apply, less return premiums thereon and divi-
 24 dends paid or credited to policyholders on such direct business. "Net direct written premiums" does
 25 not include premiums on contracts between insurers or reinsurers.

26 [(9)] (10) "Plan" means the plan of operation of the association established pursuant to ORS
 27 734.590.

28 **SECTION 2.** ORS 734.520 is amended to read:

29 734.520. The purpose of ORS 734.510 to 734.710 is to:

30 (1) Provide for the payment of covered claims under certain insurance policies to avoid exces-
 31 sive delay in payment and to avoid financial loss to claimants [*or policyholders*] because of the
 32 insolvency of an insurer[, *to*];

33 (2) Assist in the detection and prevention of insurer insolvencies[, *to*];

34 (3) Provide an association to assess the cost of such protection among insurers; and [*to*]

35 (4) Assist in the liquidation of insurers as provided in this chapter.

36 **SECTION 3.** ORS 734.570 is amended to read:

37 734.570. The Oregon Insurance Guaranty Association shall:

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

1 replacement by the insured or policy cancellation caused by the insured.

2 (2) **If a claimant has a covered claim**, be the insurer [*to the extent of the association's obli-*
 3 *gation on the covered claims*] and [*to such extent*] have all the rights, duties and obligations of the
 4 insolvent insurer as if the insurer had not become insolvent, **including but not limited to the duty**
 5 **to defend and settle a covered claim on behalf of an insured according to the policy issued**
 6 **by the insolvent insurer and the obligation, when applicable, to pay interest, attorney fees,**
 7 **punitive damages or statutory penalties arising from the covered claim.**

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

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

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

36 **SECTION 4.** ORS 734.580 is amended to read:

37 734.580. The Oregon Insurance Guaranty Association may:

38 (1) With the approval of the Director of the Department of Consumer and Business Services,
 39 employ or retain such persons or designate such servicing facilities as are necessary to handle
 40 claims and perform the other duties of the association. Servicing facilities so designated may be
 41 foreign corporations or associations.

42 (2) Borrow funds necessary to carry out ORS 734.510 to 734.710, in such manner as may be
 43 specified in the plan.

44 (3) Sue or be sued.

45 (4) Negotiate and become a party to such contracts as are necessary to carry out ORS 734.510

1 to 734.710.

2 (5) At the end of any calendar year, refund to member insurers, in proportion to an insurer's
 3 payments to the association, that amount by which the board of directors [*find*] **finds** that the funds
 4 of the association exceed its current claims and expenses plus the liabilities estimated for the com-
 5 ing year.

6 (6) Perform such other acts as are necessary or proper to carry out ORS 734.510 to 734.710.

7 **(7) Settle claims with claimants and other associations that perform functions similar to**
 8 **those performed by the association.**

9 **SECTION 5.** ORS 734.630 is amended to read:

10 734.630. (1) [*Any person*] **A claimant** who recovers on a covered claim under ORS 734.510 to
 11 734.710 thereby assigns the rights of the [*person*] **claimant** under the insurance policy to the Oregon
 12 Insurance Guaranty Association to the extent of such recovery. [*Every person who seeks the pro-*
 13 *tection of ORS 734.510 to 734.710*] **A claimant** shall cooperate with the association to the same ex-
 14 tent [*such person*] **the claimant** would have been required to cooperate with the insolvent insurer.
 15 The association shall have no cause of action against the insureds of an insolvent insurer for any
 16 sums paid, except for those causes of action the insolvent insurer would have had if such sums had
 17 been paid by the insolvent insurer. If an insolvent insurer operates on the assessment plan, the
 18 payment of claims by the association does not reduce the liability of the insured to the receiver for
 19 unpaid assessments.

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

23 (3) The receiver shall be bound by settlements of covered claims by the association or a similar
 24 organization in another state. The court having jurisdiction shall grant such claims priority in ac-
 25 cordance with ORS 734.360.

26 **SECTION 6.** ORS 734.640 is amended to read:

27 734.640. (1) [*Any person who has a claim under an insurance policy against an insurer other than*
 28 *an insolvent insurer which would also be a covered claim against an insolvent insurer must first ex-*
 29 *haust the remedies under such policy.*] **Before submitting a claim to the Oregon Insurance**
 30 **Guaranty Association:**

31 **(a) A first party claimant who has a claim under a liability insurance policy issued by a**
 32 **solvent insurer must first seek recovery under the policy if the policy insures the same li-**
 33 **ability as the liability insurance policy that is the subject of a covered claim.**

34 **(b) A first party claimant who has a claim under a property insurance policy issued by**
 35 **a solvent insurer must first seek recovery under the policy if the policy insures loss to the**
 36 **same property as the property insurance policy that is the subject of a covered claim.**

37 **(c) A third party claimant who has a claim under an insurance policy issued by a solvent**
 38 **insurer must first seek recovery under the policy if the policy insures against the underin-**
 39 **surance or lack of insurance of a defendant.**

40 **(2) A claimant described in subsection (1) of this section may seek recovery from the**
 41 **association only after accepting a payment from a solvent insurer in full satisfaction of the**
 42 **claimant's claim against the solvent insurer. The payment may be in an amount that is less**
 43 **than or equal to the policy limits of the policy.**

44 [(2)] (3) [*Any person*] **A claimant** who has a claim that may also be recovered from one or more
 45 insurance guaranty agencies that perform functions similar to that of the Oregon Insurance Guar-

1 anty Association shall first seek recovery from whichever organization serves the place of residence
2 of the insured, except that:

3 (a) Recovery on first party claims for damage to property with a permanent location shall first
4 be sought from whichever organization serves the location of the property; and

5 (b) Recovery on workers' compensation claims shall first be sought from whichever organization
6 serves the residence of the claimant.

7 [(3) Any recovery under ORS 734.510 to 734.710 from the association shall be reduced by the
8 amount of any recovery pursuant to subsections (1) and (2) of this section.]

9 (4)(a) **A payment received under subsection (2) of this section is a credit against recovery
10 by a claimant described in subsection (1) of this section. A claimant's covered claim may be
11 reduced under this subsection only if the amount of the payment received under subsection
12 (2) of this section is greater than the difference between the amount of the claimant's loss
13 and the amount of the covered claim.**

14 (b) **A payment received under subsection (2) of this section is a credit against the total
15 loss of a claimant who is eligible to recover on a claim from one or more insurance guaranty
16 agencies that perform functions similar to that of the association.**

17 (c) **The association may allocate liability for covered claims involving the same loss or
18 liability with insurance guaranty agencies that perform functions similar to that of the as-
19 sociation if the claimant recovers no less than the amount to which the claimant is entitled
20 under ORS 734.510 to 734.710.**

21 (d) **A claimant may not recover an amount from the association under ORS 734.510 to
22 734.710 that, in combination with the amount recovered under subsection (1) of this section,
23 is greater than the amount of the claimant's total loss.**

24 **SECTION 7.** ORS 734.690 is amended to read:

25 734.690. No person shall have a cause of action against any member insurer, [the] Oregon In-
26 surance Guaranty Association [or its] employees or servicing facilities, any member of the board,
27 or the Director of the Department of Consumer and Business Services or employees of the director
28 for any action taken by [them] **the association** in carrying out ORS 734.510 to 734.710.

29 **SECTION 8.** ORS 734.695 is amended to read:

30 734.695. (1) The insured of an insolvent insurer may not be personally liable for amounts due
31 any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries or
32 otherwise up to the applicable limits of liability provided by the insurance policy issued by the in-
33 solvent insurer.

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

38 (a) Any insured whose net worth exceeds \$25 million on December 31 of the year next preceding
39 the date the insurer becomes an insolvent insurer and whose liability obligations to [other persons]
40 **third party claimants** are satisfied in whole or in part by payments made under ORS 734.510 to
41 734.710; and

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

45 **SECTION 9.** The amendments to ORS 734.510, 734.520, 734.570, 734.580, 734.630, 734.640,

1 **734.690 and 734.695 by sections 1 to 8 of this 2005 Act apply to claims filed with the Oregon**
2 **Insurance Guaranty Association on or after the effective date of this 2005 Act.**
3 _____