Chapter 737

1961 REPLACEMENT PART

Insurance Rates and Rating Organizations

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DEFINITIONS; PURPOSE OF CHAPTER; SELECTION BY INSURER OF APPLICABLE RATE LAW

737.005 Definitions. As used in this chapter, "commissioner" means the State Insurance Commissioner.

737.010 Purpose of chapter; construction. (1) The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall be just, reasonable and not unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this chapter.

(2) This chapter is not intended:

(a) To prohibit or discourage reasonable competition.

(b) To prohibit or encourage, except to the extent necessary to accomplish the purpose stated in subsection (1) of this section, uniformity in insurance rates, rating systems, rating plans or practices.

(3) This chapter shall be liberally interpreted to carry into effect the provisions of this section.

737.015 Insurers to designate which rate law is applicable to certain kinds of insurance. If any kind of insurance, subdivision or combination thereof, or type of coverage, subject to any of the provisions of ORS 737.105 to 737.185 is also subject to regulation by any of the provisions of ORS 737.305 to 737.390, an insurer to which both such rate regulatory laws are otherwise applicable shall file with the commissioner a designation as to which rate regulatory law shall be applicable to it with respect to such kind of insurance, subdivision or combination thereof, or type of coverage.

737.020 to 737.100 [Reserved for expansion]

CASUALTY INSURANCE RATES AND RATING ORGANIZATIONS

737.105 Types of insurance to which ORS 737.110 to 737.185 apply. ORS 737.110 to 737.185 and 737.505 to 737.560 apply, on risks or operations in this state, to all forms of insurance enumerated in paragraph (b) of subsection (1) of ORS 736 015 (1959 Replacement Part), ORS 736 060, 736.065 and 736 310, except

(1) Fire and marine insurance, but not excepting such insurance on automobiles and against liability of the owner or user for injury to property caused by his automobile.

(2) Life insurance and disability insurance.

(3) Reinsurance other than joint reinsurance to the extent stated in ORS 737.185.

(4) Insurance against loss of or damage to, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of any aircraft.

[Amended by 1961 c 562 §7]

737.110 Method of rate making; factors considered. (1) All rates shall be made in accordance with this section, but uniformity among insurers in any matters within the scope of this section is neither required nor prohibited, except to the extent necessary to meet the requirements of subsection (5) of this section.

(2) Due consideration shall be given to retrospective and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and to contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(5) Rates shall be just, reasonable and not unfairly discriminatory.

737.115 Filing of rating schedules and data required; contents. (1) Every insurer,

including interinsurance or reciprocal insurance exchanges, shall file with the commissioner in accordance with ORS 736.090, every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use.

(2) Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated.

(3) When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, he shall require such insurer to furnish the information upon which it supports such filing. The information furnished in support of a filing may include the experience or judgment of the insurer or rating organization making the filing, its interpretation of any statistical data it relies upon, the experience of other insurers or rating organizations or any other relevant factors.

(4) A filing shall be open to public inspection after the filing becomes effective.

(5) An insurer may satisfy its obligation to make such filings by becoming a member of or a subscriber to a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf.

737.120 Review of filings; effective date of filings. (1) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of ORS 737.105 to 737.185.

(2) Subject to the exception in subsection (3) of this section, each filing shall become effective after a waiting period of 15 days from the date the filing is received by the commissioner or from the date of his receipt of the information furnished in support of a filing if such supporting information is required by him as provided in subsection (3) of ORS 737.115. The waiting period may be extended by the commissioner for an additional period not to exceed 15 days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization the commissioner may authorize a filing, which he has reviewed, to become effective before the expiration of the waiting period. A filing shall be deemed to meet the requirements of ORS 737.105 to 737.185 so long as the filing remains in effect.

(3) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of ORS 737.105 to 737.185 so long thereafter as the filing remains in effect.

737.125 Suspension or modification of filing requirements; excess rates for specific risks. (1) Under such rules and regulations as he adopts, the commissioner, by written order, may suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, for which the rates cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he deems advisable to ascertain whether any rates affected by such order meet the standards set forth in ORS 737.110 so as not to be unjust, unreasonable or unfairly discriminatory.

(2) Upon the written application of the insured, stating the reasons therefor, filed with the commissioner and approved by him, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

737.130 Contracts to comply with effective filings. (1) No insurer licensed to transact the business of making insurance as an insurer in this state shall make or issue a contract or policy on risks or operations in this state except in accordance with filings which are in effect for the insurer as provided in ORS 737.105 to 737.185.

(2) Filings made prior to July 5, 1947, shall be deemed to comply with the provisions of ORS 737.105 to 737.185 if made in accordance with the provisions of ORS 736.090.

737.135 Commissioner may initiate proceedings to determine lawfulness of filings; hearing and order. (1) If at any time after a filing has been made, either within the waiting period or thereafter, the commis-

sioner is of the opinion that a filing does not meet the requirements of ORS 737.105 to 737.185, he shall give to every insurer or rating organization which made such filing written notice of a hearing to be held at a place designated by him, the notice to be given not less than 10 days prior to the time set for the hearing and to specify the matters to be considered at such hearing. The insurer or rating organization may waive the right to such hearing by notice in writing to the commissioner.

(2) If, after such hearing or after receipt of notice of waiver of such hearing, the commissioner finds that the filing meets the requirements of ORS 737.105 to 737.185, he shall issue an order approving such filing. If he finds that the filing does not meet those requirements, he shall issue an order specifying in what respects he finds that such filing fails to meet those requirements and stating that the filing shall not become effective or, if the filing is then in effect, stating when, within a reasonable period thereafter, it shall be deemed no longer effective. The latter order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. Copies of the order approving or disapproving the filing shall be sent to every such insurer and rating organization.

737.140 Individuals may initiate proceedings to determine lawfulness of filings; hearing and order. (1) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon; however, the insurer or rating organization which made the filing may not proceed under this section. The application shall specify the grounds to be relied upon by the applicant.

(2) If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall hold a hearing, within 30 days after receipt of such application, at a place designated by him and upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

(3) If, after such hearing, the commissioner finds that the filing does not meet the requirements of ORS 737.105 to 737.185, he shall issue an order specifying in what respects he finds that such filing fails to meet those requirements and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

737.145 Filings in compliance with law, when not to be disapproved. No manual of classifications, rules, rating plans, or any modifications of any of the foregoing, which establish standards for measuring variations in hazards or expense provisions, or both, and which have been filed pursuant to ORS 737.115 and 737.120, shall be held not to meet the requirements of ORS 737.105 to 737.185, if the rates thereby produced meet those requirements.

737.150 Application for license by rating organization. Any person, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business.

(2) A list of its members and subscribers.

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(4) A statement of its qualifications as a rating organization.

737.155 Issuance of license; fees; revocation and suspension; notice of organizational changes. (1) If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Each application

shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing with him.

(2) Licenses issued pursuant to this section shall remain in effect unless suspended or revoked by the commissioner. The license fee shall be $5 per year or part thereof, payable on or before April 1. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this section.

(3) Every rating organization shall notify the commissioner promptly of every change regarding matters listed in subsections (1), (2) and (3) of ORS 737.150.

737.160 Rating organization to accept insurers as subscribers; rules of organization to be reasonable; review of applications for subscribership and of reasonableness of rules. (1) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance or subdivision thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers.

(2) Each rating organization shall furnish its rating services without discrimination to its members and subscribers.

(3) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, at the request of any subscriber or any such insurer, shall be reviewed by the commissioner at a hearing held at a place designated by him upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall reduce his findings to writing and furnish a copy thereof to the insurer and to the rating organization.

(4) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policy holders, members or subscribers.

737.165 Cooperative activities among rating organizations and insurers. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of ORS 737.105 to 737.185 and 737.505 to 737.560 is hereby authorized, provided the filings resulting from such cooperation are subject to those sections which are applicable to filings generally.

(2) The commissioner may review such cooperative activities and practices. If, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with ORS 737.105 to 737.185 or 737.505 to 737.560, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with those sections and requiring the discontinuance of such activity or practice.

737.170 Insurer's compliance with filings required; procedure for obtaining approval of deviations. (1) Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization. However, any insurer may make written application to the commissioner for permission to file a uniform percentage decrease or increase to be applied to the premiums produced by the rating system so filed for a kind of insurance, or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance comprised of a group of manual classifications which is treated as a separate unit for rate making purposes, or for which separate expense provisions are included in the filings of the rating organizations. Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data

shall be sent simultaneously to such rating organization.

(2) The commissioner shall set a time and place for a hearing at which the insurer and rating organization may be heard and shall give them not less than 10 days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing, upon the consent of the applicant, he may waive such hearing.

(3) The commissioner shall issue an order permitting the modification for such insurer to be filed if he finds it to be justified and it thereupon shall become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be unjust, unreasonable or unfairly discriminatory.

(4) Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission unless terminated sooner with the approval of the commissioner.

737.175 Appeal to commissioner from action of rating organization approving or rejecting proposed change to filings. (1) Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of the rating organization in approving or rejecting any proposed change in or addition to the filings of the rating organization.

(2) The commissioner, after a hearing held at a place designated by him upon not less than 10 days' written notice to the appellant and to such rating organization:

(a) Shall issue an order approving the action or decision of the rating organization or directing it to give further consideration to such proposal; or

(b) If such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, in the event he finds that such action or decision was unreasonable, he may issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(3) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in subsection (3) of ORS 737.110, from the system of expense provisions included in a filing made by the rating organization, the commissioner, if he grants the appeal, shall order the rating organization to make the requested filing for use by the appellant.

(4) In deciding such appeal the commissioner shall apply the standards set forth in ORS 737.110.

737.180 Agreements among insurers for assignment of risks; rate modifications. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. Such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner.

737.185 Regulation of joint underwriting and joint reinsurance; restraining unfair and discriminatory practices. (1) Every group, association or other organization of insurers which engages in joint underwriting shall be subject to ORS 737.105 to 737.185 and 737.505 to 737.560.

(2) Every such organization of insurers which engages in joint reinsurance shall be subject to ORS 737.515 and 737.540 to 737.550.

(3) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization engaging in joint underwriting or joint reinsurance is unfair, unfairly discriminatory or unreasonable or otherwise inconsistent with the provisions of ORS 737.105 to 737.185 or 737.505 to 737.560, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with those provisions and requiring the discontinuance of such activity or practice

737.190 to 737.300 [Reserved for expansion]

FIRE AND MARINE INSURANCE RATES AND RATING ORGANIZATIONS

737.305 Types of insurance to which ORS 737.310 to 737.390 apply. (1) ORS 737.310 to 737.390 and 737.505 to 737.560

apply to fire, marine and inland marine insurance, on risks located in this state. Inland marine insurance includes insurance defined as inland marine insurance:

(a) By statute or by interpretation thereof;

(b) By ruling of the commissioner, if not defined by statute or by interpretation thereof; or

(c) By general custom of the business.

(2) ORS 737.310 to 737.390 and 737.505 to 737.560 do not apply to:

(a) Reinsurance, other than joint reinsurance to the extent stated in ORS 737.390.

(b) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

(c) Insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft.

737.310 Method of rate making; factors considered. (1) Rates shall be made in accordance with this section, but uniformity among insurers in any matters within the scope of this section is neither required nor prohibited, except to the extent necessary to meet the requirements of subsection (3) of this section.

(2) Manual, minimum, class rates, rating schedules or rating plans shall be made and adopted, except in the case of specific inland marine rates on risks specially rated.

(3) Rates shall be just, reasonable and not unfairly discriminatory.

(4) Due consideration shall be given to retrospective and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and to contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to retrospective and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(5) In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

(6) Rates made in accordance with this section may be used subject to the provisions of ORS 737.310 to 737.390 and 737.505 to 737.560.

737.315 Filing of rating schedules and data required; contents. (1) Every insurer, including interinsurance or reciprocal insurance exchanges, shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use.

(2) Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated.

(3) When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, he shall require such insurer to furnish the information upon which it supports such filing. The information furnished in support of a filing may include the experience or judgment of the insurer or rating organization making the filing, its interpretation of any statistical data it relies upon, the experience of other insurers or rating organizations or any other relevant factors.

(4) A filing shall be open to public inspection after the filing becomes effective.

(5) Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(6) An insurer may satisfy its obligation to make such filings by becoming a member of or a subscriber to a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf. Such insurer may so adopt the filings of a rating organization on part of the classes of risks insured by it and may make its own filings as to other classes which shall be uniform throughout the territorial classification.

737.320 Review of filings; effective date of filings. (1) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of ORS 737.305 to 737.390.

(2) Subject to the exception in subsection (3) of this section, each filing shall become effective after a waiting period of 15 days from the date the filing is received by the commissioner or from the date of his receipt of the information furnished in support of a filing if such supporting information is required by him as provided in subsection (3) of ORS 737.315. The waiting period may be extended by the commissioner for an additional period not to exceed 15 days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing, which he has reviewed, to become effective before the expiration of the waiting period. A filing shall be deemed to meet the requirements of ORS 737.305 to 737.390 so long as the filing remains in effect.

(3) Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of ORS 737.305 to 737.390 so long thereafter as the filing remains in effect.

737.325 Suspension or modification of filing requirement; excess rates for specific risks. (1) Under such rules and regulations as he adopts, the commissioner, by written order, may suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, for which the rates cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he deems advisable to ascertain whether any rates affected by such order meet the standards set forth so as not to be unjust, unreasonable or unfairly discriminatory.

(2) Upon the written application of the insured, stating the reasons therefor, filed with the commissioner and approved by him, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

737.330 Contracts to comply with effective filings; exception. (1) No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for the insurer as provided in ORS 737.305 to 737.390.

(2) However, this section does not apply to contracts or policies for inland marine risks as to which filings are not required.

(3) Filings made prior to July 5, 1947, shall be deemed to comply with the provisions of ORS 737.305 to 737.390 if made in accordance with the provisions of ORS 736.090.

737.335 Commissioner may initiate proceedings to determine lawfulness of filings; hearing and order. (1) If at any time after a filing has been made, either within the waiting period or thereafter, the commissioner is of the opinion that a filing does not meet the requirements of ORS 737.305 to 737.390, he shall give to every insurer or rating organization which made such filing, written notice of a hearing to be held at a place designated by him, the notice to be given not less than 10 days prior to the time set for the hearing and to specify the matters to be considered at such hearing. The insurer or rating organization may waive the right to such hearing by notice in writing to the commissioner.

(2) If, after such hearing or after receipt of notice of waiver of such hearing, the commissioner finds that the filing meets the requirements of ORS 737.305 to 737.390, he shall issue an order approving such filing. If he finds that the filing does not meet those requirements, he shall issue an order specifying in what respects he finds that such filing fails to meet those requirements and stating that the filing shall not become effective or, if the filing is then in effect, stating when, within a reasonable period thereafter, it shall be deemed no longer effective. The latter order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. Copies of the order approving or disapproving the filing shall be sent to every such insurer and rating organization.

737.340 Individuals may initiate proceedings to determine lawfulness of filings; hearing and order. (1) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon; however, the insurer or rating organization which made the filing may not proceed under this section. The application

shall specify the grounds to be relied upon by the applicant.

(2) If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall hold a hearing, within 30 days after receipt of such application, at a place designated by him and upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

(3) If, after such hearing, the commissioner finds that the filing does not meet the requirements of ORS 737.305 to 737.390, he shall issue an order specifying in what respects he finds that such filing fails to meet those requirements and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

737.345 Filings in compliance with law, when not to be disapproved. No manual, minimum, class rate, rating schedule, rating plan, rating rule, rating system, plan of operation or any modification of any of the foregoing, which has been filed pursuant to ORS 737 315 and 737.320, shall be held not to meet the requirements of ORS 737.305 to 737.390, if the rates thereby produced meet those requirements

737.350 Application for license by rating organization. Any person, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business.

(2) A list of its members and subscribers.

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(4) A statement of its qualifications as a rating organization. This statement shall be on forms prescribed and furnished by the commissioner and, in the case of a fire insurance rating organization, shall include a showing as to its facilities for inspecting and surveying the various municipalities and fire risks in this state and for inspecting and surveying in this state the facilities for the preventing, confining and extinguishing of fires and such other information as the commissioner may require.

737.355 Issuance of license; fees; revocation and suspension; notice of organizational changes. (1) If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance, or subdivision or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization. Each application shall be granted or denied in whole or in part by the commissioner within 60 days of the date of its filing with him. Other than the payment of the license fee no further qualification for a license shall be required of any rating organization which on July 5, 1947, was lawfully organized and maintained in this state

(2) Licenses issued pursuant to this section shall remain in effect unless suspended or revoked by the commissioner. The license fee shall be $5 per year or part thereof, payable on or before April 1. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this section.

(3) Every rating organization shall notify the commissioner promptly of every change regarding matters listed in subsections (1), (2) and (3) of ORS 737.350.

737.360 Rating organization to accept insurers as subscribers; rules of organization to be reasonable; review of applications for subscribership and of reasonableness of rules. (1) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organiza-

tion shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers.

(2) Each rating organization shall furnish its rating services without discrimination to its members and subscribers. Any rating organization may subscribe to or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

(3) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, at the request of any subscriber or any such insurer, shall be reviewed by the commissioner at a hearing held at a place designated by the commissioner and upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall reduce his findings to writing and furnish a copy thereof to the insurer and to the rating organization.

(4) No rating organization shall adopt any rule, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

737.365 Cooperative activities among rating organizations and insurers. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of ORS 737.305 to 737.390 and 737.505 to 737.560 hereby is authorized, provided the filings resulting from such cooperation are subject to and consistent with those sections which are applicable to filings generally.

(2) The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with ORS 737.305 to 737.390 and 737.505 to 737.560, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with those sections and requiring the discontinuance of such activity or practice.

737.370 Examination of reports and data, submitted to rating organization by insurers, for evidence of rate discrimination. (1) Unless previously relieved therefrom by written order of the commissioner, every rating organization shall provide for the examination of policies, daily reports, binders, renewal certificates, indorsements or other evidences of insurance, or the cancelation thereof, and may make reasonable rules governing their submission.

(2) All applications for insurance and daily reports of policies issued by any fire insurer on risks in this state covered by filings of a rating organization of which such insurer is a member or subscriber for such filings and all indorsements or changes made on or in such policies, and, in case of cancelation of such policies, the canceled policies or reports showing the return premium allowed shall be submitted to such rating organization for the purpose of determining whether there are any errors, in the form of policy or rate of premium or amount of premium repaid or allowed, such as to constitute a discrimination in rate or a failure to apply correctly the schedules of such rating organization on file with the commissioner. If any such error is found, the rating organization shall notify the company and the agent who submitted the application, report or other paper, stating in the notice the nature of the error. Upon receiving such notice the company or agent shall correct the error and submit to the rating organization a copy of the corrected application, report or other paper. If such correction is not so made within a reasonable time the rating organization shall report to the commissioner the error and the

failure to correct it and the names of the company and agent. Every application, daily report or other paper, when found to be correct, shall be stamped with the approval of the rating organization and returned to the company or agent which submitted it.

737.375 Insurers making their own filings to keep records for purpose of determining compliance with filings; inspection by commissioner; information confidential. (1) Every insurer which makes its own filings, as provided in ORS 737.315, shall keep a complete record of all applications, daily reports, indorsements, changes and cancelations of policies received by it pertaining to risks to which such filings are applicable, showing the same to have been written and made in conformity with its filings with the commissioner and promptly shall notify its agents or other representatives of any errors therein and shall report to the commissioner any failure upon the part of such agents or other representatives to make corrections in the same manner as is required of a rating organization under ORS 737.370.

(2) Such record of the business of an insurer shall at all times be open to inspection by the commissioner, his deputy or examiner. All information so submitted for examination shall be confidential.

737.380 Insurer's compliance with filings required; procedure for obtaining approval of deviations. (1) Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization. However, any insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance or class of risk within a kind of insurance or combination thereof. Such application shall specify the basis for the modification, and a copy thereof shall be sent simultaneously to such rating organization.

(2) The commissioner shall set a time and place for a hearing at which the insurer and rating organization may be heard and shall give them not less than 10 days' written notice thereof. In the event the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing.

(3) In considering the application for permission to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making listed in ORS 737.310.

(4) The commissioner shall issue an order permitting the deviation of such insurer to be filed, if he finds it to be justified, and such insurer shall make its own filings, as provided in ORS 737.315, as to such classes of insurance as are covered in such order. Thereupon such filing shall become effective. The commissioner shall issue an order denying such application if he finds that the resulting premiums would be unjust, unreasonable or unfairly discriminatory or otherwise inconsistent with ORS 737.310.

(5) Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission unless terminated sooner with the approval of the commissioner.

737.385 Appeal to commissioner from action of rating organization approving or rejecting proposed change to filings. (1) Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of the rating organization in approving or rejecting any proposed change in or addition to the filings of the rating organization.

(2) The commissioner, after a hearing held at a place designated by him and upon not less than 10 days' written notice to the appellant and to such rating organization:

(a) Shall issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal; or

(b) If such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings and in the event he finds that such action or decision was unreasonable, he may issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

737.390 Regulation of joint underwriting and joint reinsurance; restraining unfair and discriminatory practices. (1) Every group, association or other organization of insurers which engages in joint underwrit-

ing shall be subject to ORS 737.305 to 737.390 and 737.505 to 737.560.

(2) Every such organization of insurers which engages in joint reinsurance shall be subject to ORS 737.515 and 737.540 to 737.555.

(3) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair, unfairly discriminatory or unreasonable or otherwise inconsistent with the provisions of ORS 737.305 to 737.390 and 737.505 to 737.560, he may issue a written order specifying in what respect such activity or practice is unfair or unreasonable or otherwise inconsistent with those provisions and requiring the discontinuance of such activity or practice.

737.395 to 737.500 [Reserved for expansion]

GENERAL REGULATIONS AND SUPERVISION OF ALL RATING AND ADVISORY ORGANIZATIONS; ENFORCEMENT OF RATE REGULATORY LAWS AND PENALTIES

737.505 Insured entitled to rate information; remedies of aggrieved persons. (1) Every rating organization and every insurer which makes its own rates, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, shall furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(2) Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected.

(3) Any party affected by the action of such rating organization or such insurer on such request, within 30 days after written notice of such action, may appeal to the commissioner, who, after a hearing held at a place designated by him upon not less than 10 days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

737.510 Advisory organizations; registration; jurisdiction of commissioner to restrict unfair practices. (1) Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

(2) Every advisory organization may file with the commissioner:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities.

(b) A list of its members.

(c) The name and address of a resident of this state upon whom notices may be served.

(d) An agreement that the commissioner may examine such advisory organization in accordance with ORS 737.515.

(3) Any insurer which makes its own filings or any rating organization may support its filings by statistics or adopt rate-making recommendations furnished to it by an advisory organization which has complied with this section. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with this chapter, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with this chapter. If the act or practice thus specified is not modified to comply with such order, the commissioner may issue an order requiring any insurer which makes its own filings or any rating organization to discontinue the use of the statistics or rate-making recommendations furnished to it by such advisory organization.

737.512 Fictitious grouping for rate purposes prohibited. (1) As used in this section, unless the context requires otherwise, "fictitious grouping" means a grouping by way of membership, license, franchise, con-

tract, agreement or any method other than common ownership, or use and control.

(2) No insurer, whether or not licensed to transact the business of making insurance as an insurer in this state, shall:

(a) Make available, through any rating plan or form, fire, inland marine, casualty or surety insurance, or any combination thereof, at a preferred rate or premium to any person based upon a fictitious grouping of that person.

(b) Write or deliver a form, plan or policy of insurance covering a grouping or combination of persons or risks, any of which are within this state, at a preferred rate or form other than that offered to the public generally and persons not in the group, unless the form, plan or policy and the rates or premiums to be charged therefor have been approved by the commissioner. The commissioner shall not approve any form, plan or policy, or the rates therefor, that would constitute a violation of paragraph (a) of this subsection.

(3) Nothing in this section applies to life, accident, health and hospitalization policies or annuity contracts.

[1959 c 324 §2]

737.515 Examination of rating, advisory and other organizations; payment of costs; acceptance of report from another state. (1) The commissioner shall make or cause to be made an examination:

(a) At least once in five years, of each rating organization licensed in this state.

(b) As often as he deems it expedient, of each advisory organization complying with and referred to in ORS 737.510 and of each organization referred to in ORS 737.185 and 737.390.

The reasonable costs of any such examination shall be paid by the organization examined, upon presentation to it of a detailed account of such costs. The officers, manager, agents and employes of any such organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its methods of operation.

(2) In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

(3) All such examinations shall be conducted as provided in ORS 736.545 to 736.570.

737.520 Procedure for formulating and making available for use rules and statistical plans of loss and expense experience; assisting organizations. (1) The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least biennially in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in ORS 737.110 and 737.310. Such rules and plans also may provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis which is inconsistent with the rating system filed by it.

(2) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof. Such compilations shall be made available to insurers and rating organizations, subject to reasonable procedures and allocation of costs thereof, under rules promulgated by the commissioner.

737.525 Interchange of data; promoting uniformity of rating laws. (1) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

(2) In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult and cooperate with them with respect to rate making and the application of rating systems.

737.530 Rules and regulations. The commissioner may make reasonable rules and regulations to effect the purposes of this chapter.

737.535 Withholding and giving false information prohibited. No person or organization shall wilfully withhold information from or knowingly give false or misleading information to the commissioner, to any statistical agency designated by the commissioner, to any rating organization, or to any insurer, which will affect the rates or premiums chargeable under this chapter.

737.540 Civil penalties. (1) If the commissioner finds that any person or organization has violated any provision of this chapter, such person or organization shall be liable to this state for a penalty of not more than $50 for each violation; but if the commissioner finds such violation to be wilful, such person or organization shall be liable to this state for a penalty of not more than $500 for each violation.

(2) Service of process in any action to recover such penalty shall be made according to the requirement of law relating to actions brought against insurance companies by policyholders thereof.

(3) The penalties provided in subsection (1) of this section are in addition to any other penalty provided by law.

737.545 Procedure for suspension of license. The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective, and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

737.550 Necessity for hearing before ordering penalty or suspension of license. No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held at a place designated by him upon not less than 10 days' written notice to such person or organization specifying the alleged violation.

737.555 Procedure for judicial review of commissioner's orders. (1) Any insurer, rating organization or other party in interest may appeal from any order of the commissioner to the Circuit Court of Marion County within 20 days after service of the order by serving upon the commissioner and filing with the clerk of said court a notice of appeal, together with:

(a) A copy of the order appealed from.

(b) A copy of the notice of hearing.

(c) An undertaking of $500 conditioned to pay all costs that may be awarded against the appellant upon the appeal.

(2) Upon the motion of the insurer, rating organization or other party in interest, the court shall determine whether the filing of the appeal shall operate as a stay of the order of the commissioner. The appeal shall be heard and tried de novo in the manner provided by law for the trial of suits in equity. The notice of hearing shall be deemed a complaint and shall be deemed denied and no other pleading shall be required. Such appeal shall have precedence over other civil causes and shall be heard and determined promptly.

(3) Either the commissioner or any insurer, rating organization or other party in interest affected by the order or decree of the circuit court may appeal therefrom to the Supreme Court in the manner provided for appeals from decrees in suits in equity.

737.560 Rating organization membership not required by chapter. Nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

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 1, 1961

Sam R. Haley
Legislative Counsel