

Chapter 734

1967 REPLACEMENT PART

Rehabilitation and Liquidation of Insurers

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Note: ORS chapter 734 first becomes operative on January 1, 1968. See 1967 c.359 §714.

734.010 Application of chapter; "insurer" specially defined. (1) This chapter shall apply to:

(a) All persons transacting or purporting to transact insurance as insurers in this state; and

(b) All persons in process of organization to become insurers.

(2) The term "insurer," when used in this chapter shall include all persons enumerated in subsection (1) of this section. [1967 c.359 §258]

734.020 "Impairment" defined. An insurer shall be deemed to be "impaired" when it does not possess assets at least equal to all its liabilities plus its required capitalization. [1967 c.359 §257]

734.030 "Delinquency proceeding" defined. "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating or conserving such insurer. [Formerly 751.010]

734.040 "Foreign country" defined. "Foreign country" means territory not in any state as defined in ORS 731.136. [1967 c.359 §260]

734.050 "Domiciliary," "ancillary" and "reciprocal state" defined. As used in this chapter:

(1) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state has at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States, and any such insurer is deemed to be domiciled in such state for purposes of this chapter.

(2) "Ancillary state" means any state other than a domiciliary state.

(3) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the Uniform Insurers Liquidation Act, as defined in ORS 734.330, are in force, including the provisions

requiring that the commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer. [1967 c.359 §261]

734.060 "General assets" defined. As used in this chapter, "general assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States shall be deemed general assets. [1967 c.359 §262]

734.070 "Preferred," "special deposit" and "secured" claims defined. As used in this chapter:

(1) "Preferred claim" means any claim with respect to which the law of a state or of the United States accords priority of payment from the general assets of the insurer.

(2) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(3) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process. [1967 c.359 §263]

734.080 "Receiver" defined. As used in this chapter, "receiver" means receiver, rehabilitator, liquidator or conservator, as the context may require. [1967 c.359 §264]

734.110 Jurisdiction of delinquency proceedings; venue. (1) The circuit court shall have original jurisdiction of delinquency proceedings under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter.

(2) The venue of delinquency proceedings against a domestic insurer shall be in the circuit court for the county in which is located the insurer's registered office or principal place of business. The venue of such proceedings against foreign and alien insurers shall be in the circuit court for Marion County.

(3) At any time after the commencement of a delinquency proceeding the court may issue an order changing the venue of the proceeding on motion of the commissioner or other interested person if the court finds the proceedings may be more economically and efficiently conducted thereby. [1967 c.359 §265]

734.120 Exclusive remedy; appeal. (1) Delinquency proceedings pursuant to this chapter shall constitute the sole and exclusive method of rehabilitating, liquidating or conserving an insurer, and no court shall entertain a petition for the commencement of such proceedings, or any other similar procedure, unless the same has been filed in the name of the state on the relation of the commissioner.

(2) An appeal shall lie to the Supreme Court from an order granting or refusing rehabilitation, liquidation, or conservation, and from every order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein. [1967 c.359 §266]

734.130 Commencement of delinquency proceeding. (1) The commissioner shall commence a delinquency proceeding by an application to the court for an order directing the insurer to show cause why the commissioner should not have the relief prayed for.

(2) The application shall be by petition, verified by the commissioner, setting forth the ground or grounds for the proceeding and the relief demanded.

(3) If the court is satisfied from reading the commissioner's petition that the facts therein alleged, if established, would constitute grounds for a delinquency proceeding under this chapter, the court shall issue an order to the insurer to show cause.

(4) On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders,

members, subscribers or the public may require.

(5) After commencement of a delinquency proceeding by the commissioner, orders of the court may thereafter be made for any of the purposes relevant upon application of any interested person. [1967 c.359 §267]

734.140 Injunctions. (1) Upon application by the commissioner for an order to show cause under ORS 734.130, or at any time thereafter, the court may, without notice, issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents, employes and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may, at any time during a proceeding under this chapter, issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(3) Notwithstanding any other provision of law, no bond shall be required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section. [1967 c.359 §268]

734.150 Grounds for rehabilitation, domestic insurers. The commissioner or any interested person may apply for an order directing the commissioner to rehabilitate a domestic insurer if the insurer:

(1) Is impaired;

(2) Has refused to submit its books, papers, accounts or affairs to the reasonable inspection and examination of the commissioner;

(3) 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 into the property or business of any other insurer, without first having complied with ORS 731.512 and 732.505 to 732.570;

(4) Is found to be in such condition that its further transaction of business would be

hazardous to its policyholders, creditors, stockholders or the public;

(5) Has wilfully violated its articles of incorporation or any law of this state;

(6) Has any trustee, director, manager or officer who has refused to be examined under oath touching its affairs;

(7) Has been the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or of its property by a federal court, or if a receiver, trustee, custodian, or sequestrator has been appointed by a federal court or if such appointment is imminent;

(8) Has consented to such an order through a majority of its directors, stockholders, members, or subscribers;

(9) Has failed to pay a final judgment rendered against it in any state upon any insurance policy issued or assumed by it, within 30 days after the judgment became final or within 30 days after time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later; or

(10) Has had its certificate of authority to transact insurance in this state revoked. [Formerly 738.450]

734.160 Order of rehabilitation, domestic insurers. (1) An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he may apply to the court for an order of liquidation under ORS 734.180.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply for an order terminating the rehabilitation proceeding and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be granted except after a full hearing.

[1967 c.359 §270]

734.170 Grounds for liquidation, domestic insurers. The commissioner or any interested person may apply for an order directing the commissioner to liquidate the business of a domestic insurer, regardless of

whether there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in ORS 734.150, or if the insurer:

(1) Has ceased transacting business for a period of one year;

(2) Has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any laws except the Insurance Code; or

(3) Has not organized or completed its organization and obtained a certificate of authority as an insurer within the time authorized by law.

[1967 c.359 §271]

734.180 Order of liquidation, domestic insurers. (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner or in the name of the insurer as the court may direct, and to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply under this chapter for an order dissolving the corporate existence of a domestic insurer:

(a) Upon his application for an order of liquidation of such insurer, or at any time after such order has been granted; or

(b) Upon the grounds specified in subsection (3) of ORS 734.170, regardless of whether an order of liquidation is sought or has been obtained.

[Formerly 738.470]

734.190 Grounds for conservation, foreign and alien insurers. The commissioner or any interested person may apply for an order directing the commissioner to conserve the assets within this state of a foreign or alien insurer upon any one or more of the following grounds:

(1) Any of the grounds specified in ORS 734.150; or

(2) That its property has been sequestered in any jurisdiction.

[1967 c.359 §273]

734.200 Conservation or ancillary receivership, foreign and alien insurers. (1) An order to conserve the assets of a foreign

or alien insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) Whenever a domiciliary receiver has been appointed for any foreign or alien insurer in its domiciliary state, the court shall, on application of the commissioner, appoint the commissioner as the ancillary receiver in this state.

(3) An order to liquidate the assets in this state of a foreign or alien insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this state and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this chapter. [1967 c.359 §274]

734.210 Conduct of delinquency proceedings, domestic insurers. (1) Whenever under this chapter a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as such receiver. The court shall direct the receiver forthwith to take possession of the property of the insurer and to administer the same under the orders of the court.

(2) Any deed or other instrument executed under this chapter shall be valid and effectual for all purposes as though the same had been executed by the person affected by any proceedings under this chapter or by its officers pursuant to the direction of its governing board or authority. The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale or other evidence of title duly filed or recorded.

(3) In cases where any real property sold by the commissioner is located in a county other than the county wherein the proceeding is pending, the commissioner shall cause a certified copy of the order of his appointment, or order authorizing or ratifying the sale, to be filed with the recording officer for the county in which the property is located.

(4) The commissioner as domiciliary receiver shall be responsible on his official bond for the proper administration of all

property coming into his possession or control. The court may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the property.

[Formerly 751.020]

734.220 Powers of commissioner as receiver. (1) Upon taking possession of the property and business of any person in any proceeding under this chapter, the commissioner shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of this state for the purpose of rehabilitating, liquidating or conserving the insurer.

(2) Upon taking such possession of the property and business of any person, the commissioner as receiver shall:

(a) Be vested with the insurer's title and interest in and to all assets and property of every kind, both tangible and intangible, except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in this chapter for ancillary receivers appointed in this state as to assets located in this state;

(b) Possess, in the name of the insurer or in his own name, all rights, privileges, powers and authority granted to insurers in this state or otherwise possessed by insurers generally, without regard to any limitations thereon prescribed in the articles or bylaws of such insurer; and

(c) Perform and do all acts which he may deem necessary, advisable or expedient for the accomplishment or in aid of the purpose for which such possession was taken.

[1967 c.359 §276]

734.230 Deputies and assistants. In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. Unless otherwise provided by the commissioner, no person so appointed shall be deemed a state employe solely by reason of such appointment. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the delinquent insurer and of conducting the delinquency proceedings shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them special deputies shall possess all the powers given to,

and, in the exercise of those powers, shall be subject to all the duties imposed upon, the receiver with respect to delinquency proceedings.

[1967 c.359 §277]

734.240 Conduct of delinquency proceedings, foreign insurers. (1) Whenever under this chapter an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment:

(a) If he finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver; or

(b) If 10 or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver of an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all the property, contracts and rights of action, and all the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the provisions of this section the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

[Formerly 751.030]

734.250 Right of domiciliary receiver to sue in this state. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets

of such insurer to which he may be entitled under the laws of this state.

[1967 c.359 §279]

734.260 Claims of nonresidents against domestic insurers. (1) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either:

(a) Be proved in this state as provided by law; or

(b) If ancillary proceedings have been commenced in such reciprocal states, be proved in those proceedings.

(3) In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in ORS 734.270 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

[Formerly 751.040]

734.270 Claims of residents against foreign insurers. (1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in this state may either:

(a) Be proved in the domiciliary state as provided by the law of that state; or

(b) If ancillary proceedings have been commenced in this state, be proved in those proceedings.

(3) In the event that any such claimant elects to prove his claim in this state, he

shall file his claim with the ancillary receiver in the manner provided by this chapter for the proving of claims against insurers domiciled in this state, and he shall give notice in writing to the receiver in the domiciliary state, either by registered or certified mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within 30 days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered or certified mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.

[Formerly 751.050]

734.280 Form of claim; notice; hearing.

(1) All claims against an insurer, against which delinquency proceedings have been begun, shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant, or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

(2) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state, on or before the last date for filing as specified in this chapter.

(3) After the expiration of any period for filing of claims, the receiver shall report the claims filed within such period to the court, specifying in such report his recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing such claims and shall direct that the claimants or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices

shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

(4) At the hearing all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

[1967 c.359 §282]

734.290 Priority of preferred claims.

(1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims whether owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

[1967 c.359 §283]

734.300 Priority of special deposit claims. The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

[1967 c.359 §284]

734.310 Priority of secured claims. The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on

the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

[Formerly 751.080]

734.320 Attachment and garnishment of assets. During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

[1967 c.359 §286]

734.330 Uniform Insurers Liquidation Act: short title; interpretation. (1) ORS 734.030 to 734.080 and 734.240 to 734.330 may be cited as the Uniform Insurers Liquidation Act.

(2) The Uniform Insurers Liquidation Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

[Formerly 751.110]

734.340 Date rights fixed on liquidation. The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers, and all other persons interested in its estate, shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which makes the order, subject to the provisions of ORS 734.380 with respect to the rights of claimants holding contingent claims.

[1967 c.359 §288]

734.350 Voidable transfers. (1) Any transfer of, or lien upon, the property of an insurer, other than as provided in ORS 734.320 which is made or created within four months prior to the commencement of a delinquency proceeding with the intent of giving to any creditor, or of enabling him to

obtain, a greater percentage of his debt than any other creditor of the same class, and which is accepted by such creditor having reasonable cause to believe that such a preference will occur, shall be voidable.

(2) Every director, officer, employe, stockholder, member, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof, shall be personally liable therefor and shall be bound to account to the commissioner.

(3) The commissioner, as receiver in any proceeding under this chapter, may avoid any transfer of, or lien upon, the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided, and may recover the property so transferred, unless such person was a bona fide holder for value prior to the commencement of the delinquency proceeding. Such property or its value may be recovered from anyone who has received it, except a bona fide holder for value as specified in this subsection.

[1967 c.359 §289]

734.360 Preference of claims. (1) The debts and claims to be paid in full in delinquency proceedings prior to the payment of any other debts or claims and the order of payment shall be:

(a) Costs and expenses of administration of the delinquency proceedings;

(b) Compensation or wages actually owing to salaried employes other than officers of an insurer, for services rendered within three months prior to the commencement of a delinquency proceeding, but not exceeding \$600 for each such employe;

(c) Taxes legally due and owing by the insurer to this state or to the United States; and

(d) Debts owing to any person, including this state, who by the laws of this state is entitled to priority.

(2) Debts or claims for unearned premiums due policyholders shall share in the distribution of assets only after all other properly submitted and proved claims have been paid in full.

[1967 c.359 §290]

734.370 Offsets. No offsets shall be allowed in cases of mutual debts or mutual

credits between the insurer and another person in connection with any delinquency proceeding under this chapter, except for cases of policy loans and cases of reinsurance.

[1967 c.359 §291]

734.380 Allowance of certain claims.

(1) A contingent claim against an insurer or a claim based upon a cause of action or suit against an insured of an insurer shall be filed, presented and reported in the same manner and within the same time limitations as provided in this chapter for a noncontingent claim. Such claims shall be allowed to share in a distribution of assets in the same manner as noncontingent claims of the same class and priority, provided that before any such sharing and distribution:

(a) If the claim is a contingent claim against the insurer, it becomes an absolute claim either as a result of proof presented or litigation; or

(b) If the claim is based upon a cause of action or suit against an insured of the insurer, a judgment is obtained against the insured or it may be reasonably inferred from proof presented that the claimant would be able to obtain such a judgment; in no case, however, shall all of the claims so presented and allowed arising out of a single act of the insured exceed the maximum liability of the insurer under its policy with or affecting the insured.

(2) Nothing in subsection (1) of this section shall prevent or bar the commissioner from compromising a disputed claim with the claimant, whether contingent or noncontingent, if such compromise is justified and supported by the facts and circumstances.

(3) If full or partial distribution to noncontingent claimants is authorized or directed by the court prior to satisfaction of the requirements of paragraph (a) or (b) of subsection (1) of this section, with respect to particular claims the commissioner shall retain a sum equal to the amount which would have been paid on the contingent claim if such requirements had then been met. The amount so withheld shall be distributed to the person or persons found by the court to be entitled thereto at such time as the claim is fully established as provided in subsection (1) of this section, or the commissioner is satisfied that the claim is without merit or cannot be so proved or established, or the statute of limitations, if timely asserted, would bar further consideration or recovery thereon.

(4) No judgment entered after the date of entry of a liquidation order shall be considered in the liquidation proceedings as evidence of liability or of the amount of damages, and no judgment entered on default or inquest or by collusion after commencement of a delinquency proceeding shall be considered as conclusive evidence in the liquidation proceeding, either of liability or of the amount of damages.

[1967 c.359 §292]

734.390 Time to file claims. (1) If upon the granting of an order of liquidation under this chapter, or at any time thereafter during the liquidation proceeding, the insurer shall not be clearly solvent, the court shall, after such notice and hearing as it considers proper, make an order declaring the insurer to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against the insurer and who have not filed proper proofs thereof, to present the same to him, at a place specified in the notice, within four months from the date of the entry of such insolvency order or within such longer time as the court shall prescribe. The last day for filing of proofs of claims shall be specified in the notice. The notice shall be given in a manner determined by the court.

(2) Proofs of claims may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed on or before such date, have been paid in full.

[1967 c.359 §293]

734.400 Report for assessment, domestic mutual and reciprocal insurers. Within three years from the date an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer was filed in the office of the clerk of the court by which such order was made, the commissioner may make a report to the court setting forth:

(1) The reasonable value of the assets of the insurer;

(2) The insurer's probable liabilities; and

(3) The probable necessary assessment, if any, to pay all claims and expenses in full, including expenses of administration.

[1967 c.359 §294]

734.410 Levy of assessment, domestic mutual and reciprocal insurers. (1) Upon the basis of the report provided for in ORS 734.400, including any amendments thereof, the court, ex parte, may levy one or more assessments against all persons who, as shown by the records of the insurer, were members (in the case of a mutual insurer) or subscribers (in the case of a reciprocal insurer) at any time within one year prior to the commencement of the delinquency proceeding.

(2) Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. The total of all assessments against any member or subscriber, with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provisions of the Insurance Code, shall be no greater than the amount specified in the policy of the member or subscriber and as limited under the Insurance Code; except that, if the court finds that the policy was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, the court may determine the upper limit of such assessment on the basis of such minimum rate.

(3) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with the Insurance Code.
[1967 c.359 §295]

734.420 Order to pay assessment. After levy of assessment as provided in ORS 734.410 and upon the filing of a further detailed report by the commissioner, the court shall issue an order directing each member (in the case of a mutual insurer) or each subscriber (in the case of a reciprocal insurer) if he shall not pay the amount assessed against him to the commissioner on or before a day to be specified in the order, to show cause why he should not be held liable to pay such assessment together with costs as set forth in ORS 734.440, and why the commissioner should not have judgment therefor.

[1967 c.359 §296]

734.430 Publication and transmittal of assessment order. The commissioner shall cause a notice of the assessment order issued under ORS 734.420, which shall set forth a brief summary of the contents of such order, to be:

(1) Published in such manner as shall be directed by the court; and

(2) Inclosed in a sealed envelope, addressed and mailed, postage prepaid, to each member or subscriber liable thereunder, at his last-known address as it appears on the records of the insurer, at least 20 days before the return day of the order to show cause specified in the assessment order.
[1967 c.359 §297]

734.440 Judgment upon assessment.

(1) On the return day of the order to show cause specified in the assessment order issued under ORS 734.420, if the member or subscriber does not appear and serve verified objections upon the commissioner, the court shall make an order adjudging that such member or subscriber is liable for the amount of the assessment against him, together with \$10 costs, and that the commissioner may have judgment against the member or subscriber therefor.

(2) If on such return day the member or subscriber shall appear and serve verified objections upon the commissioner, there shall be a full hearing before the court or a referee to hear and determine the matter. The court, after such hearing, shall make an order either negating the liability of the member or subscriber to pay the assessment or affirming his liability to pay the whole or some part thereof, together with \$25 costs and the necessary disbursements incurred at such hearing, and directing that the commissioner, in the latter case, may have judgment therefor.

(3) A judgment upon any such order shall have the same force and effect, and may be entered and docketed, and may be appealed from, as if it were a judgment in an original action brought against a member or subscriber in the court in which the delinquency proceeding is pending.

[1967 c.359 §298]

REHABILITATION AND LIQUIDATION

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 1, 1967.

Robert W. Lundy
Legislative Counsel

CHAPTER 735

[Reserved for expansion]

