

Chapter 738

1965 REPLACEMENT PART

Incorporation, Merger and Management of Domestic Insurance Companies

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DEFINITIONS

738.005 Definitions for ORS 738.235 to 738.395. Unless otherwise expressly defined, limited, provided or required by context, certain terms have meanings for purposes of ORS 738.235 to 738.395 as follows:

(1) "Funds" means assets of an insurer invested or available for investment. Excluded are amounts deemed necessary to satisfy normal current operating requirements. Normal current operating requirements include, but not by way of limitation, acquisition of personal property, including mechanical and electrical computers and equipment, considered necessary or convenient in the operation of the insurer's business.

(2) "Obligation" means a bond, debenture, note, warrant, certificate or other evidence of indebtedness.

(3) "Corporation" means a corporation, joint stock association or business trust organized and existing under the laws of a sovereign.

(4) "Sovereign" means the United States, or a state or territory thereof, including the District of Columbia, or the Dominion of Canada, or a province thereof.

(5) "Political subdivision" means an incorporated county, city, town, village, municipality, or subdivision thereof, or a public corporation, district, agency, commission, authority or instrumentality, or subdivision thereof.

(6) "Insurer" means a stock or mutual insurance corporation organized and existing under the laws of Oregon.

(7) "Stock insurer" means an insurer having a stated or determined capital divided into shares, the holders of which possess all or part of the proprietary interests.

(8) "Mutual insurer" means an insurer in which the policyholders possess all of the proprietary interests.

(9) "Amplly secured" means an obligation which at the date of acquisition is not in default and as to which no default is imminent, and which satisfies the requirements of one or more of the following:

(a) An obligation of a sovereign or political subdivision thereof, if it is issued, assumed or guaranteed by the governmental unit involved and is payable either from:

(A) Taxes levied or which may be levied by said governmental unit.

(B) Adequate special revenues pledged or otherwise appropriated or required by law

to be used for the purpose of such payment, provided the law authorizing the issuance of the obligation requires that adequate rates be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating expenses, maintenance charges, and the principal, interest and dividends on the obligation. An obligation payable solely out of special assessments on real property benefited by local improvements shall not be considered amplly secured unless the total amount so payable is less than 50 percent of the market value of the real property (including any improvements thereon) and constitutes a lien on said property.

(b) An obligation issued, assumed or guaranteed by a corporation, if at the date of acquisition the corporation is solvent, has not been in default on any of its obligations during the preceding three years, and the obligation is secured by the pledge of property the market value of which exceeds the amount of the obligation by 25 percent or more. Obligations in the form of notes secured by mortgages or deeds of trust on improved real property or leasehold interests governed by ORS 738.238 and 738.255 are not included within the provisions of this paragraph.

(c) An obligation found to be amplly secured under regulations duly promulgated by the commissioner. In making such regulations the commissioner shall give consideration to regulations pertaining to amplly secured obligations issued from time to time by the National Association of Insurance Commissioners, and shall consider the financial condition of the issuing, assuming or guaranteeing corporation.

(10) "Unencumbered" means the nonexistence of any lien, burden or charge having priority over the lien securing the insurer's investment. The following shall not be considered encumbrances on real property or leasehold interests therein:

(a) Reservations of mineral, oil or timber rights, easements, rights of way, sewer rights or rights of walls.

(b) Liens for taxes or assessments not delinquent.

(c) Building restrictions or other restrictive covenants common to the community.

(d) Where the loan is secured by a lien upon real property, a lease under which rents or profits are reserved to the owner if in any event the security for the loan would

be a first lien upon the real property except for such lease.

(e) A leasehold interest in or prior lien on the real property where the loan is secured by a lien on the leasehold, provided the security for the loan is a first lien upon the leasehold and there exists no provision preventing the insurer from continuing the lease in force for the duration of the lease or no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed so long as the lessee's obligations under the lease are discharged.

[1959 c.286 §3]

INCORPORATION

738.010 Incorporation procedure. (1) Any 10 or more persons, a majority of whom are residents of this state, desiring to become incorporated as an insurance corporation, may make, sign and acknowledge, before an officer authorized to take acknowledgements of deeds, articles of incorporation, in which shall be stated:

(a) The proposed corporate name, which shall not so nearly resemble the name of an existing corporation as to mislead the public or cause confusion.

(b) The place where its principal office will be located.

(c) The purpose, which shall be restricted to the class or classes of insurance to be undertaken, and the powers necessary and incidental to carrying out such purpose.

(d) The mode and manner in which the corporate powers are to be exercised.

(e) The number, terms of office and manner of electing the directors.

(f) The provisions for meetings and votes of stockholders and members. A stock company shall provide that each stockholder shall have one vote for each share of stock held by him. A company without capital stock shall provide that every policyholder shall be a member and entitled to a vote. A stock company may provide for votes by policyholders, but in such case each policyholder shall have the same voting power as every other policyholder.

(g) The amount of its capital, if any, the number of shares and the par value of each share.

(h) Such other particulars as may be necessary to manifest and explain the objects and purposes of the company.

(2) The incorporators shall file the articles with the insurance commissioner and

publish, in a newspaper of general circulation in the state, notice of such filing and of the intention to form a corporation.

(3) They shall then file with the Insurance Commissioner:

(a) A copy of such notice, verified by the oath of the publisher, or his agent.

(b) Copies of proposed bylaws.

(c) Forms of subscription for capital stock.

(d) Forms of proposed application for membership and for insurance.

(e) All proposed forms of insurance policies, literature and advertisements.

(f) A bond payable to the Insurance Commissioner and his successors, as trustee, in the sum of \$10,000, with sureties, and conditioned upon the faithful accounting to the corporation on completion of its organization and the receipt of its license from the Insurance Commissioner, or to the stockholders, members, applicants for policies and creditors, or to the trustee, receiver or assignee of the corporation, duly appointed in any proceeding in any court or department of competent jurisdiction in the state, in accordance with their respective rights in case the organization of the corporation is not completed and license is not procured from the Insurance Commissioner.

(g) An application to have securities registered by qualification under ORS 59.170. [Amended by 1953 c.693 §2]

738.020 Approval of articles and bond; certificate of registration of securities; permit to solicit subscriptions and complete organization. (1) The Insurance Commissioner shall submit the proposed articles and other papers filed with him to the Corporation Commissioner. The Corporation Commissioner shall examine these and, if he finds them in accordance with the law, shall so certify and return them, except the application to have securities registered, to the Insurance Commissioner. The Corporation Commissioner shall consider the application to have securities registered and, if in order, issue to the incorporators a certificate of registration. The Insurance Commissioner shall cause the articles and the certificate of the Corporation Commissioner to be recorded in his records and issue to the incorporators a certified copy thereof.

(2) If the Insurance Commissioner approves the sureties on the bond so filed, or on any like bond substituted therefor, he shall deliver to the incorporators a permit in

the name of the corporation, authorizing it to complete its organization.

(3) Upon receiving such permit and the Corporation Commissioner's certificate of registration the corporation shall have authority to solicit subscriptions and payments for capital stock, if a stock corporation, and applications and advance premiums for insurance, and to exercise such powers, subject to the limitations prescribed in the General Insurance Law, as may be necessary and proper in completing its organization and qualifying for a license to transact the class or classes of insurance proposed in its articles of incorporation.

(4) A corporation shall not issue policies or enter into contracts of insurance until it receives a license authorizing it so to do. [Amended by 1953 c.693 §2]

738.030 Stock subscription solicitors, and agents, to be certified to commissioner. Except as provided in ORS 738.020, no person shall solicit subscriptions for the capital stock of, or applications for insurance in, any corporation in the process of organization unless he has been thereunto duly authorized by the corporation and a certificate of his authority, signed by a principal officer of the corporation, has been filed with the Insurance Commissioner. [Amended by 1953 c.693 §2]

738.040 Stipulations required in subscriptions and applications; disposition of subscribed funds. (1) Every subscription to the capital stock of a corporation in the process of organization shall contain a stipulation that no sum shall be used for commission, promotion or organization expenses in excess of a stated percent of the amount paid upon the subscription. This stated amount shall not exceed 15 percent.

(2) All sums paid by subscribers in excess of the amount which may be devoted to commission, promotion or organization expense shall be invested in securities in which an insurance company is authorized to invest, or deposited in a bank or trust company in the state until the company has duly procured a license from the Insurance Commissioner.

(3) Every subscription for stock and every application for insurance in a corporation made prior to its licensing shall contain a stipulation that the money, securities or evidences of debt advanced by the applicant shall be returned to him without any deduction in case the company fails to complete

its organization or procure its license or issue the policy applied for.

[Amended by 1953 c.693 §2]

738.050 Minimum capitalization. (1) No domestic capital stock corporation is authorized to transact any insurance business unless it maintains at all times:

(a) A paid-up capital of not less than \$100,000 and a surplus of \$50,000 or more if the corporation has an unrevoked certificate of authority received before May 2, 1955.

(b) Except as provided in paragraphs (c) and (d) of this subsection, a combined paid-up capital and surplus of not less than \$500,000 if the corporation received a certificate of authority after May 2, 1955.

(c) In the case of a life insurance company, a combined paid-up capital and surplus of not less than \$300,000 if the company received a certificate of authority after May 2, 1955, but before September 2, 1963.

(d) In the case of a disability insurance company, a combined paid-up capital and surplus of not less than \$300,000 if the company received a certificate of authority after May 2, 1955.

(2) No domestic mutual corporation or company which received a certificate of authority after September 2, 1963, is authorized to transact any insurance business unless it maintains at all times a combined deposit capital and surplus over all liabilities for the benefit of all policyholders of not less than \$500,000.

(3) Notwithstanding subsections (1) and (2) of this section, no domestic insurance company is authorized to transact any workmen's compensation insurance business unless it maintains at all times a combined paid-up capital and surplus in the United States of not less than \$1,500,000.

[Amended by 1955 c.409 §3; 1959 c.338 §3; 1963 c.397 §4]

738.060 Issuance of certificate of authority and license. If upon examination the Insurance Commissioner determines that a domestic insurance corporation applying for authority to transact business has in money and other lawful investments the assets, capital and surplus required by law, and that it has complied with all the requirements of law, he shall issue to it a certificate of authority and its first annual license, both showing the classes of business it is authorized to transact.

[Amended by 1953 c.693 §2]

738.070 Commissioner's supervision of corporations in process of organization; organization to be completed within one year.

(1) The Insurance Commissioner may, personally or through his deputy and assistants, examine into the affairs of any corporation in the process of organization and inspect its books and papers. He may summon and examine under oath any person who is or has been connected with such corporation.

(2) The commissioner may publish any facts which he may deem of interest to those dealing with such corporation.

(3) If the commissioner finds that the corporation has violated the law, or if the corporation does not qualify for a certificate of authority within one year from the date of its permit, he may revoke its permit.

(4) If the commissioner finds that an agent of such corporation has violated the law he may revoke his authority, and he may for such agent's violation revoke the corporation's permit.

(5) The commissioner may renew any corporation's permit or agent's authority which he has revoked.

[Amended by 1953 c.693 §2]

738.080 Expiration of corporate authority for failure to commence business. If any domestic insurance corporation does not commence to issue policies within two years from the date of making the filing required in ORS 738.010 its corporate powers shall expire. The circuit court upon petition of the commissioner or any person interested may fix by decree the time in which the corporation must settle and close its affairs.

738.090 Liability of directors and incorporators. The directors, incorporators, and organizers of any corporation organized under this chapter and those entitled to participation in the profits of such corporation shall be jointly and severally liable for all debts or liabilities of such company until it has been authorized to make insurance in this state.

738.100 Corporation's lien on stock for unpaid subscription or premium. A domestic insurance corporation shall have a lien on every share of capital stock issued by it and all profits and dividends accruing thereon for any unpaid balance of the subscribed price thereof, and also for any debt owed to the corporation by the holder of such stock for premiums.

738.105 General powers of insurer incorporated in Oregon. Subject to the provisions of the general insurance laws and in absence of express provisions therein or in the articles of incorporation to the contrary, an insurer incorporated in this state shall have power in addition to powers elsewhere granted in the general insurance laws:

(1) To have perpetual succession by its corporate name.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and deal with personal property, or any interest therein, which it deems necessary or convenient to operate its business; included, but not by way of limitation, are mechanical and electronic computers and equipment. Such mechanical and electronic computers and equipment which constitute a data processing and accounting system shall, if owned by the insurer, be allowed as an asset in determining the financial condition of the insurer if the cost of the system is at least \$50,000, which cost shall be amortized in full over a period not to exceed 10 calendar years; however, the amount to be so allowed as an asset shall not be in excess of the difference arrived at by subtracting all of an insurer's liabilities plus the minimum capital and surplus required of a stock insurer or the equivalent amount required of a mutual insurer from the total of the insurer's assets.

(5) To sell, convey, transfer, lease, mortgage or exchange investments and other real and personal property, or any interest therein.

(6) To make contracts and incur liabilities, borrow money at such rates of interest as it may determine; to issue notes, bonds and other obligations; and to secure its obligations by mortgage or pledge of its property.

(7) To loan, invest and reinvest its assets and to acquire and hold property, real and personal, as security therefor.

(8) To conduct its business, carry on its operations, and have offices and exercise the powers granted by the general insurance

laws in any state, territory, district or possession of the United States, or in any foreign country.

(9) To elect or appoint officers and agents of the corporation and define their duties and fix their compensation.

(10) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(11) To make donations for the public welfare or for charitable, scientific or educational purposes and in time of war to make donations in aid of war activities.

(12) In time of war to transact any lawful business in aid of the United States in the prosecution of the war.

(13) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty, but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of shareholders or policyholders, or otherwise.

(14) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans and other incentive or deferred compensation plans for its officers, employes or agents.

(15) To cease its corporate activities and surrender its corporate franchise, subject to reinsurance or express provisions for satisfying obligations.

(16) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized, or to perform any or all of the acts expressly or impliedly authorized or required under the general insurance laws. [1959 c.369 §1; 1963 c.306 §1]

738.110 Amending bylaws. Whenever any domestic insurance corporation amends

its bylaws a copy of such amendment shall be filed with the commissioner.

738.120 Amending articles of incorporation. (1) The articles of incorporation of a domestic insurance corporation may be amended if:

(a) A majority of the directors authorize the amendment.

(b) Notice of intention to amend articles of incorporation is published once a week for four successive weeks in a newspaper of general circulation in the state.

(c) The holders of two-thirds of the capital stock of a corporation having capital stock give written consent to the amendment; or, two-thirds of the members of a corporation organized without capital stock, present at a regular meeting or at a special meeting called for the purpose, vote for a resolution directing its board of directors to make such amendment.

(d) All requirements of the articles of incorporation relating to amendments are satisfied.

(2) The amendment shall be signed and acknowledged by the president and secretary or like officers of the corporation and, with a copy of the proceedings of the stockholders or members and of the directors, filed with the Insurance Commissioner.

(3) The Insurance Commissioner shall submit the amendment and copies of proceedings to the Corporation Commissioner. If the Corporation Commissioner finds that these conform to law he shall return them to the Insurance Commissioner with his certificate to that effect.

(4) The Insurance Commissioner or his deputy or examiner shall examine the proceedings and if they conform to law the commissioner shall issue to the corporation a certificate of authority to transact business under the amended articles.

(5) The amendment shall not take effect until the Insurance Commissioner delivers to the corporation a copy of the amendment certified by him and a copy of the certificate of the Corporation Commissioner. In the case of an amendment providing for a decrease in capital, the Insurance Commissioner shall not approve the amendment or issue to the corporation his certified copy of such amendment if he is of the opinion that the interests of policyholders or creditors may be prejudiced thereby.

[Amended by 1953 c.693 §2]

738.130 Amendment to decrease capital.

(1) Any domestic insurance corporation having capital stock may amend its articles of incorporation to decrease its capital to an amount justified by its assets and not less than the minimum required for such a corporation.

(2) If a corporation's capital is impaired, an amendment to decrease its capital must be adopted by a vote of the stockholders and approved by two-thirds of the directors.

738.140 Filing amendments to decrease capital. Copies of an amendment adopted under subsection (2) of ORS 738.130 certified by the secretary of the corporation under the corporate seal must be filed in the offices of the Corporation Commissioner, the Insurance Commissioner and the clerk of the county in which the corporation's principal office is located, and in the principal office of the company.

738.150 Issue of new stock certificates upon decrease in capital. Upon a decrease in capital under ORS 738.130 the directors of a corporation may require each stockholder to surrender his stock certificate in exchange for a new certificate for such proportion of the amount of his original stock as the reduced capital bears to the original capital.

738.160 Partial distribution of assets upon decrease in capital. In connection with a decrease in capital under ORS 738.130 a corporation may make any distribution of its assets to its stockholders which does not reduce the surplus of its assets over its liabilities, including its capital, to less than:

(1) \$150,000, if the company has an unrevoked certificate of authority received prior to May 2, 1955.

(2) Except as provided in subsections (3) and (4) of this section, \$500,000, if the company received a certificate of authority after May 2, 1955.

(3) In the case of a life insurance company, \$300,000 if the company received a certificate of authority after May 2, 1955, but before September 2, 1963.

(4) In the case of a disability insurance company, \$300,000 if the company received a certificate of authority after May 2, 1955. [Amended by 1955 c.409 §4; 1959 c.338 §4; 1963 c.397 §5]

738.170 Amendment to increase capital; time limitation on completion of capital stock increase. A domestic insurance corporation having capital stock may amend its articles to increase its capital. Such increase must be subscribed and fully paid up within one year of the date of the amendment unless the commissioner certifies his consent to an extension of such time. Upon a failure to have an increase of capital paid up in the time limited, the commissioner may institute court proceedings against the corporation to oust it from its powers under the amendment that authorized the increase.

MANAGEMENT

738.180 Qualifications and election of directors and officers. (1) The affairs of every domestic insurance corporation shall be managed by a board of directors which shall consist of not less than five members. A majority of the board is a quorum.

(2) Directors shall be stockholders, members or policyholders of the corporation and a majority of them shall be residents of the state.

(3) Directors shall be elected in accord with the provisions of the articles of incorporation for such term, not exceeding three years, as the articles prescribe. The annual meeting for the election of directors shall be held at such time as the bylaws may direct. The bylaws may provide for the division of the board into two or three classes and for the election thereof at its annual meetings in such a manner that the members of one class only shall retire and their successors be chosen. The record made by the secretary of the votes, which shall show whether the same were cast in person or by proxy, shall be evidence of any election.

(4) If for any cause the stockholders or members fail to elect directors at any annual meeting, the directors may call a special meeting for that purpose. Notice of such meeting shall be given as provided in paragraph (b) of subsection (1) of ORS 738.120.

(5) The directors shall annually choose, by ballot, a president, who shall be a member of the board, a secretary and such other officers as the bylaws may provide.

(6) Vacancies in any office may be filled by the directors or by the stockholders or members as the bylaws shall prescribe. Vacancies occurring in the board may be filled by the board until the next annual

election. At that time the members or stockholders shall elect a person to serve for the unexpired term.

738.190 Proxies; regulation by commissioner. (1) A proxy may be authorized in writing to vote the shares of any stockholder, or where authorized of a policyholder, of a stock insurer at any regular or special stockholders' meeting or to vote the interest of any policyholder of a mutual insurer at any regular or special policyholders' meeting.

(2) Such stockholders and policyholders shall be provided with adequate and accurate information with respect to the affairs of the insurer, the interests of those involved in the solicitation of proxies or consents, and the matters regarding which the proxies or consents are solicited.

(3) Every form of proxy or consent and soliciting material to be used in connection therewith shall be filed with the commissioner in advance of any circulation or other use by at least 10 days, or such shorter period as the commissioner may authorize. Circulation or use of a filed document may be made when such 10-day or shorter period has expired, unless or until the commissioner has disapproved the filing by written notice showing wherein the document does not comply with this section or the pertinent regulations. Any proxy or consent obtained in violation of this section shall be void.

(4) The commissioner may issue regulations to carry out the purposes of this section and to prevent fraud or deception in connection with proxies and consents. Such regulations may differ as to different types of insurers, and may include, but not by way of limitation, provisions as to:

(a) Exemption from the requirements of this section for insurers subject to similar provisions of federal law, or with less than a prescribed number of stockholders;

(b) Disclosure of equivalent information when no proxies or consents are solicited;

(c) Form and content of proxies, consents and solicitation materials, and filing procedures therefor;

(d) Procedure for presentation of stockholder proposals; and

(e) Election contests.

[Amended by 1959 c.369 §2; 1965 c.240 §1]

738.200 Salary and tenure of officers, directors and employes. No domestic insurance corporation shall pay any salary, compensation or emolument to any officer,

trustee or director thereof, nor any salary, compensation or emolument, other than commissions, amounting in any year to more than \$10,000, to any person, firm or corporation, unless such payment is first authorized and directed by a vote of two-thirds of the board of directors of such corporation, duly taken and recorded in the minutes of a board meeting.

[Amended by 1959 c.369 §3]

738.210 What business may be transacted. No domestic insurance corporation shall transact any business other than that specified in its articles of incorporation, except that it may frame and issue policies in other states in accordance with the laws thereof, anything in its articles of incorporation or bylaws to the contrary notwithstanding.

738.220 Reinsurance of risks. Any domestic company may reinsure any part of an individual risk in another company having power to make such reinsurance. With the consent of the commissioner it may reinsure any or all of its risks in another company, and shall receive credit for the reserve on all risks so reinsured.

738.230 Reinsurance of business of retiring companies. (1) No domestic insurance company, impaired, insolvent or retiring from business in this state, may reinsure its business until its plan to effect such reinsurance has been submitted to the commissioner and approved by him. No such reinsurance shall be effected in a company not admitted to this state.

(2) In effecting such reinsurance, the reinsuring company shall become liable to the original insured for any loss or damage occurring under the policies reinsured, and shall, within a reasonable time, replace such policies with its own, or by indorsement thereon acknowledge liability thereunder. In case of cancellation of a reinsured policy the reinsurer shall be liable to the original insured for all return premiums.

INVESTMENTS

738.235 Investment of funds controlled by ORS 738.235 to 738.395; "excess funds" defined. (1) Funds of a domestic insurer shall be invested, reinvested and used in the manner and subject to the conditions, restrictions and limitations set forth in ORS 738.235 to 738.395.

(2) The funds of an insurer in excess of the minimum provided in ORS 738.238 are defined as "excess funds" and shall be invested as provided in ORS 738.238 or in ORS 738.245 to 738.315.

[1959 c.286 §2, 5]

738.238 Investments required for minimum funds and optional for excess funds.

(1) The minimum combined paid-up capital and surplus required of a stock insurer, and the funds of a mutual insurer in an amount equal to the minimum combined paid-up capital and surplus required of a like stock insurer, shall be invested and kept invested as follows:

(a) In amply secured obligations of the United States, a state or territory thereof or the District of Columbia, or of a political subdivision of the State of Oregon.

(b) In loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in Oregon where:

(A) The lien does not exceed 50 percent of the appraised value of the property and the loan is for a term of five years or less;

(B) The lien does not exceed 66 $\frac{2}{3}$ percent of the appraised value of the property provided there is an amortization plan mortgage, deed of trust or other instrument under the terms of which the instalment payments are sufficient to repay the loan within a period of not more than 25 years; or

(C) The investment is insured or guaranteed by the Federal Housing Administration, the United States Veterans' Administration, or under Title I of the Housing Act of 1949 (providing for slum clearance and redevelopment projects) enacted by Congress on July 15, 1949.

(2) Investments made pursuant to this section shall be kept free of any lien or pledge. The term "lien or pledge" as used in this section shall not include a deposit of securities or cash with a sovereign, nor assets held in trust for the benefit or protection of all or any class of the policyholders or creditors of an insurer.

[1959 c.286 §4]

738.240 [Repealed by 1959 c.286 §24]

738.245 Investment of excess funds in obligations of a sovereign, political subdivision thereof or corporation. Excess funds may be invested in amply secured obligations of a sovereign, political subdivision thereof or corporation. Expressly included, but not by way of limitation, are obligations of the

following federal agencies and authorities: Federal Home Loan Bank, Federal Land Banks, Home Owners Loan Corporation, Public Housing Authorities (to the extent that such obligations are secured by a pledge of annual contributions to be paid by the United States or an agency thereof), and Federal Intermediate Credit Banks.

[1959 c.286 §6]

738.250 [Repealed by 1959 c.286 §24]

738.255 Investment of excess funds in certain loans secured by real property. (1) Excess funds may be invested in:

(a) Loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in the manner and subject to the same terms and conditions set forth in paragraph (b) of subsection (1) of ORS 738.238, except that the property may be located within the boundaries of any sovereign; for loans described in subparagraph (B) of said paragraph, the maximum permitted ratio of the loan to the appraised value shall be 80 rather than 66 $\frac{2}{3}$ percent, and the maximum term of the loan shall be 30 rather than 25 years.

(b) Loans secured by first liens upon a leasehold of improved, unencumbered real property located within the boundaries of any sovereign if:

(A) The leasehold has a period of not less than 20 years to run from the date of the loan, inclusive of the term which may be provided by an enforceable option of renewal, the loan does not exceed 70 percent of the fair market value of the leasehold together with any improvements located thereon which are subject to the lien, the terms of the loan provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to completely amortize the loan within a period of four-fifths of the term of the leasehold, and the insurer is entitled to be subrogated to all rights of the lessee under the leasehold; or

(B) The investment is insured or guaranteed in the manner provided in subparagraph (C) of paragraph (b) of subsection (1) of ORS 738.238.

(2) A loan upon the security of real property or a leasehold interest therein which is a participation in or a part of a series or issue shall not be made unless the insurer holds a senior participation or similar security interest in the mortgage or deed

of trust giving it substantially the rights of a first mortgagee.

(3) Nothing in ORS 738.235 to 738.395 shall prohibit an insurer from renewing or extending a proper loan secured by a first lien upon real property or a leasehold interest therein made pursuant to this section or to ORS 738.238 for the original or a lesser amount even though such amount results in a greater percentage of the current fair market value of the real property or leasehold than would otherwise be permitted under said sections.

[1959 c.286 §7]

738.260 [Repealed by 1959 c.286 §24]

738.265 Investment of excess funds in real property. (1) Excess funds may be invested in income-producing real property, leases thereon or vendors' interests therein under contracts of sale. Real property and leaseholds so acquired may be leased or sublet.

(2) Real property may also be acquired by an insurer:

(a) Out of excess funds for its own business use or to protect or enhance other real property acquired and held under ORS 738.235 to 738.395; or

(b) In satisfaction or liquidation of obligations previously owned, or in exchange or part payment for property previously owned, or as a dividend, or by gift, devise, merger or consolidation.

(3) Real property acquired under this section shall be disposed of within five years after it ceases to be income-producing or to be used by the insurer for its business operation, whichever is later; provided, however, that any real property so acquired which qualifies as an investment under ORS 738.235 to 738.395 may be retained and held if approved as an investment in the manner prescribed by ORS 738.335 and 738.345. The commissioner may extend the time limit prescribed in this subsection if the interests of the insurer will suffer by a "forced sale" of the property.

[1959 c.286 §8]

738.270 [Repealed by 1959 c.286 §24]

738.275 Investment of excess funds in stocks of corporations. (1) Excess funds may be invested in stocks (including trust certificates) of solvent corporations organized and carrying on a business under the laws of a sovereign as follows:

(a) Preferred or guaranteed stocks if at the time of acquisition the corporation is not in default or arrears as to any preferred or guaranteed dividend and has continuously and regularly paid said dividends during the preceding three years.

(b) Common stocks if:

(A) The obligations and preferred stock, if any, of such corporation are eligible for investment under ORS 738.235 to 738.395;

(B) Cash dividends have been paid during each of five years preceding the date of acquisition; and

(C) The stock is registered on a national securities exchange regulated under the Securities Exchange Act, or if of a type not commonly so registered is regularly traded on a broad national or regional basis.

(2) An insurer shall not invest so as to own or control more than five percent of the voting power outstanding of a corporation, nor shall it invest in the obligations or stocks of a corporation if the insurer, directors, trustees and officers own or control, or as a result thereof shall own and control, in the aggregate more than 50 percent of the voting power.

(3) Notwithstanding the provisions and limitations of subsections (1) and (2) of this section or of ORS 738.245, 738.375 or 738.385, an insurer may acquire from its excess funds without limitation the stocks or obligations of a subsidiary corporation of the insurer which subsidiary is engaged, or will be engaged, in the insurance business or primarily in a kind of business incidental to the insurance business carried on by the insurer, or which holds or operates, or will hold or operate, real property owned or occupied by the insurer.

[1959 c.286 §9]

738.280 [Repealed by 1959 c.286 §24]

738.285 Lending excess funds; limitations on loans. (1) An insurer may loan its excess funds upon the pledge of obligations and stocks eligible for investment under ORS 738.235 to 738.395; as of the date the loan is made, no loan shall exceed in amount 80 percent of the market value of the collateral pledged. No such loan shall be made for the purpose of providing funds to purchase or carry stocks registered on a national securities exchange.

(2) In connection with a loan on the security of real property or a leasehold as provided in ORS 738.238 and 738.255, an

insurer may loan from its excess funds an amount not exceeding 20 percent of the amount loaned on the real property or leasehold on the security of a chattel mortgage for a term of not more than five years if the mortgage constitutes a first lien (except for taxes not then delinquent) on tangible, permanent personal property of the borrower kept and used on the premises (excluded are stocks of goods held for sale or transfer in the ordinary course of business or items which by normal use will be consumed or depleted during the period of the loan). The ratio of the personal property loan to the value of the security shall not exceed the ratio of the companion loan to the value of the real property or leasehold.

(3) Excess funds of a life insurer may be loaned to a policyholder upon the security of his life insurance policy or annuity contract. The loan shall not exceed the cash value of the policy or contract.

[1959 c.286 §§10, 11]

738.290 [Repealed by 1959 c.286 §24]

738.295 Investment of excess funds in certain obligations and other specified items. Excess funds of an insurer may be invested in the following:

(1) Obligations secured by a mortgage or deed of trust payment of which is guaranteed by a policy of mortgage insurance.

(2) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development.

(3) Mortgage participation certificates issued by a mortgage insurance company under ORS chapter 746.

(4) Bank and bankers' acceptances and other bills of exchange of the kind and nature made eligible by law for purchase in the open market by federal reserve banks.

(5) Deposits, certificates of deposits, accounts or savings or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations insured with the Federal Deposit Insurance Corporation or with the Federal Savings and Loan Insurance Corporation or qualified to do business under the laws of Oregon.

(6) Obligations issued by trustees or receivers of a corporation created or existing under the laws of a sovereign which, or the assets of which, are being administered under the direction of a court having jurisdiction if the obligation is adequately secured as to principal and interest.

(7) Transportation equipment used wholly or in part within a sovereign, or adequately secured trust certificates of participation or similar obligations or contracts evidencing an interest in such transportation equipment where the investor is entitled to receive a determined or determinable portion of rental, purchase or other obligatory payments for use or purchase of the equipment.

(8) Purchase contracts or lease-purchase agreements executed under the Federal Public Buildings Purchase Contract Act of 1954, or the Post Office Department Property Act of 1954.

(9) Stock of the Federal Home Loan Bank to the extent of the minimum required by the Federal Home Loan Bank Act. An insurer acquiring such stock may exercise all rights and powers given to members under such Act, including but not by way of limitation the right to obtain advances or borrow money from said bank and to pledge collateral as security therefor.

(10) Obligations issued, assumed or guaranteed by the Inter-American Development Bank.

[1959 c.286 §12; 1963 c.368 §1]

738.300 [Repealed by 1959 c.286 §24]

738.305 Investment of excess funds under "prudent man" rule. (1) Excess funds may be invested in a manner not expressly permitted under ORS 738.235 to 738.395 and not expressly prohibited under ORS 738.385 and 738.395, provided such investments are made in the exercise of the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(2) Funds invested under this section shall not exceed in the aggregate the lesser of:

(a) Seven and one-half percent of the insurer's corporate assets.

(b) The excess of the insurer's assets over all liabilities including statutory reserves and required minimum capital and surplus.

(3) If the commissioner has reason to believe that loans or investments made pursuant to this section are not adequately secured or are not yielding an income he may direct the insurer to report to him under

oath the amount of such loans or investments, the security therefor and its market value.

[1959 c.286 §13; 1961 c.291 §1]

738.310 [Repealed by 1959 c.286 §24]

738.315 Acquisition and retention of personal property; purchases or loans for protection of investment property. (1) An insurer may acquire and retain personal property received as a dividend, gift or devise, or pursuant to a lawful plan of merger, consolidation or reorganization or bona fide agreement of bulk reinsurance, or in satisfaction or liquidation of an obligation, or in exchange or part payment for real or personal property previously owned or to protect or enhance such property.

(2) An insurer may make purchases or loan sums necessary to protect, preserve or enhance investment property, real or personal, which it is otherwise authorized to acquire or hold.

[1959 c.286 §14]

738.320 [Repealed by 1959 c.286 §24]

738.325 Investments authorized by prior law. An investment which was legal and proper immediately before enactment of ORS 738.235 to 738.395 shall be considered a proper investment and shall be subject to extension or renewal.

[1959 c.286 §15]

738.330 [Repealed by 1959 c.286 §24]

738.333 Investments subject to ORS 738.335 to 738.395. Except as may be expressly provided to the contrary in ORS 738.235 to 738.395, all investments shall be subject to the qualifications, restrictions and limitations set forth in ORS 738.335 to 738.395.

[1959 c.286 §16]

738.335 Approval by board of directors of investments and deposits. (1) Investments and sales or exchanges thereof, except for policy loans of a life insurer, shall be approved by the board of directors or a committee thereof charged with the duty of investing the funds of the insurer.

(2) Deposits shall be made in banks or banking institutions approved by the board of directors.

[1959 c.286 §17]

738.340 [Repealed by 1959 c.286 §24]

738.345 Record of investments required.

As to each investment, an insurer shall make a written record in permanent form to be signed by a person authorized by the board of directors or by a committee thereof charged with the duty of investing the funds. The record shall show the authorization and approval of the investment and in addition shall contain:

(1) In the case of mortgage loans: The name of the borrower; the location and legal description of the property; a physical description and the appraised value of the security; the amount of the loan, rate of interest and terms of repayment.

(2) In the case of obligations: The name of the obligor; description of the security and record of earnings; the amount invested and the rate of interest or dividend; the maturity and yield based upon the purchase price.

(3) In the case of corporate stocks: The name of the issuing corporation; the record of earnings and of dividends paid for the preceding three years for preferred stock and for the preceding five years for common stock; a summary of the financial statement of the corporation as of the end of the preceding fiscal year; the exchange, if any, on which the stock is listed; the amount invested and the number of shares acquired and held.

(4) In the case of real estate, leaseholds or vendors' interests under contracts of sale therein: The location and legal description of the property; a physical description and the appraised value of the property and interest therein; the purchase price and terms; the amount of any lien known to be against the property; if of a leasehold, the terms of the outstanding lease; if a vendor's interest under a contract of sale, the terms and status of payments under the contract.

(5) In the case of all investments: The amount of any expenses and commissions incurred on account of the investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records; the name of any director, trustee or officer of the insurer, having a direct, indirect, or contingent interest in the loan, security or property, or who would derive, directly or indirectly, any benefit therefrom, and the nature of such interest or benefit.

[1959 c.286 §18]

738.350 [Repealed by 1959 c.286 §24]

738.355 Disposal of investments on order of Insurance Commissioner. After a hearing, the commissioner may by written order require the disposal of an investment which he finds to be made or retained in violation of ORS 738.235 to 738.395, or of an investment which he, for good cause, determines to be prejudicial to, and to impair the security of, the stockholders or policyholders of the insurer.
[1959 c.286 §19]

738.360 [Repealed by 1959 c.286 §24]

738.365 Insurance required on buildings on property which is security for loan. On loans secured by liens upon real property or leasehold interests therein, the buildings and other improvements located on the premises shall be kept insured against loss or damage from fire in an amount not less than the unpaid balance of the obligation or the insurable value of the property, whichever is the lesser. The fire insurance policy or policies shall be payable to and held by the insurer, or a trustee for its benefit, and continued in force until the loan is repaid or satisfied.
[1959 c.286 §20]

738.370 [Repealed by 1959 c.286 §24]

738.375 Limitations on investments in any one person or single parcel of real estate. An insurer shall not have any combination of investments in or secured by the stocks, obligations, and property of one person, corporation or political subdivision in excess of 10 percent of the insurer's assets, nor shall it invest more than 10 percent of its assets in a single parcel of real estate (after deducting any encumbrances) or in any other single investment. This section shall not apply to investments in, or loans upon, the security of the general obligations of a sovereign, or to policy loans by life insurers.
[1959 c.286 §21]

738.380 [Amended by 1953 c.91 §1; repealed by 1959 c.286 §24]

738.385 Prohibited investments. An insurer shall not invest in the following:

(1) Investments which at the time of purchase or acquisition are not interest-bearing or dividend or income-paying, or are in default in any respect, or in which the insurer is not entitled to receive for its exclusive account and benefit the interest, dividends or income accruing thereon. This sub-

section shall not apply to property acquired under subsection (2) of ORS 738.265 or under ORS 738.315, or under subsection (1) of ORS 738.265 or ORS 738.305 if the property is acquired with the intent and expectation that it will be income producing.

(2) Its own stock, or loans thereon, without the consent of the commissioner.

(3) Any investment or security found by the commissioner to be designed to evade any prohibition of ORS 738.235 to 738.395.
[1959 c.286 §22]

738.390 [Repealed by 1959 c.286 §24]

MISCELLANEOUS

738.395 Certain transactions between insurer and directors, trustees or officers prohibited. (1) Except as permitted in subsection (2) of this section, no director, trustee or officer of an insurer shall receive, directly or indirectly, any money or thing of value for negotiating, procuring, recommending or aiding in the purchase or sale by the insurer of property, or in a loan from or to the insurer, or be pecuniarily interested, either as principal, coprincipal, agent or beneficiary in such a purchase, sale or loan. No insurer shall make any such payments or loans, or make any advances to directors, trustees or officers for future services to be performed, or guarantee in any manner the financial obligations of such persons (the word "guarantee" as used in this sentence shall not include payments to be made upon death of a person insured under ORS 739.605). The prohibitions set forth in this subsection shall not apply to or affect the payment to any officer of reasonable compensation, whether based in whole or in part upon commission or otherwise, nor shall it prevent the payment of a fee to any approved person for legal or other specialized or professional services rendered to the insurer and approved by the board of directors, or prevent the making of loans or advances to agents or other employees of an insurer as required or as is expedient in the conduct of its business.

(2) An insurer shall not contract or otherwise enter into a transaction with a director, trustee, officer or a partnership or corporation in which a director, trustee or officer has, directly or indirectly, a proprietary interest in excess of five percent, unless the interest of the director, trustee or officer is fully disclosed to the board of

directors of the insurer, and the board thereafter approves and authorizes the contract or transaction by a vote sufficient for the purpose without counting the vote of such interested person.

[1959 c.286 §23]

738.400 [Repealed by 1959 c.286 §24]

738.410 Dividends. (1) No domestic insurance corporation shall make any payments in form of dividends or otherwise to its stockholders or policyholders for or on account of any interest in or relation to the corporation as stockholders or policyholders, except for matured claims or other policy obligations and in purchase of surrender values, unless it possesses assets in the amount of such payments in excess of its liabilities including its capital stock liability.

(2) It is unlawful for the officers, directors, trustees or managers to declare or pay any dividends except from the surplus profits arising from its business, estimated and ascertained in accordance with the requirements and provisions of the General Insurance Law.

738.420 Supporting documents for expenditures. No domestic insurance company shall make any disbursement of \$100 or more unless the sum is evidenced by:

(1) A voucher signed by or on behalf of the person, firm or corporation receiving the money or, if a voucher cannot be obtained, by an affidavit stating the reason for not obtaining the voucher; or

(2) A bill, invoice, statement or similar document commonly in business use submitted on account of goods supplied or services rendered or both; or

(3) An authorization of the board of directors, or a committee thereof or officer duly delegated by the board with authority to so authorize, in regard to compensation of officers, employes and agents; or

(4) Satisfactory proof of claim, accepted and approved in the manner prescribed by the company, based upon provisions of a policy or contract issued by the company.
[Amended by 1959 c.369 §4]

738.430 Books and records to reflect condition of company. A domestic insurance company shall keep its books, records, accounts and vouchers in such manner that the commissioner or his authorized representatives may readily verify its annual

statements and ascertain whether the company is solvent and has complied with the law.

738.440 Demand to make good or to reduce capital when capital is impaired.

(1) Whenever the commissioner finds from any showing or statement made to him or from any examination made by him or his deputy or examiner that the capital of any domestic insurance corporation is impaired or that its assets are insufficient to justify its continuance in business, he shall at once determine the amount of such impairment or deficiency and thereupon issue his written notice and requisition to the corporation. This shall direct the corporation to require its stockholders to make good the amount of the impairment or deficiency with cash or investments authorized by the General Insurance Law or to reduce its capital as provided in ORS 738.130 to 738.150 within 90 days from the service of the notice and requisition.

(2) If the amount of any such impairment or deficiency is not made good or the capital reduced within the time specified in such notice and requisition and proof thereof filed in the office of the commissioner, the corporation shall be deemed insolvent and shall be proceeded against as an insolvent corporation in the manner authorized by ORS 738.450 to 738.500.

738.450 Suit by commissioner to seize business. (1) The commissioner may apply to the circuit court, or any judge thereof, in the judicial district in which the principal office of a domestic insurance company is located, for an order directing the company to show cause why the commissioner should not take possession of its property, records and effects and conduct or close its business and for such other relief as the nature of the case and the interest of its policyholders, creditors or stockholders or the public may require. Such application may be made:

(a) If the company is insolvent.

(b) If the company has unlawfully refused to submit its books, papers, accounts or affairs to the reasonable inspection and examination of the commissioner, his deputy or examiner.

(c) If the company has neglected or refused to observe an order issued under ORS 738.440 or 744.480.

(d) If the company has by contract of reinsurance, or otherwise, transferred or

attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other company, without first having obtained the written approval of the commissioner.

(e) If the company is found upon examination to be in such condition that its further transaction of business would be hazardous to its policyholders, creditors, stockholders or the public.

(f) If the company has wilfully violated its articles of incorporation or any law of the state.

(g) If any trustee, director, manager or officer of the company has unlawfully refused to be examined under oath touching its affairs.

(2) The Attorney General shall represent the commissioner in an application under this section or ORS 738.480.

738.460 Interlocutory restraining order. Upon an application being made under ORS 738.450, or any time thereafter, the court or judge may, in its discretion, issue an order restraining the company from the transaction of its business or disposition of its property, records or effects until the further order of the court.

738.470 Determination of suit. On the return of an order to show cause made on an application under ORS 738.450, and after a full hearing, the court shall either deny the application, or direct the commissioner forthwith to take possession of the property, records and effects of the company and to retain such possession and conduct the business until a further order is made, or order the liquidation of the business of the company.

738.480 Restoration of business to company. If, upon the application of the commissioner or of the company, and after a full hearing, the court finds that the cause for an order made under ORS 738.470 directing seizure has been removed and that the company can properly resume possession of its property, records and effects, and the conduct of the business, it shall make an order to that end.

738.490 Mode of liquidation. (1) If a company whose liquidation has been ordered under ORS 738.470 does business in more

than one state it shall be liquidated under ORS chapter 751.

(2) If the company does business in this state only it shall be liquidated by and under the direction of the commissioner as follows:

(a) The commissioner may deal with the property, records, effects and business of such company in his own name or in the name of the company as the court may direct. He shall be vested by the operation of law with title to all the property, effects, contracts and rights of action of the company as of the date of the order directing him to liquidate. The filing or recording of such order in the office of the recorder of deeds in any county where property is located in the state shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such company would have imparted.

(b) In the performance of his duties under this section, the commissioner may appoint under his hand and official seal one or more special deputy commissioners and employ such counsel, clerks and other assistants as may by him be deemed necessary. He may give each of such persons such powers to assist him as he may consider proper. The compensation of such special deputy commissioners, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating any company shall be fixed by the commissioner, subject to the approval of the court, and shall, on certificate of the commissioner, be paid out of the funds or assets of the company.

(c) The commissioner may, subject to the approval of the court, make and prescribe such rules and regulations as may be proper for the due and orderly exercise of the authority given him by this section. This paragraph does not apply to the liquidation of mutual fire insurance companies.

738.500 Dissolution of company. At any time after the court orders the liquidation of the business of a company, as provided in ORS 738.470, the commissioner may apply for the dissolution of such company. After due notice and hearing and such other procedure as the court deems proper, the company shall be dissolved.

738.510 Companies organized and licensed under prior laws recognized. Every domestic insurance company organized and licensed to transact insurance business in

this state on May 21, 1917, hereby is recognized as an existing company, and shall have the right to continue such business under the provisions of the General Insurance Law if such company whose capital and surplus did not meet the requirements of the General Insurance Law conformed to such requirements within four years from January 1, 1918.

738.520 to 738.600 [Reserved for expansion]

MERGER

738.610 "Acquisition" and "acquire" defined. Unless otherwise expressly defined, limited, provided or required by context, "acquisition" or "acquire" shall mean and include any one of the following for the purposes of ORS 738.610 to 738.640:

(1) Merger of two or more insurance companies.

(2) Consolidation of two or more insurance companies.

(3) Purchase by an insurance company (for cash, stock or other property) of all or substantially all of the assets of another insurance company, with a correlative assumption of liabilities.

(4) Procurement by an exchange of capital stock, issued for that purpose, by an insurance company of a controlling interest (more than 50%) of the capital stock of another operating insurance company.

(5) Bulk reinsurance by one insurance company of all or substantially all of the insurance in force of another insurance company, or of all or substantially all of a major class of such insurance.

(6) Any other organizational arrangement (other than outright purchase by a company of the outstanding capital stock from stockholders of another company), the effect of which is to bring together under common ownership, control or responsibility all or substantially all of the assets, liabilities and insurance in force of two or more insurance companies.

[1963 c.477 §1]

738.620 Procedure for acquisition of domestic or foreign insurance company by domestic insurance company. A domestic insurance company, stock or mutual, may be a party to an acquisition with or involving one or more other domestic or foreign insurance companies, stock or mutual (or one or more alien insurance companies provided they are organized under the laws of the

Dominion of Canada or any province thereof) upon compliance with the following:

(1) The insurance company or companies involved shall prepare and execute a written plan setting forth all essential terms and provisions of the acquisition, including but not limited to the terms and conditions of issuance of any security in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash. The plan shall first be approved by the board of directors of each company involved. The plan, together with certified copies of the authorizing resolution of each board of directors showing adoption and approval, shall then be filed with the commissioner. The parties to the plan may, if they so desire, include with the filing a written request for a hearing upon the fairness of the plan and other matters requisite to the commissioner's approval, or the commissioner may, if he deems it necessary or advisable to do so, direct that such a hearing be held. Any such hearing shall be held within 30 days after the filing of the plan at such time and place and upon such reasonable notice as the commissioner may designate, at which time all insurance companies involved in the acquisition, all interested policyholders and stockholders thereof, all persons to whom it is proposed to issue securities pursuant to such plan and other persons who may be adversely affected thereby, shall have an opportunity to be heard. If requested by any insurance company involved, or if directed by the commissioner, the portions of ORS 183.420 to 183.450, pertaining to evidence, testimony, subpoenas and preparation of a record shall, to the extent applicable, govern the proceedings at the hearing.

(2) The commissioner shall approve the plan within 30 days after such filing (or within 30 days after a hearing if one is called and held) unless he finds such plan:

(a) Is contrary to law or would result in a prohibited combination of risks or classes of insurance.

(b) Is inequitable or unfair to the policyholders or stockholders of any insurance company involved or to any other person affected thereby.

(c) Would substantially reduce the security of and service to be rendered to policyholders of any domestic insurance company involved, in this state or elsewhere.

(d) Provides for a foreign or alien insurance company to be the acquiring, surviving or resulting company and he further finds that such company cannot satisfy the requirements of this state for transacting an insurance business involving the classes of insurance affected by the acquisition.

(e) Is subject to other material and reasonable objections.

If the commissioner does not approve such plan, he shall so notify the insurance companies involved in writing, specifying the bases, factors and reasons therefor and giving the companies involved an opportunity to amend the plan, if possible, to obviate his objections. Any insurance company involved may, within 60 days after receipt of a notice of disapproval, petition the Circuit Court for Marion County, or the circuit court for the county in which it has its principal place of business in this state, for judicial review of the commissioner's action. The provisions of ORS 183.480 to 183.500 shall, to the extent applicable, govern such judicial review and any appeal therefrom to the Supreme Court. For purpose of judicial review, the specifications required to be set forth in the written notice from the commissioner shall be deemed the findings of fact and conclusions of law of the agency.

(3) Following approval by the commissioner or pursuant to court order or decree as provided in subsection (2) of this section, the plan shall be submitted to and approved by the members of a mutual company and the stockholders of a stock company. Unless the articles or bylaws of a company provide for a greater percentage or number of votes, the plan shall be approved by at least two-thirds of the persons voting thereon, in person or by proxy, at a duly called regular or special meeting. The notice of such meeting of members or stockholders, the procedure to be followed at such meeting and the persons entitled to vote at such meeting shall be governed by the provisions applicable to regular or special meetings of members or stockholders in the insurance laws, articles of incorporation and bylaws of the company. If so approved, each insurance company shall take such action and prepare, execute and file such documents as may be necessary to consummate the acquisition. In addition, there shall be filed with the commissioner (and with the appropriate authorities of any other state if so required) in dupli-

cate a certificate, executed by the president or a vice president and by the secretary or an assistant secretary of each company involved, and verified by one of the officers of each company signing the certificate, setting forth that the plan heretofore submitted has been duly adopted by the members or stockholders of each insurance company involved in the acquisition and declaring the effective date of the acquisition if not otherwise provided in the plan or agreement. The certificate shall set forth by class the number of persons present and the number of votes for and against the plan. The commissioner shall indorse on each such duplicate certificate the word "filed" and the month, day and year of the filing thereof, shall file one such duplicate and shall return the other to the acquiring, surviving or resulting company.

(4) If the plan will result in the acquisition by a stock insurance company of all or substantially all of the assets of a mutual insurance company (or of reinsurance in a stock insurance company of all or substantially all of the insurance in force of a mutual insurance company), the plan must provide for payment to each member of the mutual insurance company entitled thereto (as hereinafter provided) of his equity, if any, in the company to be so acquired (or reinsured) as determined under a fair formula approved by the commissioner. For this purpose, the mutual insurance company shall make a reasonable classification of its policies held by its members to determine the value or basis of each member's equitable share. The formula shall take into consideration all of the financial data normally required to be reported annually to the commissioner. The expenses of the acquisition which is the subject of this subsection shall be shared equitably by the companies involved. Payment for the mutual member's equity shall be made in cash except that the acquiring insurance company may offer an option to the member to take cash or stock in the acquiring company for his equitable interest. To qualify for an equitable distribution, a policyholder must have been a member of the mutual insurance company for at least one year at the time such plan was approved and adopted by the members.

(5) If a stockholder of a domestic stock insurance company which is a party to an acquisition shall file with the company, prior to or at the meeting of stockholders at which the plan of acquisition is considered and submitted to vote, a written objection to such

plan and shall not vote in favor thereof, and within 10 days after the date on which the vote was taken said stockholder shall make written demand to the surviving, resulting, reinsuring or parent company (hereinafter in this subsection referred to as the "acquiring company") for payment of the fair value of his interest, as of the day prior to the date on which said vote was taken approving said acquisition, then, if the acquisition is effected, the acquiring company shall pay to such dissenting stockholder, upon surrender of his shares, the fair value thereof. Any such stockholder failing to make demand within the 10-day period shall be bound by the terms of the plan. Within 10 days after the acquisition is effected, the acquiring company shall give notice thereof to each dissenting stockholder who has complied with the foregoing. Within 30 days after such notice the parties shall agree upon the fair value of said interest. If they cannot so agree, the value shall be fixed by three appraisers selected as follows: One to be selected by the vote of the majority of the dissenting stockholders at a meeting called for that purpose by the Insurance Commissioner on 10 days' notice, one by the acquiring company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If any necessary appraiser is not appointed within 60 days after the effective date of the acquisition, or if the appraisal is not completed within 90 days after the acquisition becomes effective, the Insurance Commissioner shall cause the appraisal to be made. The expenses of appraisal shall be paid by the acquiring company.

(6) The provisions of ORS 57.480 shall, to the extent not inconsistent with ORS 738.610 to 738.640, apply to an acquisition of the type described in subsection (1) or (2) of ORS 738.610.

(7) The action taken by any foreign or alien insurance company which is a party to an acquisition must be authorized by the laws of the state, territory, district, country or province under which it is incorporated or organized, and such company must satisfy and comply with any applicable laws thereof and with the provisions of its articles of incorporation and bylaws. If the foreign or alien insurance company is to be the acquiring, surviving or resulting company, it must qualify and be licensed to en-

gage in the business of insurance in this state.

[1963 c.477 §2; 1965 c.257 §1]

738.630 [1963 c.477 §4; repealed by 1965 c.257 §2]

738.640 Receipt of consideration for aiding acquisition prohibited. No director, officer, agent or employe of any insurance company a party to an acquisition shall receive any fee, commission, compensation or other valuable consideration whatsoever for aiding, promoting or assisting therein, except as set forth in the plan.

[1963 c.477 §3]

INSIDER TRADING IN SECURITIES

738.710 "Equity security" defined. The term "equity security" when used in ORS 738.710 to 738.780 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

[1965 c.204 §7]

738.720 Application of ORS 738.730 to 738.750. The provisions of ORS 738.730 to 738.750 shall not apply to equity securities of a domestic stock insurance company if:

(1) Such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended; or

(2) Such domestic stock insurance company shall not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of ORS 738.730 to 738.750 except for the provisions of this subsection.

[1965 c.204 §8]

738.730 Filing statement of security ownership with commissioner. Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file

with the commissioner on or before January 31, 1966, or within 10 days after he becomes such beneficial owner, director or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

[1965 c.204 §2]

738.740 Suit to recover insider profits; exempted transactions. (1) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized.

(2) This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

[1965 c.204 §3]

738.750 Prohibited sales of securities. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal:

(1) Does not own the security sold; or

(2) If owning the security, does not deliver it against such sale within 20 days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation;

but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

[1965 c.204 §4]

738.760 Establishing or maintaining primary or secondary market in securities; rules of commissioner. (1) The provisions of ORS 738.740 shall not apply to any purchase and sale, or sale and purchase, and the provisions of ORS 738.750 shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security.

(2) The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

[1965 c.204 §5]

738.770 Arbitrage transactions exempt. The provisions of ORS 738.730 to 738.750 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of ORS 738.710 to 738.780.

[1965 c.204 §6]

738.780 Rules of commissioner. The commissioner shall have the power to make such rules and regulations as may be neces-

sary for the execution of the functions vested in him by ORS 738.710 to 738.770, and may for such purpose classify domestic stock insurance company, securities, and other persons or matters within his jurisdiction. No provision of ORS 738.730 to 738.750 imposing any liability shall apply to any act

done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

[1965 c.204 §9]

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 November 15, 1965.

**Sam R. Haley
Legislative Counsel**

