Chapter 735

1971 REPLACEMENT PART

Essential Insurance

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CROSS REFERENCES

735.025

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Regulation of insurers, generally, 731.354 to 731.470

735.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Association" means the Oregon FAIR Plan Association created by ORS 735.045.

(2) "Board" means the board of directors of the association.

(3) "Essential property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage indorsements thereon, as approved by the commissioner, and insurance against the perils of vandalism and malicious mischief. "Essential property insurance" does not include automobile insurance or insurance on such types of manufacturing risks as may be excluded by the commissioner.

(4) "Inspection bureau" means the person or persons designated by the association with the approval of the commissioner to make inspections as required under ORS 731.418, 733.010 and 735.005 to 735.145 and to perform such other duties as may be authorized by the association.

(5) "Service insurer" means any insurer designated as such by the board.

(6) "Member insurer" means an insurer authorized to transact insurance in this state that writes any kind of essential property insurance.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter apply, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Plan" means the plan of operation of the association established pursuant to ORS 735.085.

(9) "State layer" means that sum of money which is necessary to reimburse an agency of the United States Government for losses reinsured by such agency, where the provision for such sum is a condition of the continued availability of reinsurance with respect to essential property insurance on domestic risks by such agency to member insurers. The amount of the state layer for a particular calendar year may not exceed the lesser of paragraph (a) or (b) of this subsection, where:

(a) Equals the total reinsured losses paid by such agency for that year with respect to domestic risks, diminished by the sum of:

(A) The reinsurance premiums paid by member insurers for that year with respect to domestic risks;

(B) Any excess of net reinsurance premiums over reinsured losses realized in this state since the year for which such reimbursement of such agency was last required; and

(C) Any assessment of member insurers made under such reinsurance contract with respect to that year.

(b) Equals five percent of the aggregate property insurance premiums earned in this state during the preceding year on all lines of insurance for which such reinsurance is provided in the subject year.

[1971 c.321 §5]

735.015 Purpose. The purpose of this chapter is:

(1) To assure stability in the property insurance market for certain property located in this state.

(2) To assure the availability of essential property insurance to the owners of insurable property.

(3) To encourage maximum use, in obtaining essential property insurance, of the normal insurance market provided by authorized insurers.

(4) To provide for the equitable distribution among authorized insurers of the responsibility for insuring certain insurable property for which essential property insurance cannot be obtained through the normal insurance market by the establishment of the Oregon FAIR Plan Association.

[1971 c.321 §2]

735.025 Construction. This chapter shall be liberally construed to effect the purpose provided in ORS 735.015.

[1971 c.321 §3]

735.035 Application. This chapter applies only to essential property insurance on domestic risks.

[1971 c.321 §4]

735.045 Oregon FAIR Plan Association; insurers required to be members; plan of operation. There is hereby created the Oregon FAIR Plan Association. Each insurer that is a member insurer shall become and remain a member of the association as a condition of its authority to transact insurance in this state. The association shall perform

its functions in accordance with a plan of operation established pursuant to ORS 735.085, and shall exercise its powers through its board of directors.
[1971 c.321 §6]

735.055 Association board of directors; appointment; compensation, expenses of members; quorum. (1) The board of directors of the association shall consist of five members selected by the member insurers, subject to the approval of the commissioner, and two persons selected by the Governor, one of whom shall be a resident of a county of over 400,000 population and neither of whom is employed by or has been an agent of a member insurer. The term of each member shall be as specified in the plan, but in no event for longer than four years. A vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as for the initial selection. If the initial selection of members by the member insurers is not made within 60 days after the effective date of ORS 731.418, 733.010 and 735.005 to 735.145, the commissioner may select such initial members.

(2) In making or approving selections to the board, the commissioner shall consider among other things whether member insurers are fairly represented.

(3) A member of the board shall receive no compensation for his services as a member. However, a member shall be reimbursed from the assets of the association for actual and necessary travel and other expenses incurred by him in the performance of his duties.

(4) A majority of the members of the board constitutes a quorum for the transaction of business.
[1971 c.321 §7]

735.065 Required association functions. (1) The association shall:

(a) Have authority on behalf of its members to arrange for the issuance of property insurance policies by service insurers and to reinsure any of those policies in whole or in part and to cede such reinsurance, subject to the plan.

(b) Assess member insurers the amounts necessary to pay the expenses incurred by the association in meeting its obligations and exercising its duties and powers under this chapter.

(2) Except as provided in paragraphs (a) and (b) of subsection (3) of this section, the assessment of each member insurer for a particular calendar year shall be in the proportion that the net direct written premiums of the member insurer for the second preceding calendar year bears to the net direct written premiums of all member insurers for the second preceding calendar year. Each member insurer shall be notified of an assessment not later than the 30th day before the day it is due. If the funds of the association do not provide in any one year an amount sufficient to pay the expenses of the association, the funds available shall be prorated among the expenses and the unpaid portion shall be paid as soon thereafter as funds become available. If an assessment would cause a member insurer's financial statement to reflect an amount of surplus less than the minimum amount required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance, the association may, in whole or in part, exempt the member insurer from payment of the assessment or defer payments.

(3) (a) The maximum assessment of a member insurer for any calendar year shall be two percent of the insurer's net direct written premiums for the second preceding calendar year.

(b) The minimum assessment of a member insurer for any calendar year shall be $50.

(4) Reimburse inspection bureaus, service insurers and employes of the association for expenses incurred in the inspection or insuring of property on behalf of the association, and pay all other expenses the association incurs in carrying out the provisions of this chapter.

(5) Undertake a continuing public education program in cooperation with member insurers and agents to assure that the plan and federal programs to provide crime insurance, including the program provided under section 602 of the Act of December 31, 1970, Public Law 91-609, receive adequate attention.

(6) Undertake a continuing education program to advise the public of the steps which may be taken to make property more insurable against crime, personal liability and the perils named in subsection (3) of ORS 735.005.
[1971 c.321 §8]

735.075 Discretionary association functions. The association may:

(1) With the approval of the commissioner, employ or retain such persons and designate such inspection bureaus and service insurers as are necessary to handle applications, inspect and insure property and perform the other duties of the association.

(2) Borrow funds as necessary to carry out this chapter in such manner as may be specified in the plan.

(3) Sue or be sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out this chapter.

(5) At the end of any calendar year, refund to member insurers, in proportion to each insurer's payments to the association, the amount by which the board of directors finds that the funds of the association exceed its current liabilities plus the liabilities estimated for the coming year.

(6) Perform such other acts as are necessary or proper to carry out this chapter.
[1971 c.321 §9]

735.085 Plan of operation; submission to commissioner; approval of plan; compliance with plan. (1) The association shall submit to the commissioner, not later than September 7, 1971, a plan of operation, and may thereafter submit such amendments thereto as will provide for the reasonable and equitable exercise of the duties and powers of the association. The plan of operation, and any amendments thereto, shall become effective upon approval in writing by the commissioner.

(2) If the association fails to submit a plan that receives the approval of the commissioner as provided in subsection (1) of this section, or if the association after such approval fails to maintain a plan satisfactory to the commissioner, the commissioner shall by rule prescribe a plan of operation that meets the standards provided in subsection (1) of this section. A plan prescribed by the commissioner shall remain in effect until the commissioner by rule provides otherwise.

(3) No member insurer shall fail to comply with the currently effective plan.
[1971 c.321 §10]

735.095 Contents of plan of operation. The plan shall:

(1) Establish procedures for the submission and processing of applications for insurance and the payment of claims for losses.

(2) Establish procedures for record keeping, payment of other expenses and administration of all other financial affairs of the association.

(3) Establish times and places for meetings of the board.

(4) Establish procedures for selection of members of the board and for approval of such selections by the commissioner.

(5) Establish a procedure for appeal to the commissioner of final actions or decisions of the association.

(6) Establish such other procedures as may be necessary or proper to carry out the duties and powers of the association.

(7) Provide that the association shall file periodically with the commissioner statements of the insurance provided through the association and estimates of anticipated claims against the association.

(8) Provide that, subject to the written consent of the commissioner, the plan shall conform to any requirements set forth as conditions of the availability of reinsurance of domestic risks assumed by member insurers, whether as service insurers or otherwise, which is offered by the United States Government under the provisions of Titles XI and XII of the Urban Property Protection and Reinsurance Act of 1968, as amended (82 Stat. 476).

(9) Contain provisions for the collection of funds necessary to make any state layer payments.
[1971 c.321 §11]

735.105 Regulation of association as insurer; financial report to commissioner. The association is subject to regulation by the commissioner in the same manner as an insurer, to the extent determined by the commissioner to be necessary to carry out the purpose of this chapter. Not later than March 30 of each year the board shall submit to the commissioner, in a form approved by him, a financial report for the preceding calendar year.
[1971 c.321 §12]

735.115 Exemption of association from fees and taxes. Except for taxes levied on real or personal property, the association shall be exempt from the payment of all fees and taxes levied by this state or by any city, county, district or other political subdivision of this state.
[1971 c.321 §13]

735.125 Notification to commissioner of state layer payments by insurers; amortization of payment certificates. (1) If payments with respect to the state layer are made by a member insurer to the association, the association shall notify the commissioner of the amount of each such payment and issue a certificate to the insurer setting forth the amount of the payment.

(2) The commissioner shall set a period, not to exceed 10 years and commencing with the next calendar year after date of issue, over which each certificate shall be amortized. A pro rata portion of each certificate shall expire on December 30 of each year.
[1971 c.321 §14]

735.135 Insurance rates to include cost of unexpired payment certificates. The rates charged for essential property insurance may include amounts sufficient to recover, over a period of time determined by the commissioner, an amount equal to the face value of unexpired certificates issued pursuant to ORS 735.125. Rates that include amounts reasonably calculated to recover such certificate values are not excessive solely because of the inclusion of such amounts.
[1971 c.321 §15]

735.145 Immunity from legal action in carrying out duties. No person shall have a cause of action against the association or its employes or servicing facilities, any member of the board, or the commissioner or his employes for any action taken by them in carrying out this chapter.
[1971 c.321 §16]

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, 1971.

Robert W. Lundy
Legislative Counsel