Chapter 749

1965 REPLACEMENT PART

Interinsurance Exchanges and Lloyd's Organizations

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RECIPROCAL OR INTERINSURANCE EXCHANGES

749.010 Exchange of reciprocal or interinsurance contracts authorized; "subscriber" and "attorney" defined. (1) Individuals, partnerships and corporations of this state, hereby designated as subscribers, hereby are authorized to exchange reciprocal or interinsurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of our laws, except life insurance. Such contracts may be executed by an attorney, agent or other representattive, hereby designated as attorney, duly authorized and acting for such subscribers. The attorney may be an individual, firm or corporation organized under the laws of this state or any other state or territory and having his principal office at the place designated by the subscribers in the power of attorney.

(2) Any corporation now or hereafter organized under the laws of the state shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character mentioned in ORS 749.010 to 749.150. The right to exchange such contracts hereby is declared to be incidental to the purpose for which such corporations are organized and as much granted as the rights and powers expressly conferred.

749.020 Reciprocal or interinsurance contracts and exchanges governed exclusively by ORS 749.010 to 749.150, exceptions. Reciprocal or interinsurance or indemnity contracts and the exchange thereof, and subscribers, their attorney or representative, shall be regulated by ORS 749.010 to 749.150 and by no other law relating to insurance unless such law is referred to in ORS 749.010 to 749.150, and no law enacted after March 11, 1931, shall apply to them unless they are expressly designated therein. However, all laws relating to insuring the performance of obligations of employers under ORS chapter 656 shall apply to them. [Amended by 1965 c.285 §94h]

749.030 Reciprocal exchange may not do insurance business without a certificate of authority. (1) No exchange shall be permitted to do any form of insurance business in this state without a certificate of authority from the State Insurance Commissioner.

(2) No certificate of authority to transact any kind of insurance in this state shall be issued to any foreign exchange until such exchange, through its attorney, files with the insurance commissioner an application therefor verified by the oath of such attorney and setting forth the information required under ORS 749.040 and complies with the provisions of ORS 749.010 to 749.150.

749.040 Declaration, or application for certificate of authority, to be filed; contents. (1) Subscribers contracting among themselves as authorized by ORS 749.010 shall, through their attorney, file with the State Insurance Commissioner a declaration, verified by the oath of such attorney, setting forth:

(a) The name or title of the exchange, which name or title shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as, in the opinion of the commissioner, is likely to result in confusion or deception.

(b) The location of the principal office of the exchange.

(c) The kind or kinds of insurance to be effected or exchanged.

(d) A copy of the form of power of attorney or instrument under which such insurance is to be effected or exchanged.

(e) A copy of the policy, contract or agreement under or by which such contracts of insurance are effected or exchanged among the subscribers.

(f) That applications have been made for insurance upon at least 200 risks aggregating not less than $3,000,000 represented by bona fide applications, or, in case of employers' liability or workmen's compensation, for insurance covering a total payroll of not less than $3,000,000, and, in case of automobile insurance, that applications have been made upon at least 2,500 automobiles covering any or all classes of automobile insurance, such applications to be concurrently effective when the reciprocal exchange is authorized to commence business by the commissioner.

(g) That there has been deposited and shall be maintained at all times with the State Treasurer or other proper official of the state in which the exchange is domiciled $50,000 in cash or securities, as a general

deposit for the benefit of subscribers wherever located. In the case of an exchange writing employers' liability or workmen's compensation insurance, such deposit shall be not less than $100,000. Where the laws of the home state do not provide for the acceptance of such a deposit, the same may be made with a bank or trust company in escrow subject to the control of the insurance commissioner of the home state, and such deposit shall be released only upon the written order of such insurance commissioner. A certification from the insurance commissioner or other proper state official of the state in which the exchange is domiciled shall be attached to the application for the certificate of authority. Exchanges other than those writing employers' liability or workmen's compensation insurance may file an indemnifying bond or certified copy thereof in the penal sum of $50,000 in lieu of such deposit. Such bond may be a personal bond with two or more individual sureties or a bond of a surety company authorized to do business in the state where the principal office of the exchange is situated. It shall be for the use and benefit of all subscribers wherever located and shall be filed with and approved by the commissioner of insurance of the state where the principal office of the exchange is located.

(2) The applicant shall furnish any other information required by the commissioner, except no exchange shall be required to furnish or file the names or addresses of its policyholders or subscribers.

749.050 Financial statement and instrument authorizing actions and service of process must be filed with declaration. (1) The application for a certificate of authority shall be accompanied by a sworn statement showing the financial condition of the exchange as of December 31 immediately preceding. The commissioner may require a supplemental statement to be furnished as of a later date.

(2) Concurrently with the filing of the declaration provided for by the terms of ORS 749.040, the attorney shall file with the commissioner an instrument in writing executed for said subscribers conditioned that upon the issuance of certificate of authority provided for in ORS 749.110, action may be brought in the county in which the property insured thereunder is situated or where the injured person resides, and service of process may be had upon the commissioner in all suits in this state arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Three copies of such process shall be served and the commissioner shall file one copy, forward one copy to the attorney and return one copy with his admission of service. Actions at law or suits in equity may be brought against or defended in the name of the exchange adopted by the subscribers.

749.060 Statement of maximum indemnity on each risk must be filed. The attorney shall file with the State Insurance Commissioner his sworn statement showing the maximum amount of indemnity upon any single fire risk and shall, whenever and as often as the same is required, file with the commissioner a statement verified by his oath giving such information.

749.070 Surplus requirements; contingent assessment liability of subscribers. (1) No exchange shall be licensed nor its license renewed by the State Insurance Commissioner unless it has and maintains at all times a surplus above reserves and all other liabilities in an amount of $50,000, and any exchange which exchanges contracts of insurance covering workmen's compensation insurance shall maintain such a surplus of $1,500,000.

(2) Any exchange which does not maintain a surplus over liabilities, as required by subsection (1) of this section, shall be notified by the commissioner of such deficiency, which deficiency shall be made good within 30 days by the subscribers or by the attorney in fact for them. No advancement made by the subscribers or the attorney shall be withdrawn or returned except out of the surplus at the exchange in excess of the requirements, and then only upon the written consent or approval of the commissioner. The contingent assessment liability of subscribers shall not be limited to an amount less than one additional annual premium or deposit; however, an exchange having a surplus of not less than the amount stated below may, while maintaining such surplus, issue nonassessable policies if such exchange deposits with the commissioner approved securities or a corporate surety bond in the amount and form provided in ORS 736.215

for companies, other than reciprocal exchanges, doing a casualty or fire insurance business:

(a) $300,000, if the exchange received a certificate of authority before September 2, 1963; or

(b) $500,000, if the exchange received a certificate of authority after September 2, 1963.

[Amended by 1963 c.397 §6]

749.080 Reserve requirements and fund regulations. (1) There shall at all times be maintained the same unearned premium reserve, loss reserve and any other reserves required of stock and mutual insurance companies.

(2) The funds of any local exchange shall be in cash or invested in such securities as the funds of stock and mutual insurance companies are required to be invested in under the laws of this state. The funds of any exchange with the principal office located in another state shall be in cash or invested in securities of the character required by the laws of such state for stock and mutual insurance companies.

749.090 Annual report of financial condition; examination of exchanges. (1) The attorney shall make a report to the State Insurance Commissioner for each calendar year, on March 1, showing the financial condition of the exchange, and shall furnish such additional information and reports as may be required.

(2) The business affairs, records and assets of such organization shall be subject to examination by the commissioner. Each such organization examined shall pay the just and legitimate expenses thereof, including railroad fare and traveling expenses of any examiner on any examination so conducted by the commissioner.

749.100 Gross premium tax for foreign exchanges, including tax for fire marshal's department; annual license fee for attorneys. (1) The attorney for every exchange not organized under the laws of this state shall pay to the Insurance Commissioner a premium tax based on a percentage of the gross premiums or deposits for the preceding calendar year as provided in subsection (3) of ORS 736.225, deducting return premiums and all amounts distributed to subscribers or credited to their accounts as provided in subsection (2) of ORS 736.225.

(2) In addition to the premium tax payable under subsection (1) of this section, such attorney for every exchange writing fire and automobile fire and theft insurance shall pay to the Insurance Commissioner, for the purpose of maintaining the department of the State Fire Marshal, a premium tax of one-half of one percent of the gross premiums or deposits for the preceding calendar year, deducting return premiums and all amounts distributed to subscribers or credited to their accounts.

(3) The premium taxes referred to in subsections (1) and (2) of this section are to be in lieu of all other taxes to be paid in this state by the exchange or by its attorney in its capacity as such acting in compliance with ORS 749.010 to 749.150 (for taxable years beginning after December 31, 1954), except taxes on real and personal property located in this state, and except taxes upon or measured by net income from which the exchange or attorney is not otherwise specifically exempted.

(4) Such attorney, with the filing of each annual report, shall pay the annual license fee as provided in ORS 736.130.

[Amended by 1955 c.728 §2; 1965 c.610 §15]

Note: The 1965 amendment to ORS 749.100 takes effect April 1, 1966. Until then, ORS 749.100 (1963 Replacement Part) remains in effect.

749.110 Attorney to secure license; issuance and revocation thereof. (1) Each attorney, by or through whom are issued any policies of or contracts for indemnity of the character referred to in ORS 749.010 to 749.150, shall procure from the State Insurance Commissioner annually, in the name or title adopted, a certificate of authority stating that all requirements of ORS 749.010 to 749.150 have been complied with.

(2) Upon such compliance and the payment of the fees and taxes required by ORS 749.010 to 749.150, the commissioner shall issue such certificate.

(3) In case of a breach of any of the conditions imposed by the provisions of ORS 749.010 to 749.150, the commissioner may revoke the certificate of authority issued thereunder.

749.120 Soliciting without a license prohibited. No attorney or representative of said attorney shall, except for the purpose of applying for certificate of authority, exchange any contracts of indemnity of the kind and character specified in ORS 749.010 to 749.150, or directly or indirectly solicit or negotiate any applications for same without

first complying with the provisions of ORS 749.010 to 749.150.

749.130 Application of other insurance laws to interinsurance exchanges. (1) The insurance laws of this state regarding the appointment or licensing, qualification and regulation of insurance agents or resident agents and the counter signature of policies by them shall not apply to the attorney in fact of a reciprocal or interinsurance exchange, nor to the traveling salaried home office representatives of such exchange operating on a salary basis and receiving no commissions, but shall apply to any reciprocal or interinsurance exchange that operates under the agency system and appoints agents on a commission basis.

(2) Any reciprocal or interinsurance exchange exchanging contracts of indemnity between its subscribers and providing coverage for loss by fire, lightning or windstorm and which maintains its own rates and schedule of rates shall not be required to join or become a member of a fire insurance rating organization but may, in lieu of joining such organization, file with the State Insurance Commissioner its schedule of rates and classifications. No exchange which confines its business principally to sprinklered risks shall be subject to the rating organization law, except as may therein be provided.

(3) A reciprocal or interinsurance exchange may insert in any form of policy prescribed by the law of this state any provisions or conditions required by its plan of insurance which are not inconsistent or in conflict with the law of this state. Such policy, in lieu of conforming to the language and form prescribed by such law, shall be held to conform thereto in substance if such policy includes a provision or indorsement reciting that the policy shall be construed as if in the language and form prescribed by such law.

749.140 Verifications by incorporated attorneys. Any instrument required to be verified by the oath of the attorney may, in case of an incorporated attorney, be verified by the oath of the president, vice president, secretary or other executive officer of such corporation.

749.150 Aid of court to enforce order or action taken. The State Insurance Commissioner may invoke the aid of any court of competent jurisdiction through injunction, mandamus or other process to enforce any order or action made or taken by him in pursuance of law.

749.160 to 749.300 [Reserved for expansion]

UNDERWRITERS DOING BUSINESS ON LLOYD'S PLAN

749.310 Underwriters authorized to transact business on the Lloyd's plan. Individuals, partnerships or associations of individuals, hereby designated "underwriters," are authorized to engage in the business of insurance in this state as insurers on the Lloyd's plan in accordance with the provisions of the General Insurance Law but not otherwise.

749.320 Classes of risks that may be written. Such underwriters, when authorized as provided in ORS 749.340 may insure the following classes of risks:

(1) Against loss or damage to property by fire, lightning, hail or windstorms, tornadoes or earthquakes on land and against loss or damage arising from breakage or leakage of sprinklers or piping connected therewith, pumps or other apparatus erected for extinguishing fires.

(2) All insurance appertaining to or connected with ocean, marine perils and risks of transit and transportation by land or water, and all other risks and perils insured by marine and transportation insurers.

(3) All kinds of team, vehicle and automobile insurance, including indemnity against loss sustained by or legal liability for loss to the persons or property of others caused by their use or operation, but not including insurance against loss by reason of bodily injury to the persons.

749.330 Declaration, or application for certificate of authority, to be filed; contents. Such underwriters shall file with the State Insurance Commissioner a declaration signed and sworn to by their duly authorized attorney, or attorneys in fact, setting forth:

(1) The name and title under which the business is to be conducted, which name shall not be so similar to any existing association of insurers on the Lloyd's or interinsurance plan, or insurance corporations, as, in the opinion of the commissioner, is calculated to deceive.

(2) The location of the principal office at which the business is to be conducted.

(3) A copy of the form of power of attorney, agreement or other authority of the attorney, or attorneys in fact, setting forth the character of their representatives and authority and the agreement between the underwriters.

(4) Copies of each form of policy contracts or agreement under or by which insurance is to be effected.

(5) The names and addresses of all the underwriters proposing to engage in such business.

(6) The designation and appointment of the commissioner for service of legal process.

(7) The kind or kinds of insurance to be written.

(8) That a fund for the protection of policyholders is in the possession, within the United States, of the attorney, or attorneys in fact, or a committee for such underwriters, and is either in cash or invested as required by the laws of the state in which the principal office of the underwriters is located in respect to securities deposited by the insurance corporations authorized to transact similar kinds of insurance. Such fund is to amount to the sum of not less than $100,000 if the applicants desire to be authorized to transact the kind of insurance specified in any one of subsection (1), (2) or (3) or in subsections (1) and (3) or (2) and (3) of ORS 749.320; and such fund is to amount to the sum of not less than $200,000 if the applicants desire to be authorized to transact all the kinds of insurance specified in subsections (1), (2) and (3) or in subsections (1) and (2) of ORS 749.320.

(9) The number of underwriters, which shall not be less than 25, and that each underwriter is worth in his own right not less than $20,000 over and above all his debts and liabilities.

(10) A statement showing a list of all cash and invested assets owned by said associated underwriters, as such, and their estimated values.

749.340 Commissioner to issue certificate of authority; necessity for certificate; renewal. (1) Upon the filing of the declaration, the commissioner shall examine the same and, if it appears that all the statements made in the declaration are true and that the rights of the policyholders will be protected thereunder, he may issue a certificate of authority to such underwriters under the name chosen and approved, stating that they are authorized to transact the business of insurance specified in the declaration.

(2) The commissioner shall collect an annual license fee as provided in ORS 736.130 from such underwriters before issuing or renewing such certificate of authority. Such certificate of authority shall be renewed annually.

(3) No underwriter, attorney in fact, agent or other person shall transact the business of insurance in this state for such underwriters until such certificate has been issued, nor during its suspension or revocation.

[Amended by 1965 c.610 §16]

Note: The 1965 amendment to ORS 749.340 takes effect April 1, 1966. Until then, ORS 749.340 (1963 Replacement Part) remains in effect.

749.350 Examination by commissioner. Prior to the issuance of such certificate of authority, the commissioner may, at his option, cause an examination to be made of the affairs and assets of the underwriters applying for said certificate.

749.360 Deposit of security by foreign underwriters. If any of the underwriters applying for certificate of authority under ORS 749.340 is not a citizen of the United States each such alien underwriter shall at the time of the making of the application for certificate of authority deposit with the commissioner the sum of $5,000 in cash or in securities such as are now required for the investment of the capital of insurance corporations authorized to do similar kinds of insurance business in this state or in such kinds of securities as may be approved by him. The provisions of this section as to deposits shall not apply, however, if such alien underwriter is one of an association of underwriters having on deposit with the insurance department of any state of the United States, or in the hands of a bank or trust company as trustee, a cash deposit or approved securities worth not less than $100,000 held in trust for the benefit of all their policyholders in the United States and has deposited with the State Treasurer for the security of Oregon policyholders money or bonds of the United States, or this state, or interest-paying bonds, when they are at or above par, of any other state of the United States, or the bonds of any county or municipality of this or any other state of the United States, to the actual par and

market value of not less than $25,000, or, in lieu of such securities, a corporate surety bond of the same amount payable to the State of Oregon, such deposit or bond to be held and conditioned upon the faithful performance by such company of all contracts and other requirements within the state. Such bond shall be executed by an entered or domestic surety company and approved by the commissioner and shall continue in full force and effect until the commissioner receives 60 days' written notice of its termination, which notice shall be given by the surety company that executed such bond.

749.370 Return of deposit of securities. After the conditions of any deposits made under the provisions of the General Insurance Law have been fulfilled and the certificate of authority granted to such underwriters has been canceled or they have voluntarily withdrawn from and have ceased doing business in this state, the commissioner shall return to said underwriters or their duly authorized representative for this purpose specifically designated by them, or their principal attorney, or attorneys in fact, all securities and cash so deposited in this state.

749.380 Additional underwriters to comply with law. Whenever underwriters applying for certificates of authority under ORS 749.340, after the issue of such certificate, are joined by other underwriters, additional or substituted, such additional or substituted underwriters must comply with the provisions of the General Insurance Law and shall be held to be bound by the documents on file with the commissioner concerning such authorized underwriters in the same manner and to the same extent as though they had been original applicants for the certificate of authority.

749.390 Information to be furnished commissioner. Any association of underwriters authorized under ORS 749.340 shall, from time to time, furnish to the commissioner, under oath of their attorney or attorneys in fact, such information as the commissioner may require respecting the conduct of their affairs, changes in the name under which the business is done, the establishment of branch offices, and their location, and any change in the membership of the underwriters and their attorney or attorneys in fact, including any amendment to the power of attorney, agreements or articles of association of underwriters.

749.400 Limitation upon amount of loss on any one risk. No association of underwriters authorized to do business in this state under the terms of ORS 749.340 shall expose itself to loss of any one risk to an amount in excess of one-fifth of its cash and invested assets, including therein the underwriting liability of the individual underwriters, unless any excess is promptly reinsured by the underwriters.

749.410 Underwriters subject to same laws as foreign insurance companies. All associations of underwriters authorized under ORS 749.340, and their representatives, shall respectively be subject to the same supervision by and required to make the same reports to the commissioner as is required of foreign insurance companies and their representatives transacting the same or similar kinds of insurance in this state; and they shall pay the same taxes and license fees as are required to be paid by such insurance companies.

749.420 Revoking authority. Upon violation of any of the provisions of the General Insurance Law, the commissioner shall have authority to revoke or suspend any certificate of authority issued under ORS 749.340.

749.430 to 749.980 [Reserved for expansion]

PENALTIES

749.990 Penalties. Violation of ORS 749.120 is punishable, upon conviction, by a fine of not less than $100 nor more than $1,000.

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