Chapter 747

1955 REPLACEMENT PART

Surety Companies

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747.010 Prerequisites to transaction of business. No surety company shall directly or indirectly transact business in this state until it has complied with the requirements of every law of this state applicable to such company, including the following requirements:

(1) It must be authorized, under its charter and under the laws of the state or country where it is incorporated, to become surety upon a bond, undertaking, obligation, recognizance or guaranty.

(2) It must file with the insurance department a certified copy of its articles of incorporation and a written application for authority to do business under the General Insurance Law.

(3) It must, if it is not incorporated under the laws of this state, on or before the renewal or issuing of its license, appoint a resident general agent on whom legal service may be made. Such power of attorney shall be filed with the insurance department and shall stipulate and agree on the part of the company that any legal process against the company which is served on said attorney shall be of the same legal force and validity as if served on the company and that the authority shall continue in force so long as any liability remains outstanding in this state.

(4) A surety company incorporated under the laws of any state in the United States other than Oregon must show the commissioner that it has a combined paid-up capital and surplus of $500,000. A surety company incorporated under the laws of any country other than the United States must show the commissioner that it maintains a combined deposit capital and surplus in the United States over all liabilities therein for the benefit of all policyholders in the United States equal to $500,000. [Amended by 1955 c.466 §1]

747.020 [Repealed by 1955 c.466 §6]

747.030 Annual license fee of foreign company. (1) A surety company incorporated under the laws of any state in the United States other than Oregon, or under the laws of any country other than the United States, shall pay to the commissioner $100 annually in advance for a license to transact surety business in this state.

(2) If such surety company is engaged in any other business it shall pay fees in addition to the above license for the license or licenses required by law for the transaction of such other insurance business. [Amended by 1955 c.466 §2]

747.040 Deposit required of foreign company. (1) No foreign or alien insurance company transacting the business of fidelity and surety insurance shall be granted a certificate of authority or the renewal of its annual license to transact such insurance business in this state until it has deposited with the State Treasurer money or bonds of the United States or of this state, or interest-paying bonds of any other state of the United States, or the bonds of any county or municipality of this or any other state of the United States, to the market value of not less than $25,000.

(2) The bonds shall be acceptable in amount and character, to the commissioner and also shall qualify as security for deposits of postal savings funds. [Amended by 1955 c.466 §3]

747.050 Conditions on which deposit held; level to be maintained. (1) Money or bonds deposited under ORS 747.040 shall be held in trust for all holders within the state of the obligations of the insurance company which originated through the writing of either surety or fidelity contracts within the state. They shall remain with the treasurer in trust to answer any default of the company as surety upon any such obligation established by final judgment upon which execution may lawfully be issued against the company.

(2) Bonds may be accepted in registered form if they are registered in the name of "Treasurer of the State of Oregon in trust for the holders of the obligations of the ..... company, pursuant to Oregon Laws," or in similar form specifying also that such bonds are deposited under the requirements of ORS 736.530 and 747.040.

(3) The state is responsible for the safety of all deposits made under ORS 747.040.

(4) While solvent, the company at all times has the right to receive the interest, dividends and profits upon such securities, and from time to time to withdraw such securities or portions thereof, substituting therefor other qualifying securities of equally good character and value, to the satisfaction of the commissioner. The deposit shall be maintained at all times at $25,000 or more.

(5) No company shall be permitted to withdraw its deposit for a period of one year after discontinuing business within this state nor while any suit is pending or any judgment against the company in this state remains unpaid.

747.060 Payment of losses out of deposit. (1) If any company that has made a deposit under ORS 747.040 fails to pay any loss incurred by it in this state within 60 days after its liability has been by suit finally determined, upon satisfactory proof of such liability and of its nonpayment, the State Treasurer shall pay such loss out of the deposit made with him.

(2) No deposited securities shall be sold under any process against a company until after 40 days' notice to the company, specifying the date, place and manner of sale and the process under which and purpose for which it is to be made. The notice shall be accompanied by a copy of such process. The process shall consist of a certified copy of the judgment against the company and writ of execution issued thereon, with an affidavit of the judgment creditor or his attorney that the judgment has not been paid, superseded or stayed and that the time for appeal therefrom has expired.

(3) Payment out of its deposit shall not operate to release the company from payment of any balance which it still owes after such payment.

(4) If a company becomes insolvent or is dissolved, the money and proceeds of sales of bonds deposited under ORS 747.040 shall be distributed in the manner prescribed in ORS 736.540.

747.070 Revocation of authority of foreign company to do business. (1) If a company fails for a period of 40 days after notice by the commissioner, given by registered letter addressed to its home office, to replenish and maintain its deposit as required by ORS 747.050, the authority of the company to do business in this state shall be revoked by the commissioner.

(2) If a loss is paid out of a company's deposit under subsection (1) of ORS 747.060, the State Treasurer shall at once certify to the commissioner the fact of the company's default and the commissioner shall forthwith revoke the authority granted to the company and cancel its license to transact business in the state.

(3) Any company failing to comply with any provision of this chapter shall be disqualified from doing business in this state and the commissioner shall revoke its license.

747.080 Bonds, undertakings and other obligations required by law may be executed by surety company. (1) Whenever any bond, undertaking, recognizance, or other obligation is by law or the charter, ordinance, rules or regulations of any municipality, board, body, organization, court, judge or public officer required or permitted to be made, given, tendered or filed with surety or sureties, and whenever the performance of any act, duty or obligation, or the refraining from any act is or may hereafter be required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guaranty may be executed by a surety company holding a license from the commissioner to make such insurance.

(2) The execution by such a company of any such obligation is in all respects a full and complete compliance with every requirement that it be executed by one surety, or by one or more sureties, or that such sureties be residents or householders, or freeholders, or either or both, or possess any other qualification.

(3) A surety company may be required to justify as surety. It shall be sufficient justification for such surety company when examined as to its qualifications to exhibit the certificate of authority issued to it by the commissioner or a certified copy of the same.

747.090 Certain companies may bond public officers and agencies. The following may be accepted as sole surety on all bonds, undertakings, recognizances and obligations required by law, or by charter, ordinance, rule or regulation of any municipality, board, body, organization or public officer:

(1) Any surety company organized under the laws of this state having a combined paid-up capital and surplus of not less than $500,000, having its principal office within the state and organized either solely or among other things for the purpose of transacting business as surety on obligations of persons or corporations that shows the commissioner that all such capital is in its actual possession and unimpaired.

(2) Any foreign or alien surety company

licensed to do a surety business in the state. [Amended by 1955 c.466 §4]

747.100 Reimbursement of private persons required to give bond. (1) Any receiver, assignee, guardian, trustee, executor, administrator or other fiduciary, required by law or the order of any court or judge to give a bond or other obligation as such, may include as a part of the lawful expense of executing his trust, such reasonable sum paid a company for becoming his surety on such bond as may be allowed by the court in which, or judge before whom, he is required to account. Such sum shall not exceed one percent per annum of the amount of the bond.

(2) In all actions and proceedings a party entitled to recover disbursements therein shall be allowed and may tax and recover a sum paid a person or company for executing any bond. recognizance, undertaking, stipulation or other obligation therein. Such sum shall not exceed one percent of the amount of the bond or other obligation during each year the same was in force.

747.110 Reimbursement of public officials required to give bond. Any state, county or municipal officer or officer of any school district, public board or public commission within this state, or the deputy or deputies employed in the office of any such official, who is required by law, ordinance, regulation or public policy to give a bond for the faithful performance of his duties shall be allowed a reasonable sum paid a surety company for becoming surety on his bond. Such sum shall not exceed one-half of one percent per annum of the amount of the bond. Such premium shall be paid out of the proper state, county, municipal, district, board or commission funds.

747.120 Limitation on size of single risk. No surety company doing business in this state shall assume a liability on any one risk in an amount greater than 10 percent of its capital and surplus, as determined by the last annual statement filed by the company with the insurance commissioner, unless the same is reinsured in some other solvent company in such an amount as to reduce its liability on the risk to 10 percent of its capital and surplus. [Amended by 1955 c.466 §5]

747.130 Company may take measures to reduce risk of loss. (1) Any company engaged in the surety business may contract for and receive and hold on deposit and in trust property of any kind as collateral security on any contract of guaranty or suretyship executed by it. A company may manage, realize on and dispose of the property so received and held on deposit as may be agreed to between it and the person making the deposit.

(2) Any receiver, assignee, guardian, conservator, trustee, executor, administrator or other fiduciary or party from whom a contract of guaranty or suretyship is by law required or permitted may agree and arrange with the surety company for the deposit for safekeeping of any or all moneys, assets and other property for which he is or may be responsible in a bank, savings bank, safe deposit or trust company authorized by law to do business as such in such manner as to prevent the withdrawal or alienation of such money, assets or other property, or any part thereof, without the written consent of the surety company or an order of a court of competent jurisdiction or a judge thereof made on such notice to the surety company as the court or judge may direct.

(3) Generally, it shall be lawful for a surety company to enter into any contract of indemnity or security with any person if such contract is not otherwise prohibited by law or against public policy.

747.140 Release of surety on official bonds by action of obligee. (1) Any official whose duty it is to approve any bond or undertaking given in favor of the state or any county, city, school district, drainage or irrigation district, board or commission within the state may cancel the same by serving written notice of its election so to do upon the principal and surety or sureties on such bond or undertaking 10 days before it desires the cancelation of the obligation to take effect.

(2) The official at the time of serving such notice shall also file with the officer or official occupying the position of secretary or clerk of the state, county, city, school district, drainage or irrigation district, board or commission, as the case may be, at the regular place of business of such secretary or clerk, a certified copy of such notice. At the expiration of 10 days from the filing of such notice, the surety or sureties upon such bond or undertaking shall be discharged from further liability thereon.

747.150 Release of surety on bond of public official by action of surety. (1) The surety or sureties on the bond of any public official in the state shall be released from any future liability thereon upon giving notice of election to be released, and after the expiration of the time when the official position is declared vacated, as hereinafter provided.

(2) A surety desiring to be released from liability on the bond of any state officer may file with the Governor or Secretary of State 30 days before he desires the release to take effect, a notice in writing, duly subscribed by himself or someone in his behalf, setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof. A duplicate of such notice shall also be served personally on the officer unless he has left the state, in which case the same may be served by publication for 20 days in some newspaper printed at the seat of government, or if none is printed there, then in such newspaper as shall be designated by the Governor or Secretary of State.

(3) A surety desiring to be released from the official bond of any county officer may file and serve a similar notice. The notice, except when it concerns the county clerk personally, shall be filed with the county clerk. When the county clerk is personally concerned the notice shall be filed with the county treasurer.

(4) A surety desiring to be released from liability on the bond of any city officer may file and serve a similar notice with the city clerk or mayor.

(5) A surety desiring to be released from any other official bond or undertaking shall file and serve a similar notice with the officer, person or authority whose duty it is to approve such bonds.

(6) A notice which under this section may be served by publication may be published in a newspaper in the same, or if no newspaper is published therein, then in an adjoining or other county, without any order from any court or other authority. In all cases for which publication is provided, a printed or written notice posted in at least three conspicuous places in the county for the time specified shall be deemed legal notice thereof.

747.160 Release of surety on depository bond; provision required in such bonds. (1) A surety wishing to terminate the liability undertaken upon any bank depository bond or undertaking given to guarantee the safekeeping and return of any public moneys deposited in the bank may do so by giving notice of election so to do to the principal and to the official whose duty it is to approve such bond or undertaking. A surety is released from any future liability upon any such depository bond or undertaking at the expiration of 30 days after the giving of such notice.

(2) Where the form of depository bond or undertaking given to protect any public moneys is prescribed by statute or regulation the right to cancel such bond or undertaking shall be expressed in such bonds or undertakings by adding a paragraph to the prescribed form in substantially the following form: "The above-named surety shall have the right to terminate any future liability hereunder by serving written notice of election so to do upon the principal and (here insert the official title of the state or county treasurer, or other officials whose duty it is to approve such bond), and thereupon the said surety shall be discharged from any future liability hereunder for any default of the said principal occurring after the expiration of 30 days from and after the service of such notice." The purpose of such cancelation privilege is to afford the surety a means of obtaining definite release from its liability.

(3) Any official or officials whose duty it is to approve any bank depository bond given to protect the deposits of any official moneys, on his own motion or upon written request from any bank in whose behalf such a bond is issued, may terminate the future liability on the bond by giving notice to the surety of election so to do. Thereupon the surety shall be discharged from any future liability upon any such depository bond for any default of the principal occurring after the expiration of 30 days from and after the service of such notice.

747.170 Fixing amount of new bond after release from original. Whenever a notice is filed, or filed and served, as provided in ORS 747.140 to 747.160, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking shall be filed. If no such order is made the new or additional bond or un-

dertaking shall be executed for the same amount as the original.

747.180 Company may not deny power to execute bond; construction of contract. A surety company executing any bond or undertaking under the provisions of this chapter is estopped in any proceeding, to deny its corporate power to execute such bond or undertaking or to assume such liability, and all such bonds or undertakings shall in any action pleading such defenses be construed by the rules applicable to contracts of insurance and indemnity.

747.190 Bond construed as including omitted statutory provisions. Whenever any person is required by the provisions of any statute to give a bond to the state or any of its political subdivisions and the statute requiring such bond requires to be included therein any specific provisions, the bond shall have the same legal effect as though such provisions were included therein, although such provisions were omitted.

747.200 Representing unlicensed company prohibited. No person shall transact or attempt to transact any business within this state on behalf of any surety company not licensed to transact business in this state or whose license has been revoked. No person shall represent such a surety company in any way, or receive or transmit applications for suretyship or receive for delivery bonds founded on applications forwarded from this state, or otherwise, or in any way procure suretyship to be effected by any company not so authorized.

747.990 Penalties. Violation of ORS 747.200 is punishable, upon conviction, by a fine not exceeding $100 for each offense.

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 October 15, 1955.

Sam R. Haley
Legislative Counsel