

Enrolled House Bill 2130

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CHAPTER

AN ACT

Relating to the Oregon Insurance Guaranty Association; creating new provisions; and amending ORS 734.510, 734.540, 734.570, 734.580, 734.640 and 734.695.

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

SECTION 1. Section 2 of this 2025 Act is added to and made a part of ORS 734.510 to 734.710.

SECTION 2. (1) Notwithstanding any other provision of ORS 734.510 to 734.710, if an insurer assumes sole responsibility for an insurance policy that a member insurer issued and the insurer that assumes responsibility for the insurance policy is subject to liquidation, the Oregon Insurance Guaranty Association is subject under ORS 734.510 to 734.710 to a claim that arises from the insurance policy even if:

(a) The insurer that is subject to liquidation assumed sole responsibility for the insurance policy under an allocation, transfer, assumption or other operation in accordance with a law of this state that provides for dividing an insurer or allocating, transferring or assuming designated insurance policies; and

(b) A court order or novation released the member insurer from any obligation under the insurance policy.

(2) The association is not subject under ORS 734.510 to 734.710 to a claim that arises from an insurance policy if an insurer that was not a member insurer issued the insurance policy and a member insurer later assumed sole responsibility for the insurance policy under a novation or an allocation, transfer or assumption in accordance with a law of this state that provides for dividing an insurer or allocating, transferring or assuming designated insurance policies.

SECTION 3. 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] **under** 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]* **the** policy or by a person suffering injury or damage for which a person insured under *[such]* **the** 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 **the** 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) Any amount due to a state or to the federal government, except for a claim by the Workers' Benefit Fund under this section;

[(C)] (D) [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, **except for a claim that arises out of a workers' compensation policy that is subject to ORS chapter 656; or**

[(D)] (E) 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]* **the insured's** subsidiaries as calculated on a consolidated basis.

(5) "Cybersecurity insurance" means direct insurance that is not otherwise excluded under ORS 734.540 from the application of ORS 734.510 to 734.710 and that:

(a) Involves first-party and third-party coverage in a policy or endorsement;

(b) Is written on a direct, admitted basis; and

(c) Covers losses and loss mitigation that arise out of or are related to:

(A) A breach of security, as defined in ORS 646A.602;

(B) An unauthorized intrusion into a network or security system;

(C) Identity theft;

(D) The presence, and the effects or results, of a computer virus or ransomware;

(E) Cyber extortion; or

(F) Risks and exposures that are similar or related to the risks or exposures described in subparagraphs (A) to (E) of this paragraph.

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

(7) "Incident or occurrence" means:

(a) One proximate, uninterrupted or continuing cause that results in an injury or damage, even if:

(A) The damage or injury consists of separable components or affects different items; and

(B) More than one claim or claimant results from the cause.

(b) A single cause or condition, exposure to which over a period of years results in continuous, indivisible injury or damage.

[(6)] (8) "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;

(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, judgment 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] **the insurer's** domicile.

[(7)] **(9)** "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)] **(10)(a)** "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.

(b) "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(11) "Novation" means a transaction in which one insurer's or entity's existing policy obligation, or a claim, becomes the direct obligation of another insurer or entity with the policyholder's express consent, or consent implied from the circumstances, from the notice provided to the policyholder or from the conduct of the parties, at which point the policyholder releases the insurer or entity from the existing policy obligation or claim.

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

SECTION 4. ORS 734.540 is amended to read:

734.540. ORS 734.510 to 734.710 apply to all kinds of direct insurance except life, health, title, surety, credit, mortgage guaranty, home protection insurance, wet marine and transportation insurance, [and] insurance against the risk of economic loss assumed under a less than fully insured employee health benefit plan, whether issued or delivered as health or casualty insurance, **and any insurance that a state or the federal government provides or guarantees.**

SECTION 5. 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.]

(1) Shall pay covered claims that exist at the time, or that arise within 30 days after, a member insurer has been determined to be insolvent, subject to the following limits and exceptions:

(a) The association's obligation to pay a covered claim that arises from the insolvency of a member insurer between September 9, 1971, and December 31, 2024, is only the amount of the covered claim that is less than \$300,000.

(b) The association's obligation to pay a covered claim that arises from the insolvency of a member insurer on or after January 1, 2025, may not exceed \$600,000.

(c) Notwithstanding the limitations set forth in paragraphs (a) and (b) of this subsection, the association shall pay the full amount of any covered claim that arises out of a workers' compensation policy, less any amount the Workers' Benefit Fund pays on the covered claim under ORS chapter 656.

(d) The association is not obligated to pay:

(A) Any amount that exceeds the obligation of the insolvent member insurer under the policy from which the claim arises;

(B) A claim that arises after the policy expires or after the insured cancels or replaces the policy; or

(C) More than \$600,000 in the aggregate for any claim, including any first-party or third-party claim, that arises out of or is related to a single incident or occurrence that is covered under a cybersecurity insurance policy or endorsement, regardless of the number of claims made or the number of claimants.

(2) Is the insurer to the extent of the association's obligations on covered claims, with all of the rights, duties and obligations the insolvent member insurer would have had if the insolvent member insurer had not become insolvent.

(3) **Shall** assess member insurers the amounts necessary to pay the expenses [incurred by] the association **incurs** in meeting [its] **the association's** obligations and exercising [its] **the association's** duties and powers under ORS 734.510 to 734.710. The assessments of each member insurer [shall] **must** 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] **may not** 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] **must** be notified of an assessment not later than the 30th day before the day [it] **the assessment** 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] **must** be prorated among the obligations and expenses, and the unpaid portions [shall] **must** 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 **the member insurer** incurred in [the payment of such] **paying covered** claims [by the member insurer in its] **in the member insurer's** capacity as a servicing facility.

(4) **Shall** investigate claims brought against the association and adjust, compromise, **defend**, settle and pay covered claims to the extent of the association's obligation[, and].

(5) **Shall** review settlements, releases and judgments to which the insolvent **member** insurer or [its] **the insolvent member insurer's** insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested. **The association's obligation to defend an insolvent member insurer's insured ceases when the association tenders or pays an amount that is equal to the lesser of the statutory limit that applies to the covered claim or the policy limit that applies to the covered claim.**

[(5)] (6) **Shall** reimburse servicing facilities and employees of the association for obligations and expenses **the servicing facilities and employees** incurred and paid in the handling of claims on behalf of the association[, and].

(7) **Shall** pay all other expenses the association incurs in carrying out ORS 734.510 to 734.710.

SECTION 6. ORS 734.580 is amended to read:

734.580. The Oregon Insurance Guaranty Association may:

(1) [With the approval of the Director of the Department of Consumer and Business Services,] Employ or retain [such] persons or designate [such] servicing facilities [as] **that** are necessary to handle claims and perform the other duties of the association, **subject to the approval of the Director of the Department of Consumer and Business Services.** Servicing facilities so designated may be foreign corporations or associations.

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

(3) Sue or be sued.

(4) Negotiate and become a party to *[such]* contracts *[as]* **that** are necessary to carry out ORS 734.510 to 734.710.

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

(6) **Pay any claim made under a cybersecurity insurance policy, at the association's sole discretion and without assuming any duty to pay, if the claim is covered by a cybersecurity insurance policy of an insolvent insured on behalf of an insured with the net worth described in ORS 734.695 (2)(a). In all cases in which the association pays under this subsection a claim made on behalf of an insured with the net worth described in ORS 734.695 (2)(a), the association may recover the amount paid as provided under ORS 734.695.**

[(6)] (7) Perform *[such]* **any** other acts *[as]* **that** are necessary or proper to carry out ORS 734.510 to 734.710.

SECTION 7. ORS 734.640 is amended to read:

734.640. *[(1) Any person who has a claim under an insurance policy against an insurer other than an insolvent insurer which would also be a covered claim against an insolvent insurer must first exhaust the remedies under such policy.]*

(1)(a) **A person need not exhaust any right available under an insolvent member insurer's policy, but if the person has a claim under an insurance policy that arises from the same facts, injury or loss from which a covered claim against the association arises, whether or not the insolvent member insurer issued the policy, the person must first exhaust all coverage under the policy, including the right to a defense, before the association must pay the covered claim. The association's payment obligation must be reduced by the full applicable limits set forth in the other insurance policy and the association must receive a full credit for the limits. If the policy does not set forth applicable limits, the claim against the association must be reduced by the amount of the total recovery.**

(b) **A claim under this subsection includes any amount that is payable by or on behalf of a self-insured claimant.**

(c) **A claim arises from the same facts, injury or loss from which a covered claim against the association arises if the person that makes a claim under a policy of liability insurance is jointly and severally liable, or is a joint tortfeasor, with a person that is covered under the policy of an insolvent member insurer under which the covered claim arises.**

(d) **Before making a claim against the association, a person that has a claim in which the injury or loss is alleged to result from exposure to, or the release of, asbestos or any environmental pollutant or contaminant must first exhaust all coverage available to the person under any and all other insurance policies that cover the claim during all periods in which the other insurance policies are available to the person, even if an insolvent member insurer provided the only coverage for the claim when the exposure or release allegedly occurred.**

(2) Any person *[who]* **that** has a claim that may also be recovered from one or more insurance guaranty agencies that perform functions similar to that of the Oregon Insurance Guaranty Association shall first seek recovery from whichever organization serves the place of residence of the insured, except that:

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

(b) Recovery on workers' compensation claims *[shall]* **must** first be sought from whichever organization serves the residence of the claimant.

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

SECTION 8. ORS 734.695 is amended to read:

734.695. (1) The insured of an insolvent insurer [*may not be*] **is not** 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, **including defense fees**, 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.

(3) Notwithstanding subsection (1) of this section, the association may recover from an insured with the net worth described in subsection (2)(a) of this section:

(a) All payments the association made to or on behalf of the insured for a claim under a cybersecurity insurance policy, whether the payment was for indemnity, defense or another purpose; and

(b) The association's legal fees and court costs in any action the association brings to recover the payments.

Passed by House March 11, 2025

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Timothy G. Sekerak, Chief Clerk of House

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Julie Fahey, Speaker of House

Passed by Senate April 29, 2025

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2025

Approved:

.....M.,....., 2025

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2025

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Tobias Read, Secretary of State