

House Bill 2730

Sponsored by Representative WITT (Presession filed.)

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**.

Establishes rules of construction for interpreting business property insurance policies in this state. Prohibits certain conduct by insurers with respect to business interruption claims. Provides that insured may bring action to seek actual damages for insurer's violation of prohibitions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the construction of business property insurance policies; and declaring an emergency.

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

4 **SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS chapter**
5 **742.**

6 **SECTION 2. As used in sections 2 to 4 of this 2021 Act:**

7 (1) **"Business interruption claim"** means a claim under a business property insurance
8 policy for a loss, including a loss of property or the use of property, a loss of income or an
9 extra or unanticipated expense, that results from an interruption, suspension or cessation
10 of business in or on the business property that the business property insurance policy covers.

11 (2) **"Business property"** means real property and personal property that is located in this
12 state and is used partly or entirely for commercial purposes.

13 (3) **"Business property insurance policy"** means a contract of insurance that covers
14 business property for loss or damage that arises during, in the course of or as a result of
15 business operations in this state.

16 (4) **"Governmental action"** means a declaration, directive, order, rule or other official
17 action that halts, suspends or restricts, or has the effect of halting, suspending or restrict-
18 ing, business activities in or on business property as a means for reducing disease trans-
19 mission or otherwise protecting public health from the effects of a pandemic or other public
20 health emergency.

21 (5) **"Insured"** means the named insured in a business property insurance policy or an-
22 other person who is an insured or a beneficiary under the business property insurance policy.

23 (6) **"Pathogen"** means a virus, bacterium or other microorganism that causes or can
24 cause disease, illness or physical or emotional damage or distress.

25 **SECTION 3. (1) Except as provided in subsection (2) of this section, in an action between**
26 **an insurer and an insured to determine the existence of coverage for a business interruption**
27 **claim, a business property insurance policy must be interpreted in accordance with the fol-**
28 **lowing rules of construction:**

29 (a) **The laws of this state apply to the action if:**

30 (A) **A party to the action is organized under the laws of this state or has a principal place**

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 of business in this state; or

2 (B) The action involves or is related to property located in this state or to business ac-
3 tivity conducted in this state.

4 (b) A direct, physical loss or damage to business property occurs if the business property
5 is subject to governmental action.

6 (c) A business property insurance policy does not limit or exclude a claim predicated
7 upon infection by or exposure to a pathogen unless:

8 (A) The infection or exposure occurs on, in or in close proximity to the business property
9 that the business property insurance policy covers; or

10 (B) The business property insurance policy provision that limits or excludes coverage for
11 infection by or exposure to a pathogen specifically limits or excludes coverage for claims
12 predicated upon governmental action.

13 (2) The rules of construction set forth in subsection (1) of this section do not:

14 (a) Modify or otherwise affect common-law rules that govern choice of law determi-
15 nations for property that is located outside this state; or

16 (b) Apply if the application results in an interpretation of a business property insurance
17 policy that is contrary to the established or expressed mutual intent of the parties to the
18 business property insurance policy.

19 **SECTION 4.** (1) An insurer may not:

20 (a) Fail or refuse to investigate a business interruption claim within 15 business days
21 after receiving the claim;

22 (b) Fail to respond diligently to a business interruption claim or to correspondence re-
23 lated to the claim;

24 (c) Fail to make timely payments related to a business interruption claim;

25 (d) Deny a business interruption claim for an improper purpose, such as to delay a
26 settlement or resolution of the claim, needlessly increase an insured's costs or otherwise
27 intentionally cause unnecessary difficulties for an insured; or

28 (e) Require an insured to respond to repetitive questions or provide information about
29 matters or issues that are not necessary for settling or resolving the business interruption
30 claim.

31 (2)(a) An insured may bring an action in a circuit court of this state to recover actual
32 damages that result from an insurer's violation of a provision of subsection (1) of this section
33 with respect to the insured's business interruption claim against the insurer, together with
34 the insured's reasonable attorney fees and costs.

35 (b) At least 20 days before bringing an action under paragraph (a) of this subsection, an
36 insured shall notify the insurer and the Director of the Department of Consumer and Busi-
37 ness Services of the insured's intent to bring an action and the basis for the action. The in-
38 sured shall send the notification by regular mail, registered mail or certified mail with return
39 receipt requested. The insured shall provide proof of notice upon request. For purposes of
40 this paragraph, notice is effective three business days after the insured sends the notice.

41 (c) If an insurer does not resolve the issue that is the basis for the insured's action
42 within 20 business days after receiving a notice under paragraph (b) of this subsection, the
43 insured may bring the action without further notice.

44 (d) If a court finds that an insurer acted unreasonably in failing to pay a business in-
45 terruption claim, the court may award treble the amount of damages the court would have

1 otherwise awarded to the insured in an action under this section.

2 (3)(a) An insured must bring an action under this section within two years after the date
3 on which the insured discovered or should have discovered the insurer's violation of this
4 section.

5 (b) If an insured sends a written notice under subsection (2)(b) of this section, the time
6 period specified in paragraph (a) of this subsection is tolled for the length of time necessary
7 for the insurer and insured to comply with this section.

8 (4) Except as otherwise provided in this section, ORS 742.061 applies to an action that an
9 insured brings under this section.

10 SECTION 5. (1) Sections 2 to 4 of this 2021 Act apply to actions that an insured brings
11 after the effective date of this 2021 Act and to actions that an insured brought before the
12 effective date of this 2021 Act but for which a court has not entered a judgment before the
13 effective date of this 2021 Act.

14 (2) Subsection (1) of this section does not require a retrial of any fact that a jury or court
15 found in any action brought before the effective date of this 2021 Act.

16 SECTION 6. This 2021 Act being necessary for the immediate preservation of the public
17 peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect
18 on its passage.