Chapter 744

1957 REPLACEMENT PART

Fire Insurance

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FIRE INSURANCE GENERALLY

744.010 Application of general corporation laws. The general provisions of law relating to the powers, duties and liabilities of corporations apply to all incorporated insurance companies, so far as such provisions are pertinent to and not in conflict with other provisions of law relating to such companies.

744.020 Application of General Insurance Law; examination of records. (1) All domestic insurance companies, every insurance agent, adjuster or other representative doing business in this state, and all insurance business the subject matter of which is located wholly or in part in this state, unless otherwise provided, shall be subject to and governed by the General Insurance Law.

(2) The records of every insurance company, agent or other representative doing business in this state shall be subject to the inspection and examination of the commissioner, his deputy or examiner.

744.030 Registration of insurer's "title." (1) A fire insurance company, before issuing any policy or contract for indemnity or insurance on property situated or located in this state, shall file with the commissioner the title under which it proposes to write such insurance in the state. The title shall be registered by the commissioner, together with the name of the company, and a sample and specimen thereof shall be pasted in a book to be kept for that purpose by the commissioner. Upon paying the fee required by subsection (2) of this section and complying with all other departmental requirements the company shall be entitled to issue policies or contracts for indemnity or insurance under the title so registered and no other.

(2) Every insurance company registering a title under this section shall pay to the commissioner a fee of $5 and the commissioner then shall issue a certificate to the company setting forth the name of the company and attach to the certificate a facsimile of the title registered.

744.040 Doing business under additional title. (1) Any insurance company authorized to transact a fire insurance business in this state in its own corporate name may file one additional title in the same manner as provided for the filing of corporate title by such companies in ORS 744.030 and may issue its policies under such additional title.

(2) A company qualifying to transact business under an additional title shall be regarded as two distinct companies with respect to:

(a) Payment of fees for the transaction of business.

(b) Appointment of agents to transact business.

(c) Reporting to the commissioner the amount of business transacted, for taxation and departmental purposes.

744.050 [Repealed by 1953 c.93 §2]

744.060 [Repealed by 1953 c.93 §2]

744.070 Limitation on amount and duration of insurance. (1) No insurance company, agent or insured shall knowingly issue or procure any fire insurance policy upon property within this state for an amount which with any existing insurance exceeds the fair value of the property or of the interest of the insured therein, or for a longer period than five years.

(2) Every insurer who makes insurance upon any building or property, or interests therein, against loss or damage by fire, and every agent who issues a fire insurance policy covering any building or property or interest therein and every insured who procures a policy of fire insurance upon any building or property or interest therein owned by him, is presumed to know the insurable value of such building or property or interest therein at the time such insurance is effected.

(3) ORS 744.070 to 744.090 do not apply to insurance on stocks of merchandise or property of fluctuating values where the reduced rate percentage value clause is made a part of the policy.

744.080 Adjusters to report overinsurance and origin of fires. Every adjuster who investigates a loss claim in this state shall ascertain whether there is overinsurance upon such risk and the facts and circumstances so far as practical pertaining to the origin and cause of the fire. He shall report his findings, together with any circumstances which in his belief indicate fraud or attempted fraud, to the insurance department.

744.090 Return of premium for excess insurance. In the event of the total destruction of any insured property, if the total amount of loss is less than the total amount insured thereon, the insuring company or

companies shall return to the insured the total amount of insurance premium paid for the excess of the insurance over the appraised value of the property at the time of the loss. This amount shall be paid at the same time and in the same manner as the loss.

744.100 Standard fire policy. No fire insurer, its officers or agents, shall use any fire insurance policy or renew any fire policy on property in this state unless it contains the following provisions, which shall form a portion of the contract between the insurer and insured:

"In consideration of the provisions and stipulations herein or added hereto and of ——— dollars ($———) premium this company, for the term of ——— from the ——— day of ———, 19—, to the ——— day of ———, 19—, at noon, standard time, at location of property involved, to an amount not exceeding ——— dollars ($———), does insure ——— and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all direct loss by fire, lightning and by removal from premises endangered by the perils insured against in this policy, except as hereinafter provided, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

"Assignment of this policy shall not be valid except with the written consent of this company.

"This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which hereby are made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

"In witness whereof, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at ———.

———
Secretary.

———
President.

"Countersigned this ——— day of ———, 19——.

———
Agent.

"This entire policy shall be void if, whether before or after a loss, the insured has wilfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

"This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

"This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) Enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at an after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

"Other insurance may be prohibited or the amount of insurance may be limited by indorsement attached hereto.

"Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

"(a) While the hazard is increased by any means within the control or knowledge of the insured; or

"(b) While a described building, whether intended for occupancy by owner or tenant,

is vacated or unoccupied beyond a period of 60 consecutive days; or

"(c) As a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

"Any other peril to be insured against or subject of insurance to be covered in this policy shall be by indorsement in writing hereon or added hereto.

"The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

"No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

"This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a five-days' written notice of cancelation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancelation shall state that said excess premium, if not tendered, will be refunded on demand.

"If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by giving to such mortgagee a 10-days' written notice of cancelation.

"If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

"This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

"The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless such time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other

vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

"In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then, on request of the insured or this company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

"It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

"There can be no abandonment to this company of any property.

"The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

"No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss.

"This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company."

744.110 Statement of amount and rate of premium. All fire insurance policies must state on their face the amount and the rate of the premium in money.

744.120 Kind of insurer to be designated. Every policy shall have legibly inscribed upon its face and filing back suitable words to designate whether the company making the insurance is a stock or mutual company or "Lloyds" or interinsurers association.

744.130 Other policy provisions permitted. (1) A fire insurer may add to the provisions required by ORS 744.100 other conditions, provisions, and agreements not in conflict with law or contrary to public policy.

(2) Any provision restricting or abridging the rights of the assured under the policy contract must be preceded by a sufficiently explanatory title printed or written in type not smaller than eight-point capital letters. [Amended by 1955 c.226 §1]

744.140 Company regulations as part of policy. If a policy of fire insurance is made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of the policy as the same may be written or printed upon, attached, or appended thereto.

744.150 Company to furnish proof of loss blanks. The company shall, within a reasonable time after receipt of notice of loss, furnish to the insured printed blanks for making the proof of loss required by the standard form of policy prescribed by ORS 744.100. The furnishing of such blanks shall not be deemed in itself an admission of liability on the part of the company. The insured shall have 90 days after receipt of such blanks to furnish proof of loss, notwithstanding anything contained in the standard form of policy.

744.160 Licensing of agents. (1) Agents of fire insurance companies may be appointed by their companies and licensed by the

commissioner as provided in ORS 736.405 to 736.425. Before issuing a license to any such agent the commissioner shall be advised as to the moral character and integrity of the applicant.

(2) The commissioner must withhold any license applied for, or revoke any license issued to any agent or agency, when he is satisfied that the principal use of such license is to effect insurance upon the property or liability of such agent or agency or to evade the enforcement of ORS 736.620 to 736.640 or that the applicant has not complied with all legal requirements relating to agents.

(3) A member of a mutual fire insurance company may solicit or procure applications for membership in his company without being licensed.

744.170 Agents of different companies sharing office. No fire insurance company, its officers or district managers, shall prohibit any agent or representative of such company or manager from occupying or renting or using office space with any persons representing insurance companies. If any such company, its manager or representative, issues instructions contrary to this provision, the commissioner shall, on receipt of proof of such act, cause the license of the offending company to be suspended for a period of 30 days.

744.180 Charging back commissions on premiums reduced in connection with rate war. If any company has precipitated or aided in precipitating or conducting a rate war for any purpose and has ordered the cancelation or rewriting of policies at a rate lower than that provided by its rating schedules and has paid or attempted to pay to the assured any return premium on any risk so to be rewritten on which their agent has received or is entitled to receive his regular commission, the company shall not be allowed to charge back to the agent any portion of his commission on the ground that the same has not been earned.

744.190 Violations to be reported. Every person having knowledge of a violation of the General Insurance Law is required to report promptly the facts and circumstances pertaining thereto to the commissioner. The commissioner shall hold such reports and the name of the informants as confidential.

744.200 Self-incrimination; immunity. (1) No person shall be excused from attending and testifying or producing any books, papers or other documents before any court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of the General Insurance Law for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of crime or subject him to penalty or forfeiture.

(2) No person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

744.210 to 744.300 [Reserved for expansion]

MUTUAL FIRE INSURANCE COMPANIES

744.310 Mutual companies authorized. (1) Corporations may be formed under the provisions of ORS 744.310 to 744.510 and in compliance with the laws of Oregon by citizens of this state for the purpose of conducting a general fire insurance business or to insure only one class of one or more special kinds of property of its members against loss or damage by fire, lightning, hail and tornadoes.

(2) No policy of insurance shall be issued except to a member of such a company.

744.320 Board of directors. (1) The number of directors of a mutual fire insurance corporation shall be not less than five nor more than nine and a majority shall constitute a quorum.

(2) These directors shall be elected from the members of the association by ballot at the annual meeting and shall hold office for terms not to exceed five years each or until their successors are elected and qualified. The annual meeting of the members of the corporation shall be held in the month of January of each year. In the election of the first board of directors, not more than two shall be elected for five years, four years, three years and two years, respectively. The remaining number shall be elected for one year.

(3) Every member insured shall be entitled to one vote in the election of each director and, except as provided in subsection (4) of this section, he must cast the

same in person, voting for as many persons as there are directors to be elected.

(4) Every member of a mutual fire insurance company organized under ORS 744.310 to 744.510 and licensed to do business in any foreign state may vote either in person or by proxy. Any corporation, association, joint stock company, partnership or society that is a member may vote by one of its officers or representatives.

744.330 Election of officers. The directors of a mutual fire insurance corporation at their first meeting following the annual election shall elect a president and vice president, who must be members, and a treasurer and secretary who may or may not be members of the corporation. All such officers shall hold their office for one year from the date of their election or until their successors are elected and qualified.

744.340 Bonds of treasurer and secretary. The treasurer and secretary of a mutual fire insurance corporation shall give bonds to the corporation for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors. Such bonds shall be approved by the commissioner.

744.350 Compensation of officers. A mutual fire insurance corporation, by its directors, may prescribe the duties of its officers and fix their compensation. No officer or other person whose duty it is to determine the character of the risks and upon whose decision applications for insurance are accepted or rejected by such corporation shall receive as any part of his compensation a commission upon the aggregate insurance written.

744.360 Bylaws; location of office. (1) A mutual fire insurance corporation, by its directors, may make such bylaws as are necessary for the management of its affairs and as are not inconsistent with the law. It may in like manner amend or alter its bylaws when necessary.

(2) A corporation may, by action of its board of directors thereunto duly authorized by vote of a majority of the members present at any duly and legally called regular or special meeting, remove its office and principal place of business to any town or city having adequate banking, mail and transportation facilities.

744.370 Care of corporate funds. (1) The bylaws of a mutual fire insurance corporation shall provide that all money due the corporation shall be paid to the secretary who shall receipt therefor and turn such funds over to the treasurer promptly, making such reports of collections to the treasurer at least once a month and taking his receipt for same.

(2) The treasurer shall deposit all funds belonging to the corporation as may come into his hands in the name of the corporation in such banks, trust companies or other depositories as he may elect, the selection of such depository to be subject to the approval of the board of directors.

(3) The treasurer shall submit a report showing the amount of such funds on hand at all regular meetings of the board of directors and at any special meetings on request of the board.

(4) The funds of the corporation shall be disbursed only by order of the board of directors, or of an auditing board which the board may appoint, at a regular or special meeting of the board. Such an order, when presented to him, shall be sufficient authority for the treasurer to make disbursements.

744.380 Reserve funds. The bylaws of a mutual fire insurance corporation shall provide for the creation of a reserve fund for the purpose of providing against large losses or conflagrations. Such fund may be drawn upon for the payment of losses in such manner as the bylaws of the corporation specify.

744.390 Annual statement to members. The secretary of a mutual fire insurance corporation shall prepare an annual statement showing the condition of the corporation on December 31 and present the same at the annual meeting.

744.395 When company is insolvent; dissolution. Whenever the liabilities of any mutual fire insurance corporation for losses reported, expenses, taxes and all other debts and liabilities are greater than its admitted assets, or whenever the available resources of any such corporation are less than the requirements of the General Insurance Law, then such corporation is insolvent and may be proceeded against and dissolved in the same manner as provided in case of other corporations of this state.

744.400 Prerequisites to issuance of policies; fees payable. (1) No policy shall be issued by any mutual fire insurance corporation until:

(a) Not less than $300,000 of insurance in not less than 300 separate risks, not to exceed $1,000 on any one risk, has been subscribed for and is entered upon its books.

(b) It has entered on its books assets consisting of the liability of its members to pay advance assessments on delivery of policies and the contingent liability of its members subject to assessment. The advance assessment liability and the contingent liability shall each equal at least $5,000 and shall be shown in the signed applications of its members.

(c) A list of the subscribers for insurance with such other information as the commissioner may require has been filed at the insurance department.

(d) The president and secretary of the corporation have certified under oath that every subscription for insurance in the list filed is genuine and that each subscriber has agreed that he will take the policies subscribed for by him and pay the advance assessments for the same within 30 days of the granting to the corporation of a license to issue policies.

(e) It has received a certificate of authority stating that the corporation has complied with the provisions of the General Insurance Law and the requirements of the insurance department and is authorized to transact its appropriate business in this state.

(2) The application for a certificate of authority must be accompanied by the fees required by ORS 736.130 for issuance of certificate and annual license.

744.410 Admission of foreign mutuals. (1) Any mutual fire insurance corporation or association, without subscribed capital or guarantee fund, organized under the laws of any other state and desiring to transact business in this state, shall file with the commissioner:

(a) A financial statement, signed by its president and secretary under oath, showing its condition on December 31 next preceding the date of its application for admission and showing that it is possessed of assets of not less than $200,000 of which not less than $100,000 is net surplus over and above all liabilities including its reserve and unearned premium liability as provided under the laws of the state in which it is incorporated.

(b) A certificate from the insurance commissioner of the state in which it is incorporated certifying that in his judgment the financial statement is correct.

(2) The commissioner, upon receipt and examination of such statement and certificate and upon satisfying himself of the correctness thereof and of compliance with the laws of this state, shall issue to such corporation or association a certificate of authority granting it full power to transact business under the General Insurance Law.

744.420 Limitations on amount and duration of insurance. (1) A mutual fire insurance corporation may issue policies for a term not exceeding five years. Those mutual companies writing risks in not more than 10 counties are exempt from the foregoing requirement of this section provided the risk is inspected at least once in five years. No policy shall be for an amount in excess of the largest of the following applicable limitations:

(a) Five percent of the surplus of the insurer as shown in the latest annual statement filed with the insurance department or, upon risks adequately protected by automatic sprinklers or risks principally of noncombustible construction and occupancy, 15 percent of such surplus.

(b) Four thousand dollars on any one risk, unless protected by reinsurance in companies having sufficient assets and surplus to be permitted to do business in this state.

(c) For a corporation having $1,000,000 or more total insurance in force, $6,000 on any one risk plus $1,000 on any one risk for each $500,000 of insurance in excess of $1,000,000, up to a limit of $10,000.

(d) For a corporation organized to insure a special class of property and having more than $1,000,000 of insurance in force as shown by its last annual statement filed with the insurance department, twice the amount specified in paragraphs (a), (b) or (c).

(2) A frame range of two or more adjoining buildings situated in the same city block, or risks separated by less than 100 feet, are deemed one risk. A standard fire wall constituting part of a brick building of standard construction may be accepted as equivalent to 100 feet. In rural fire protection districts with approved fire protection the exposure distance may be reduced to 50 feet and in towns and cities with approved fire protection the exposure distance may be reduced to 50 feet in business and 25 feet in residence sections.

(3) Mutual corporations possessed of assets of not less than $200,000, of which not less than $100,000 is net surplus over and above all liabilities determined as provided in ORS 736.570, are not subject to the limitations relating to amount of policy imposed by subsection (1) of this section. [Amended by 1953 c.322 §2]

744.430 Policyholders' liability; nonassessable policies. (1) Each person accepting a policy in any mutual fire insurance company thereby becomes a member of the company and liable for his proportionate share of losses and operating expenses.

(2) Any person or persons holding property in trust may insure the same in such company, and as such trustee assume the liabilities and be entitled to the rights of a member, but shall not be personally liable upon such contract of insurance.

(3) A mutual fire insurance company may fix the contingent and mutual liability of its members for payment of losses and expenses by a uniform rule set forth in its bylaws and policies. Such mutual liability shall not be less than twice the amount of the usual advance assessment written in the policy.

(4) A company that has accumulated in the regular course of business assets of not less than $200,000, of which not less than $100,000 is net cash surplus determined as provided in ORS 736.570, may, while in that condition and subject to the approval of the commissioner adopt bylaws limiting the liability of its policyholders to the premium specified in its policies. The power to issue policies with such limitation of liability continues only during the time the company is in such financial condition.

(5) Every such company which has not limited the liability of its policyholders in accordance with the preceding subsection must print upon its policies such bylaws as will define the liability of a policyholder. [Amended by 1955 c.226 §2]

744.440 Action to recover assessment. An action may be brought against any member of a mutual fire insurance company who neglects or refuses to pay any assessment levied by the company to recover the whole amount of contingent liability with costs of the action. Execution shall issue on a judgment recovered in such an action for assessments and costs only as they accrue.

744.450 Withdrawal of members. Any member of a mutual fire insurance company may withdraw at any time by surrendering his policy to the company, giving written notice to the secretary of his intention to withdraw and paying his share of all losses which have accrued and all assessments then due, accrued or pending.

744.460 Cancelation of policies. (1) A mutual fire insurance company may cancel or terminate any policy by giving the insured five days' written notice and returning to the insured any unearned assessment computed pro rata.

(2) A mutual company shall use and issue only the standard form of policy provided in ORS 744.100, however:

(a) It is not required upon cancelation of the policy of insurance or certificate of membership to return any part of any policy, certificate, membership or inspection fee that may have been charged.

(b) Where a definite part of the amount charged has been collected for and designated as an expense assessment, it may by bylaw determine the amount of refund that shall be made from said expense assessment.

(c) If it is on an assessment basis, levying assessments at such times and in such amounts as are necessary to defray its losses and expenses, it may provide by bylaw that no part of the assessments shall be returned.

(d) If it is organized for the insurance of a single class of risks and the assessment charged in a flat sum, it may by contract provide that no return assessment shall be paid upon cancelation.

744.470 Examination of company. Whenever it appears to the commissioner that the solvency of any mutual fire insurance company is impaired or that the provisions of the General Insurance Law are being violated or upon written request signed by 25 members of the company, he may immediately make examination of the company as provided in ORS 736.550 to 736.570.

744.480 Notice to make good deficiency of assets. (1) Whenever it appears to the commissioner that the assets and resources of any mutual fire insurance company are less than required by the General Insurance Law, he shall promptly determine the amount of such deficiency and issue his written notice and requisition to each of

the trustees, directors and officers of the company, requiring the company to make good the amount of the deficiency within 60 days from the service of notice and requisition.

(2) Notice and requisition may be served by registered letter having affixed proper postage and directed to the company at its principal place of business in this state specified in its articles of incorporation or association and to the officers and directors at their last known addresses.

744.490 Making deficiency good. (1) Upon receipt of a notice and requisition issued under ORS 744.480 the officers of a mutual fire insurance company shall immediately call a meeting of the trustees or directors, at the earliest date such meeting may be legally held, for the purpose of levying a special assessment upon the members to make good the deficiency.

(2) The assessment shall be collected in the same manner as other assessments. The notice of assessment shall include a statement of the financial condition of the company showing the deficiency in funds as stated in the notice and requisition. The special assessment shall be due and payable within 30 days from date of notice of assessment, after which time delinquent members may be proceeded against as provided in ORS 744.440.

(3) The company shall file proof in the office of the commissioner within the time specified in the notice and requisition that the deficiency has been made good. The commissioner may extend the time if it appears that sufficient time was not allowed.

744.500 Failure to make deficiency good. (1) If a deficiency is not made good by a mutual fire insurance company within the time specified in a notice and requisition issued under ORS 744.480, and satisfactory proof thereof filed with the commissioner, he may revoke the certificate of authority issued to the company and the license issued to each agent of the company and shall give due notice thereof by registered mail to the company and to each of its agents.

(2) A domestic company failing to make good a deficiency shall be deemed insolvent and may be proceeeded against as provided in ORS 738.450 to 738.500.

744.510 Liability of persons accepting risks before deficiency made good. A trustee, director or officer of a mutual fire insurance company that has received a notice and requisition issued under ORS 744.480 who takes a new risk after the expiration of the time allotted for making good the deficiency and before the deficiency is made good is personally liable for loss occurring on such new risk.

744.520 Companies organized and doing business under prior laws recognized. Every mutual fire insurance corporation or association organized and doing business on May 21, 1917, hereby is recognized as an existing corporation or association, and shall have the right to continue such business under the provisions of the General Insurance Law if such corporation or association whose assets were not sufficient to comply with the provisions of the General Insurance Law complied with such requirements by December 31, 1918, or such later date as the commissioner may have specified.

744.530 Merger of mutual companies; plan of merger. (1) Any two or more domestic mutual fire insurance corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in ORS 744.530 to 744.570.

(2) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) The names of the corporation proposing to merge, and the name of the corporation into which they propose to merge, which is in ORS 744.530 to 744.640 designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(d) Any other provisions with respect to the proposed merger as are deemed necessary or desirable. [1957 c.247 §1]

744.540 Consolidation of mutual companies; consolidation plan. (1) Any two or more domestic mutual fire insurance corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in ORS 744.540 to 744.570.

(2) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is in ORS 744.530 to 744.640 designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for mutual fire insurance corporations organized under the laws of this state.

(d) Any other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [1957 c.247 §2]

744.550 Approval of plan by corporate members. (1) After approving a plan of consolidation, the board of directors of each corporation shall by resolution direct that the plan be submitted to a vote at an annual or special meeting of the corporation members.

(2) (a) After approving a plan of merger, the board of directors of the corporation whose corporate existence is to terminate by the merger shall by resolution direct that the plan be submitted to a vote at an annual or special meeting of the corporation members.

(b) The board of directors of the corporation which is to be the surviving corporation may by resolution authorize the president and secretary to sign and acknowledge the merger agreement on behalf of the corporation without submitting the plan to a vote of the corporation members, or it may by resolution direct that the plan be submitted to a vote at an annual or special meeting of the corporation members.

(3) Written or printed notice shall be mailed not less than 20 days before such meeting to each member entitled to vote at the meeting. The notice shall state the purpose of the meeting. A copy or a summary of the plan of merger or consolidation shall be included in or inclosed with the notice to each member.

(4) At each such meeting, a vote of the members shall be taken on the proposed plan of merger or consolidation. Each member of each such corporation present at the meeting shall be entitled to vote on the proposed plan of merger or consolidation, except that where a policy is held by more than one person, only one of those persons, designated by the holders of the policy, shall be entitled to vote.

(5) The plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the members present at the meeting and voting on the plan of merger or consolidation.

(6) After approval by a vote of the members and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provisions therefor set forth in the plan of merger or consolidation. [1957 c.247 §3]

744.560 Articles of merger or consolidation. (1) After approval of the plan of merger or consolidation, articles of merger or articles of consolidation shall be executed and acknowledged in duplicate by each corporation by its president and by its secretary.

(2) The articles shall set forth:

(a) The plan of merger or the plan of consolidation.

(b) As to each corporation, the number of members present at the meeting who voted on the plan, and the number who voted for and against the plan; and if the merger plan was not submitted to a vote of the members of the surviving corporation, a statement to that effect.

(3) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the State Insurance Commissioner, who shall transmit them to the Corporation Commissioner for examination. If the Corporation Commissioner finds that the articles conform to law, he shall return them to the State Insurance Commissioner with his certificate to that effect. Thereupon the State Insurance Commissioner shall:

(a) Indorse on each of the originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one of the originals in his office.

(c) Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original.

(4) The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the State Insurance Commissioner, shall be returned to the surviving, or new, corporation, or its representative. [1957 c.247 §4]

744.565 Effective date of merger or consolidation. Upon the issuance of the certificate of merger or the certificate of consolidation by the State Insurance Commissioner, the merger or consolidation shall be completed, with like effect as a merger or con-

solidation of corporations as provided by ORS 57.480. [1957 c.247 §5]

744.570 Filing of objections to plan of merger or consolidation. (1) If a member of a mutual fire insurance corporation which is a party to a merger or consolidation files with such corporation, prior to issue of the certificate of merger or consolidation, a written objection to the plan of merger or consolidation, and such member, within 30 days after the issue of the certificate makes written demand on the surviving or new corporation for cancelation of his insurance policy or policies and payment of the unearned premium thereon, the surviving or new corporation shall pay to such member, upon surrender of his insurance policy or policies, the entire pro rata unearned premium as of the date of cancelation. Upon payment thereof, the dissenting member shall cease to be a member of or have an interest in the new or surviving corporation.

(2) Any member failing to file objection and make demand as provided in subsection (1) of this section shall be bound by the terms of the merger or consolidation and shall be a member of the new or surviving corporation. [1957 c.247 §6]

744.580 Voluntary dissolution by consent of members. (1) A domestic mutual fire insurance corporation may be voluntarily dissolved by the written consent of all of its members.

(2) Upon the execution of the written consent of its members, a statement of intent to dissolve shall be executed and acknowledged on behalf of the corporation by its president and by its secretary. The statement shall be in duplicate and shall set forth:

(a) The name of the corporation.

(b) The names and respective addresses of its officers.

(c) The names and respective addresses of its directors.

(d) A copy of the written consent signed by all members of the corporation.

(e) A statement that such written consent has been signed by all members of the corporation or signed in their names by their attorneys thereunto duly authorized. [1957 c.247 §7]

744.590 Dissolution by act of corporation. A domestic mutual fire insurance corporation may be dissolved by the act of the corporation, when authorized in the following manner:

(1) The board of directors shall adopt a resolution directing that the question of dissolution be submitted to a vote at an annual or special meeting of members.

(2) Written or printed notice shall be mailed not less than 20 days before such meeting to each member entitled to vote at the meeting. The notice shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(3) At the meeting a vote of members entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Each member present at the meeting shall be entitled to vote thereon, except that where a policy is held by more than one person, only one of those persons, designated by the holders of the policy, shall be entitled to vote. The resolution shall be adopted upon receiving the affirmative vote of at least two-thirds of the members present at the meeting and voting on the resolution.

(4) Upon the adoption of the resolution, a statement of intent to dissolve shall be executed and acknowledged on behalf of the corporation by its president and by its secretary. The statement shall be in duplicate and shall set forth:

(a) The name of the corporation.

(b) The names and respective addresses of its officers.

(c) The names and respective addresses of its directors.

(d) A copy of the resolution adopted by the members authorizing the dissolution of the corporation.

(e) The number of members present at the meeting who voted on the resolution, and the number who voted for and against the resolution. [1957 c.247 §8]

744.600 Filing of statement of intent to dissolve. Duplicate originals of the statement of intent to dissolve, whether by consent of members or by act of the corporation, shall be delivered to the State Insurance Commissioner, who shall deliver them to the Corporation Commissioner for examination. If the Corporation Commissioner finds that the statement conforms to law, he shall return the duplicate originals to the State Insurance Commissioner with his certificate to that effect. Thereupon, the State Insurance Commissioner shall:

(1) Indorse on each of the originals the word "Filed," and the month, day and year of the filing thereof.

(2) File one of the duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative. [1957 c.247 §9]

744.610 Effect of statement of intent to dissolve. Upon filing a statement of intent to dissolve with the State Insurance Commissioner, whether by consent of members or by act of the corporation, the corporation shall cease to carry on its business, except in so far as may be necessary for the winding up of its affairs, but its corporate existence shall continue until a certificate of dissolution has been issued by the State Insurance Commissioner or until a decree dissolving the corporation has been entered by a court of competent jurisdiction. [1957 c.247 §10]

744.620 Liquidation of assets and business of corporation. After filing a statement of intent to dissolve with the State Insurance Commissioner:

(1) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its members, pay, satisfy and discharge its liabilities and obligations, refund to each policyholder any unearned premium which may be due, and do all other acts required to liquidate its business and affairs.

(2) The corporation, after paying or adequately providing for the payment of all its obligations, shall distribute the remainder of its assets, either in cash or in kind, among those who were members at the time of the vote to dissolve the corporation, or who signed the consent to dissolution. A policy held by more than one person shall be deemed held by a single member for purposes of distribution.

(3) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction in the county in which the registered office or principal place of business of the corporation is situated to have the liquidation continued under the supervision of the court. [1957 c.247 §11]

744.630 Articles of dissolution. When all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its members, articles of dissolution shall be executed and acknowledged on behalf of the corporation by its president and by its secretary. The statement shall be in duplicate and shall set forth:

(1) The name of the corporation.

(2) That a statement of intent to dissolve the corporation has theretofore been filed with the State Insurance Commissioner and the date on which such statement was filed.

(3) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(4) That all the remaining property and assets of the corporation have been distributed among its members in accordance with their statutory rights and interests.

(5) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit. [1957 c.247 §12]

744.640 Filing of articles of dissolution; issuance of certificate of dissolution. (1) Duplicate originals of the articles of dissolution shall be delivered to the State Insurance Commissioner, who shall deliver them to the Corporation Commissioner for examination. If the Corporation Commissioner finds that such articles of dissolution conform to law, he shall return them to the State Insurance Commissioner with his certificate to that effect. Thereupon, the State Insurance Commissioner shall:

(a) Indorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Issue a certificate of dissolution to which he shall affix the other duplicate original.

(2) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the State Insurance Commissioner, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers. [1957 c.247 §13]

744.650 to 744.980 [Reserved for expansion]

PENALTIES

744.990 Offenses and penalties. (1) Violation of the provisions of ORS 744.070 relating to amount of insurance is punishable, upon conviction, by a fine not exceeding $100.

(2) Any officer making a false oath relative to the certificate required by paragraph (d) of subsection (1) of ORS 744.400 shall be deemed guilty of perjury, and upon conviction thereof, punished as hereinafter provided.

(3) Every person who, upon oath or affirmation, legally administered to him, wilfully and corruptly makes false statements or reports, or testifies or affirms falsely to any material fact in any matter relating to a mutual fire insurance company wherein an oath or affirmation is required or authorized, shall be deemed guilty of perjury, and any person who makes any false entry or memorandum upon any of the books or papers of any mutual fire insurance company with intent to deceive shall, upon conviction thereof, be fined in any sum not exceeding $100.

(4) The officers of any mutual fire insurance company who knowingly and wilfully violate any of the provisions of the General Insurance Law shall, on conviction, be fined in any sum not exceeding $100.

(5) Any agent of a mutual fire insurance company found guilty of violating any of the provisions of the General Insurance Law shall be fined in any sum not exceeding $50 and his license shall be revoked.

(6) Any person who knowingly solicits or assists in procuring business for a mutual fire insurance company not authorized to transact business in this state shall, upon conviction, be punished by a fine of not more than $100.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel