

Chapter 734

Oregon Insurance Guaranty Association

OREGON INSURANCE GUARANTY ASSOCIATION

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OREGON INSURANCE GUARANTY ASSOCIATION

734.510 Definitions for ORS 734.510 to 734.710. 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 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 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;

(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

(D) 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 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:

(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 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. [1971 c.616 §5; 1977 c.793 §8; 2001 c.974 §1; 2003 c.576 §556]

734.520 Purpose. The purpose of ORS 734.510 to 734.710 is to provide for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, to provide an association to assess the cost of such protection among insurers and to assist in the liquidation of insurers as provided in this chapter. [1971 c.616 §2]

734.530 Construction. ORS 734.510 to 734.710 shall be liberally construed to effect the purposes provided in ORS 734.520. [1971 c.616 §3]

734.540 Application. 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. [1971 c.616 §4; 1977 c.600 §2; 1981 c.247 §14; 1993 c.649 §7]

734.550 Oregon Insurance Guaranty Association; all insurers required to be members; formation of operating plan. There is created the Oregon Insurance Guaranty Association. Each insurer that is a member insurer shall become and remain a member of the association as a condition of its authority to transact insurance in this state. The association shall perform its functions in accordance with a plan of operation established under ORS 734.590, and shall exercise its powers through its board of directors. [1971 c.616 §6]

734.555 Application to association of certain laws governing corporations; exception. The provisions, procedures and requirements of ORS chapter 60 relating to a registered office, registered agent and to service of process, notice and demand shall govern the Oregon Insurance Guaranty Association, except that the Director of the Department of Consumer and Business Services shall be substituted for the Secretary of State as the person with whom all filings shall be made and upon whom, in the circumstances specified by statute, such service may be effected. [1977 c.600 §6; 1987 c.846 §12]

734.560 Association board of directors; terms; vacancies; compensation and expenses; quorum. (1) The board of directors of the Oregon Insurance Guaranty Association shall consist of nine members selected by the member insurers, subject to the approval of the Director of the Department of Consumer and Business Services. The term of each member of the board shall be as specified in the plan, but in no event for longer than four years. A vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as for the initial selection. If the initial selection of members is not made within 60 days after September 9, 1971, the director may select the initial members.

(2) In making or approving selections to the board, the director shall consider, among other

things, whether member insurers are fairly represented.

(3) A member of the board shall receive no compensation for services as a member. However, a member shall be reimbursed by the association for actual and necessary travel and other expenses incurred by the member in the performance of duties.

(4) A majority of the members of the board constitutes a quorum for the transaction of business. [1971 c.616 §7]

734.570 Required functions of association. 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.

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

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

(5) Reimburse servicing facilities and employees of the association for obligations and expenses incurred and paid in the handling of claims on behalf of the association, and pay all other expenses the association incurs in carrying out ORS 734.510 to 734.710. [1971 c.616 §8; 1977 c.793 §9; 2001 c.974 §9]

734.575 Refunds from association deposited in General Fund. Any sums acquired by refund from the Oregon Insurance Guaranty Association that have previously been written off by contributing insurers and offset against corporate excise taxes or fire insurance gross premiums taxes, and are not then needed for purposes of ORS 734.510 to 734.710, shall be paid by the association to the Director of the Department of Consumer and Business Services and deposited with the State Treasurer for credit to the General Fund of this state. [1977 c.793 §3; 1985 c.686 §1; 1995 c.786 §8; 2003 c.568 §4]

734.577 [1987 c.582 §1; 1991 c.67 §196; 2003 c.14 §448; repealed by 2005 c.755 §59]

734.579 Recoupment assessments; rules. (1) Each member insurer subject to an Oregon Insurance Guaranty Association assessment pursuant to ORS 734.570 (3) shall recoup the amount of the assessment through a recoupment assessment imposed on net direct written premiums. The member insurer shall fix the amount of the recoupment assessment at an amount sufficient to reimburse the member insurer for the amount of Oregon Insurance Guaranty Association assessments paid by the member insurer.

(2) Each member insurer shall annually certify to the Director of the Department of Consumer and Business Services the total amount of recoupment assessments assessed for the year and that the amount assessed does not exceed the amount of Oregon Insurance Guaranty Association assessments imposed and not previously recouped or offset against corporate excise taxes or fire insurance gross premiums taxes.

(3) The director may by rule establish a minimum threshold for which a recoupment assessment under subsection (1) of this section need not be made.

(4) The Department of Consumer and Business Services, pursuant to rules adopted by the director, may audit member insurer determinations of recoupment assessments.

(5) Recoupment assessments shall be separately stated on premium billing statements. Recoupment assessments may not be considered gross premiums for any purpose. [2003 c.568 §2]

734.580 Discretionary functions of association. 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 are necessary to handle claims and perform the other duties of the association. 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 are necessary to carry out ORS 734.510 to 734.710.

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

(6) Perform such other acts as are necessary or proper to carry out ORS 734.510 to 734.710. [1971 c.616 §9]

734.590 Plan of operation; submission to director; rules. (1) The Oregon Insurance Guaranty Association shall submit to the Director of the Department of Consumer and Business Services not later than 90 days after September 9, 1971, a plan of operation, and may thereafter submit such amendments thereto as will provide for the reasonable and equitable exercise of the duties and powers of the association. The plan of operation, and any amendments thereto, shall become effective upon approval in writing by the director.

(2) If the association fails to submit a plan that receives the approval of the director as provided in subsection (1) of this section, or if the association thereafter fails to maintain a plan satisfactory to the director, the director shall by rule prescribe a plan of operation that meets the standards provided in subsection (1) of this section. A plan prescribed by the director shall remain in effect until the director by rule provides otherwise.

(3) No member insurer shall fail to comply with the currently effective plan of operation. [1971 c.616 §10]

734.600 Contents of plan of operation. A plan of operation shall:

(1) Establish procedures for the submission, processing and payment of claims against the Oregon Insurance Guaranty Association.

(2) Establish procedures for record keeping, payment of expenses and administration of all other financial affairs of the association.

(3) Establish times and places for meetings of the board.

(4) Establish procedures for selection of the board of directors and for approval of that selection by the Director of the Department of Consumer and Business Services.

(5) Establish a procedure for appeal by a member insurer to the director of final actions or decisions of the association.

(6) Establish such other procedures as may be necessary or proper to carry out the duties and powers of the association. [1971 c.616 §11]

734.610 Notification to association of insurer insolvency; furnishing association with premium information. The Director of the Department of Consumer and Business Services shall:

(1) Notify the Oregon Insurance Guaranty Association of the insolvency of an insurer not later than three days after the director receives notice of the determination of insolvency.

(2) Upon request of the board, provide the association with a statement of the net direct written premiums of each member insurer for the preceding calendar year. [1971 c.616 §12]

734.620 Notification of insolvency to insured persons; revocation of designation of servicing facility. The Director of the Department of Consumer and Business Services may:

(1) Require the Oregon Insurance Guaranty Association to notify the insureds of an insolvent insurer of the determination of insolvency and of their rights under ORS 734.510 to 734.710.

Such notification may be by:

(a) Certified or first-class mail to the address of each such person as it last appears in the records of the director or the insurer;

(b) Publication in a newspaper of general circulation in this state if the addresses of those persons to be notified is not available from the records of the director or the insurer; or

(c) Any combination of the methods referred to in paragraphs (a) and (b) of this subsection that the association considers likely to inform the persons of their rights under ORS 734.510 to 734.710.

(2) Revoke the designation of any servicing facility that the director finds is not processing and paying claims in the manner provided in the plan and in ORS 734.510 to 734.710. [1971 c.616 §13]

734.630 Assignment of claim rights; filing statements of paid claims; effect of claim settlements. (1) Any person who recovers on a covered claim under ORS 734.510 to 734.710 thereby assigns the rights of the person under the insurance policy to the Oregon Insurance Guaranty Association to the extent of such recovery. Every person who seeks the protection of ORS 734.510 to 734.710 shall cooperate with the association to the same extent such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insureds of an insolvent insurer for any sums paid, except for those causes of action the insolvent insurer would have had if such sums had been paid by the insolvent insurer. If an insolvent insurer operates on the assessment plan, the payment of claims by the association does not reduce the liability of the insured to the receiver for unpaid assessments.

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

(3) The receiver shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority in accordance with ORS 734.360. [1971 c.616 §14; 2001 c.974 §4]

734.635 Disbursing assets of insolvent insurer to association; court approval; notice to other states. (1) Not later than 120 days from the date the order of liquidation of a member insurer is filed in the office of the clerk of the court by which the order was made, that insurer's receiver shall make application to the court for approval of a proposal to disburse the insurer's marshalled assets to the Oregon Insurance Guaranty Association from time to time as those assets become available.

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

(a) Reserving amounts for the payment of those claims described in ORS 734.360;

(b) Disbursing the marshalled assets of the insolvent insurer to the association in an amount estimated to be at least equal to the claim payments to be made by the association for which the association could assert a claim against the insolvent insurer;

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

(d) Securing an agreement from the association to return to the receiver any assets previously disbursed that may be required to pay the claims of secured creditors and the claims described in ORS 734.360; and

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

(3) When an insurer's receiver intends to make application to a court for approval of a proposal to disburse the insurer's marshalled assets to the association under this section, the receiver shall give notice of the application, at least 30 days prior to filing the application with the court, to the insurance supervisory official and the insurance guaranty agency that performs functions similar to that of the association of each state in which the insolvent insurer was authorized. [1977 c.793 §2; 2001 c.974 §10]

734.640 Claim priority. (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.

(2) Any person who 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 first be sought from whichever organization serves the location of the property; and

(b) Recovery on workers' compensation claims shall 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 be reduced by the amount of any recovery pursuant to subsections (1) and (2) of this section. [1971 c.616 §16; 1977 c.793 §10]

734.650 Notifying director of impaired insurers; examination; reports on impaired insurers. (1) Whenever the board obtains any information indicating that any member insurer is impaired or in a financial condition hazardous to the policyholders or the public, the board shall so notify the Director of the Department of Consumer and Business Services.

(2) The board may request the director to examine any member insurer that the board in good faith believes to be impaired or in a financial condition hazardous to the policyholders or the public. The director shall cause the examination to begin within 30 days after the receipt of any such request. Except as otherwise provided in ORS 734.510 to 734.710, the examination shall be conducted as provided in ORS chapter 731.

(3) The director shall report the results of an examination to the board and shall notify the board whenever the director has reasonable cause to believe during an examination that the insurer is impaired or insolvent. The results of the completed examination shall not be released to the board before release to the public. The request for examination shall not be available for public inspection before release of the results of the examination to the public.

(4) The board may make such reports and recommendations to the director regarding the insolvency, liquidation, rehabilitation or conservation of member insurers as the board considers appropriate. Any such reports or recommendations are not public records. [1971 c.616 §17]

734.660 Regulation of association as insurer. The Oregon Insurance Guaranty Association is subject to regulation by the Director of the Department of Consumer and Business Services in the same manner as an insurer. Not later than March 30 of each year, the board shall submit to the director, in a form approved by the director, a financial report for the preceding year. [1971 c.616 §18]

734.670 Exemption of association from payment of fees and taxes. Except for taxes levied on real or personal property, the Oregon Insurance Guaranty Association shall be exempt from the payment of all fees and taxes levied by this state or by any city, county, district or other political subdivision of this state. [1971 c.616 §19]

734.680 [1971 c.616 §20; repealed by 1977 c.793 §11]

734.690 Immunity from legal action. No person shall have a cause of action against any member insurer, the Oregon Insurance Guaranty Association or its employees or servicing facilities, any member of the board, or the Director of the Department of Consumer and Business Services or employees of the director for any action taken by them in carrying out ORS 734.510 to 734.710. [1971 c.616 §21]

734.695 Liability of insured of insolvent insurer. (1) The insured of an insolvent insurer 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) 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 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. [1977 c.793 §4; 2001 c.974 §2]

734.700 Defense of claims on default of insolvent insurer. (1) Any pending proceeding in which an insolvent insurer is a party or is obligated to defend a party in any court of this state shall be stayed for 60 days after the date a receiver is appointed by the court to permit the Oregon Insurance Guaranty Association time to prepare a defense in such proceedings.

(2) If any covered claim arises from a judgment based on the default of the insolvent insurer or its failure to defend an insured, the association may apply to have such judgment set aside, and, upon such application shall be permitted to defend against the claim on the merits. [1971 c.616 §22]

734.710 Administration of delinquency proceeding claims and expenses; application of ORS 734.014, 734.026 and 734.110 to 734.440 to insurers. (1) In any delinquency proceeding

involving a member insurer, the claims and expenses of the insurer shall be administered as provided in ORS 734.510 to 734.710.

(2) Except as otherwise provided in ORS 734.510 to 734.710, ORS 734.014, 734.026 and 734.110 to 734.440 apply to a member insurer. [1971 c.616 §23]