

Chapter 732

1973 REPLACEMENT PART

Organization and Corporate Procedures of Domestic Insurers

GENERAL PROVISIONS

732.005 Application of private corporation law; definitions

ORGANIZATION

732.015 Permit to organize insurer required
732.025 Application for permit to organize stock insurer
732.035 Application for permit to organize insurer without capital stock
732.045 Investigation of applications to organize insurers
732.055 Issuance of organization permit
732.065 Applicants for permit to report changes to commissioner
732.075 Revoking or suspending permit to organize insurer
732.085 Incorporators
732.095 Articles of incorporation
732.105 Filing articles of incorporation and surety bond
732.115 Approval of articles, documents and bond; certificate of incorporation
732.125 Registration of securities subsequent to issuance of organization permit and certificate of incorporation
732.135 Soliciting subscriptions and applications
732.145 Stipulations required in subscriptions and applications; disposition of subscribed funds
732.155 Organization to be completed within two years; policies to be issued within one year of certification
732.165 Liability of directors and incorporators
732.175 Acting as corporate insurer without authority

CORPORATE PROCEDURES GENERALLY

732.205 General powers of insurers
732.210 Assertion of ultra vires
732.215 Management contracts prohibited
732.220 Exclusive agency contracts
732.225 Impairment of required capitalization prohibited
732.230 Curing impairment on demand of commissioner
732.235 Voluntary dissolution of insurer
732.240 Trusts of life insurance proceeds
732.245 Home office; records, assets; unlawful removal
732.250 Continuity of management in event of national emergency

DIRECTORS, OFFICERS AND EMPLOYEES

732.305 Board of directors
732.310 Classification of directors
732.315 Salary of officers, directors and employes
732.320 Supporting documents for expenditures
732.325 Certain transactions and compensation between insurers and directors, trustees, officers, agents or employes prohibited

SHARES, SHAREHOLDERS AND MEMBERS

(General Provisions)

732.405 Authorized shares
732.410 Right to acquire own shares

732.415 Stock insurer's proxies; regulation by commissioner
(Insider Trading)
732.420 "Equity security" defined
732.425 Application of insider trading regulation
732.430 Filing statement of security ownership with commissioner
732.435 Suit to recover insider profits; exempted transactions
732.440 Prohibited sales of securities
732.445 Establishing or maintaining primary or secondary market in securities; rules of commissioner
732.450 Arbitrage transactions exempt
732.455 Rules of commissioner
(Shareholders and Members)
732.460 Annual report to shareholders or members
732.465 Members of domestic mutual insurers
732.470 Voting rights of members of mutual insurer
732.475 Members' meetings and procedures of domestic mutual and reciprocal insurers

ACQUISITIONS AND MERGERS

732.505 "Acquisition" and "acquire" defined
732.510 "Controlling interest," "substantially all," "purchase, exchange or otherwise" defined
732.515 "Acquiring corporation" defined
732.520 Acquisition of insurers
732.525 Plan of acquisition
732.530 Procedure for acquisition
732.535 Hearing on plan
732.540 Approval of plan
732.545 Approval by shareholders, members or subscribers
732.550 Acquisition of assets or insurance of mutual insurers
732.555 Filing articles of acquisition; issuance of certificate
732.560 Compliance with foreign or alien laws
732.565 Effective date of acquisition
732.570 Effect of acquisition

INSURANCE HOLDING COMPANY REGISTRATION

732.605 Definitions for ORS 732.605 to 732.705
732.615 Holding company system members required to register
732.625 Registration statement; contents
732.635 Certain information not required to be disclosed
732.645 Registration information required to be kept current; reports of distributions to shareholders required
732.655 Termination of registration by commissioner
732.665 Consolidated registration
732.675 Registration for affiliated insurers
732.685 Exemption from ORS 732.605 to 732.705 by commissioner
732.695 Disclaimer of affiliation; contents; subsequent duty to register; disallowance of disclaimers by commissioner
732.705 Rulemaking authority

CROSS REFERENCES

Definitions and general provisions applicable, 731.004
to 731.194

"Insurance Code" defined, 731.004

Political contributions, 260.472

Unclaimed funds, disposition, 98.302 to 98.436

732.220

"Equity security" defined, 732.420

732.305

Management contracts prohibited, 732.215

732.425

Section 12 of federal Act, see 15 U.S.C. §78L

732.445

Federal Act, see 15 U.S.C. §§78a to 78h

ACQUISITIONS AND MERGERS

Retention of name after merger or consolidation,
731.430

Withdrawal of insurer, 731.512

GENERAL PROVISIONS

732.005 Application of private corporation law; definitions. (1) Except where inconsistent with the express provisions of the Insurance Code, ORS chapter 57 shall, to the extent applicable, govern the powers, duties and relationships of domestic insurers.

(2) (a) The following sections in ORS chapter 57 shall not apply to insurers: ORS 57.045 to 57.060; 57.306 to 57.331; 57.455 to 57.500; 57.506 and 57.511; 57.655 to 57.685 and 57.716 to 57.745; 57.755 and 57.757; 57.761 to 57.769; 57.776 to 57.783, 57.793 to 57.799, 57.811 and 57.815; and 57.991 to 57.994.

(b) The following section in ORS chapter 57 shall not apply to insurers without capital stock: ORS 57.160.

(c) The enumeration in this subsection of inapplicable sections in ORS chapter 57 shall not be deemed exclusive or a limitation upon subsection (1) of this section.

(3) To the extent applicable and not inconsistent with subsections (1) and (2) of this section, ORS chapter 57 shall apply to insurers without capital stock as well as to insurers with capital stock. Where applicable to insurers without capital stock, references in ORS chapter 57 to "shareholders" shall be deemed references to "policyholders" or "subscribers" as the case may be.

(4) In applying ORS chapter 57 as provided in this section, unless the context requires otherwise:

(a) "Corporation Division" or "division" means the Insurance Division.

(b) "Corporation Commissioner" or "commissioner" means the Insurance Commissioner.

(c) "Corporation" and "domestic corporation" means a domestic insurer.
[1967 c.359 §146]

732.010 [Repealed by 1967 c.359 §704]

ORGANIZATION

732.015 Permit to organize insurer required. No person shall organize or solicit or receive any money for the organization of a domestic insurer without a subsisting permit to organize an insurer issued by the commissioner pursuant to ORS 732.055.
[1967 c.359 §147]

732.020 [Repealed by 1967 c.359 §704]

732.025 Application for permit to organize stock insurer. Any person or persons desiring to organize a domestic stock insurer shall, as prospective incorporators, first file an application with the commissioner for a permit to organize such an insurer. The applicants shall pay to the commissioner at the time the application is filed the application fee as provided in ORS 731.804, to partially defray the costs of investigation, no part of which shall be refunded. The application shall be on forms provided by the commissioner, shall be signed by the applicants and verified. The form shall specify information with regard to the following:

(1) The class or classes of insurance to be transacted.

(2) The full names and addresses of each person who will own or control, directly or indirectly, 10 percent or more of the stock.

(3) The full name and residence address of each person associated or to be associated in the formation, organization, operation, management, stock underwriting or financing of the insurer.

(4) Full disclosure of the terms of all pertinent agreements and understandings existing or proposed among and between such persons so associated. A copy of all such agreements and understandings shall be filed with the application.

(5) The full name and residence address of the proposed directors and officers, including information regarding the character, financial responsibility, business ability and experience in the business of insurance or businesses related thereto, of each.

(6) The proposed capitalization, the plan of financing and for solicitation of stock, and a summary of the plan of operation, including types of policies to be issued.

(7) Such additional information, including but not limited to financial data, actuarial projections and copies of proposed policies, which the commissioner may by rule or otherwise require.
[1967 c.359 §148]

732.030 [Amended by 1967 c.359 §661; renumbered 751.015]

732.035 Application for permit to organize insurer without capital stock. Any one or more persons desiring to organize a domestic insurer without capital stock shall, as prospective organizers, first file an application with the commissioner for a permit to organize such an insurer. The provisions and requirements of ORS 732.025 shall govern

such application; in addition, the application shall be accompanied by:

(1) A copy of each policy for which applications are proposed to be solicited, together with a copy of the proposed application form, and application literature to be used in such solicitation; and

(2) A schedule of premiums or premium rates proposed to be charged in connection with such insurance for which applications shall be solicited.

[1967 c.359 §149]

732.040 [Amended by 1967 c.359 §662; renumbered 751.025]

732.045 Investigation of applications to organize insurers. Upon receipt of an application for a permit to organize an insurer, the commissioner shall make such investigation of the facts and conditions as he deems necessary, including the holding of a public hearing on the application if he considers it desirable or if requested by the applicant.

[1967 c.359 §150]

732.050 [Amended by 1967 c.359 §665; renumbered 751.055]

732.055 Issuance of organization permit.

(1) Within 90 days after the filing of the application for a permit to organize an insurer, the commissioner shall approve or disapprove the application.

(2) The 90-day period referred to in subsection (1) of this section may be extended by the commissioner for an additional period not to exceed 30 days if he gives written notice within such 90-day period to the applicant that he needs such additional time.

(3) The commissioner shall approve an application for a permit to organize an insurer only if he finds that:

(a) The application is complete;

(b) The documents filed with the application are in proper form;

(c) The proposed financial structure is adequate;

(d) The character, reputation, financial responsibility and general fitness of the persons named in the application or otherwise found to be associated with or have an interest in the proposed insurer are such as to command the confidence of the public;

(e) The proposed directors are collectively competent to assume responsibility for the management and general policies and procedures of an insurer proposing to issue the class or classes of insurance specified;

(f) The proposed management, collectively, possesses the requisite general business ability and experience in the business of insurance of the class or classes specified in the application; and

(g) No fact is then known to the commissioner which would prevent the proposed insurer from completing its organization and receiving a certificate of authority to transact insurance in this state.

[1967 c.359 §151]

732.060 [Amended by 1961 c.178 §1; 1967 c.359 §666; renumbered 751.065]

732.065 Applicants for permit to report changes to commissioner. Any changes in the information furnished in the application for a permit to organize an insurer shall be reported immediately to the commissioner by the persons to whom the permit was issued.

[1967 c.359 §152]

732.070 [Repealed by 1967 c.359 §704]

732.075 Revoking or suspending permit to organize insurer. After notice to the applicant stating the grounds therefor, the commissioner may revoke or suspend a permit to organize an insurer for any ground for which the issuance of the permit could be denied.

[1967 c.359 §153]

732.080 [Repealed by 1967 c.359 §704]

732.085 Incorporators. One or more natural persons of the age of 21 years or older or one or more financially responsible corporations may act as incorporators of a domestic insurer upon compliance with the provisions of the Insurance Code.

[1967 c.359 §154]

732.090 [Repealed by 1967 c.359 §704]

732.095 Articles of incorporation. (1) To the extent not otherwise inconsistent with the Insurance Code, the articles of incorporation of a domestic insurer shall conform to ORS 57.311 and, in addition, shall contain the purpose or purposes for which the insurer is organized and the class or classes of insurance or reinsurance to be made. It shall be sufficient to state, either alone or with other purposes, that the purpose of the insurer is to make insurance and reinsurance of all classes for which an insurer may be authorized under the Insurance Code. By such statement, all such classes shall be within the purposes of the insurer,

except for express limitations in the articles, if any.

(2) The articles or other basic document of a mutual or reciprocal insurer shall include the qualifications and rights of members or subscribers of the insurer.

[1967 c.359 §155]

732.100 [Amended by 1967 c.359 §667; renumbered 751.075]

732.105 Filing articles of incorporation and surety bond. The incorporators shall file with the commissioner within six months of the issuance of the organization permit under ORS 732.055:

(1) Duplicate originals of the articles of incorporation signed by all of the incorporators.

(2) A corporate surety bond payable to the commissioner and his successors, as trustee, in the sum of \$25,000, or, in lieu thereof, a like amount in approved securities or cash, conditioned upon the faithful accounting to the insurer upon completion of its organization and the receipt of its certificate of authority from the commissioner, or to the shareholders, members, applicants for policies and creditors, or to the trustee, receiver or assignee of the insurer, duly appointed in any proceeding in any court or department of competent jurisdiction in this state, in accordance with their respective rights in case the organization of the insurer is not completed and the certificate of authority is not procured from the commissioner. Such bond or deposit shall be in the form prescribed by the commissioner.

[1967 c.359 §156]

732.110 [Amended by 1967 c.359 §668; renumbered 751.085]

732.115 Approval of articles, documents and bond; certificate of incorporation. (1) If the commissioner finds that the articles of incorporation and the bond filed with him conform to law and the sureties on the bond are acceptable, he shall, when all fees have been paid as prescribed in ORS 731.804:

(a) Indorse on each of such duplicate originals of the articles the word "filed," and the month, day and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Issue a certificate of incorporation to which he shall affix the other duplicate original.

(d) Return to the incorporators or their representative the certificate of incorporation with the duplicate original.

(2) Upon the issuance of the certificate of incorporation, the insurer's corporate existence shall begin and the insurer shall have all authority and power, subject to the limitations prescribed in the Insurance Code, as may be necessary and proper to complete its organization, obtain its initial capital and otherwise complete the requirements to qualify for a certificate of authority to transact the class or classes of insurance proposed in its articles of incorporation. In the case of an insurer without capital stock, the authority and power shall include the solicitation of applications for insurance and receipt in advance of premium payments for any insurance for which the proposed form of application, policies, literature and advertisements pertaining thereto have been filed with and approved by the commissioner. An insurer shall not otherwise transact any business or incur any indebtedness until its certificate of authority to transact insurance has been granted.

(3) The issuance of the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the insurer has been incorporated under the laws of this state, except as against this state in a proceeding to cancel or revoke the certification of incorporation or any certificate of authority to transact insurance or for involuntary dissolution of the insurer.

[1967 c.359 §157]

732.120 [Amended by 1967 c.359 §669; renumbered 751.095]

732.125 Registration of securities subsequent to issuance of organization permit and certificate of incorporation. If the proposed domestic insurer is to issue securities, it shall comply with the applicable provisions of ORS chapter 59. However, the Corporation Commissioner shall not allow the registration of securities of a proposed domestic insurer unless the organizers of such insurer have been issued an organization permit under ORS 732.055, and have received a certificate of incorporation under ORS 732.115.

[1967 c.359 §158]

732.130 [Amended by 1967 c.359 §670; renumbered 751.105]

732.135 Soliciting subscriptions and applications. No person shall solicit subscriptions for the capital stock of, or, in the case of an insurer without capital stock, applications for insurance in, any insurer in the process of organization unless the insurer has filed his name and address with the commissioner.

[1967 c.359 §159]

732.140 [Amended by 1967 c.359 §671; renumbered 751.115]

732.145 Stipulations required in subscriptions and applications; disposition of subscribed funds. (1) Every subscription to the capital stock of an insurer 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 and applicants shall be deposited under an escrow agreement approved by the commissioner in a bank, trust company or savings and loan association in the state until the insurer has procured a certificate of authority from the commissioner.

(3) Every subscription for stock or every application for insurance in an insurer made prior to its receipt of a certificate of authority shall contain a stipulation that the money, securities or evidences of debt advanced by the subscriber or applicant shall be returned to him without any deduction in case the insurer fails to complete its organization or procure its certificate of authority or issue the policy applied for.

[1967 c.359 §160]

732.150 [Amended by 1967 c.359 §672; renumbered 751.125]

732.155 Organization to be completed within two years; policies to be issued within one year of certification. (1) If the commissioner finds that any domestic insurer has not completed its organization and qualified for a certificate of authority within two years from the date of filing its articles of incorporation, he may order the application abandoned and close the files in which event its corporate powers shall expire and he shall proceed as for an impaired insurer.

(2) If any domestic insurer does not commence to issue policies within one year from the date of receiving its certificate of authority, the commissioner shall proceed as for an impaired insurer.

[1967 c.359 §161]

732.160 [Amended by 1967 c.359 §673; renumbered 751.135]

732.165 Liability of directors and incorporators. The directors, incorporators, and organizers of any insurer organized under the Insurance Code and those entitled to participation in the profits of such insurer shall be jointly and severally liable for all debts or liabilities of such insurer until it has received a certificate of authority.

[1967 c.359 §162]

732.175 Acting as corporate insurer without authority. Any person who assumes to act as a corporate insurer without a permit to organize and without the issuance of a certificate of incorporation by the commissioner or who assumes to transact insurance business without a certificate of authority to transact such business issued by the commissioner shall be jointly and severally liable, as provided in ORS 57.793.

[1967 c.359 §163]

CORPORATE PROCEDURES GENERALLY

732.205 General powers of insurers. Except as otherwise provided in the Insurance Code or the articles of incorporation of an insurer, a domestic insurer shall have:

(1) The general powers granted to corporations by ORS 57.030;

(2) The powers granted to insurers by the Insurance Code; and

(3) 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 Insurance Code.

[1967 c.359 §164]

732.210 Assertion of ultra vires. The provision of ORS 57.040 shall not affect the right of any policyholder of a domestic insurer or the commissioner from asserting the lack of capacity or power of an insurer, by reason of any provision of the Insurance Code, to do any act or make any conveyance or transfer of real or personal property.

[1967 c.359 §165]

732.215 Management contracts prohibited. No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its

board of directors or other governing body.
[1967 c.359 §166]

732.220 Exclusive agency contracts.

(1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the controlling or preemptive right to produce substantially all insurance business for the insurer, unless the contract is filed with and approved by the commissioner. The contract filed with the commissioner shall be accompanied by such application for approval as the commissioner by rule may consider reasonably appropriate to the purposes of this section. The contract shall be deemed approved unless disapproved by the commissioner within 20 days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such 20 days. Notice of any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

(2) Any such contract shall provide that any such producer of an insurer's business shall within 90 days after expiration of each calendar year furnish the insurer's board of directors or other governing body a written statement of:

(a) Amounts received under or on account of the contract and amounts expended thereunder during such calendar year, including the emoluments received therefrom by the respective directors, trustees, officers, and other principal management personnel of the producer;

(b) Amounts paid by the producer during such calendar year, for any purpose, to any director, trustee, officer, agent or employe of the insurer or to any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of the insurer; and

(c) Such classification of items and further detail as the insurer's board of directors or other governing body may reasonably require.

(3) The commissioner shall disapprove any such contract if, taking into account the customary and prevailing practices of the insurance business and such opportunities for abuse as may be apparent in any conflicts of interest revealed by the contract or application, he finds that such contract:

(a) Subjects the insurer to charges that are disproportionate to those that the insurer might reasonably be expected to incur

under alternative arrangements for the production of his business;

(b) Is to extend for an unreasonable length of time, taking into account the incentives reasonably necessary to induce the producer to undertake the contract, the prospect of changes which are reasonably likely to render the contract unfavorable to the insurer and such other factors as the commissioner reasonably considers appropriate;

(c) Does not contain fair and adequate standards of performance; or

(d) Contains other inequitable provision or provisions which impair the proper interests of stockholders, policyholders, members or subscribers of the insurer.

(4) The commissioner may, after a hearing held thereon, withdraw his approval of any such contract theretofore approved by him, if he finds that the bases of his original approval no longer exist, or that the contract has, in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsection (3) of this section.

(5) This section does not apply as to any contract entered into prior to June 8, 1967, nor to any extension or amendment to such contract to the extent that such extension or amendment may be effected merely by notice and without further consideration.

[1967 c.359 §167]

732.225 Impairment of required capitalization prohibited. No domestic insurer shall reduce its combined capital and surplus by partial distribution of its assets, by payment in the form of a dividend to stockholders or otherwise, below:

(1) Its required capitalization; or

(2) A greater amount which the commissioner, by rule or by order after hearing upon his own motion or the petition of any interested person, finds necessary to avoid injury or prejudice to the interest of policyholders or creditors.

[1967 c.359 §168]

732.230 Curing impairment on demand of commissioner. (1) Whenever the commissioner determines from any showing or statement made to him or from any examination made by him that the assets of a domestic insurer are less than its liabilities plus required capitalization, he may proceed immediately under the provisions of ORS chapter 734 or he may allow the insurer a period of time, not to exceed 90 days, in which to make good the amount of the impairment with cash or authorized investments.

(2) If the amount of any such impairment is not made good within the time prescribed by the commissioner under subsection (1) of this section, the commissioner shall proceed under the provisions of ORS chapter 734.

[1967 c.359 §169]

732.235 Voluntary dissolution of insurer. (1) No insurer may be dissolved voluntarily until the commissioner has approved a plan for liquidation of the insurer's assets and obligations. The preparation and approval of such plan shall follow the provisions of ORS 732.525 to 732.545.

(2) The plan of dissolution must provide for reinsurance of substantially all insurance in force of the insurer in accordance with the provisions of ORS 731.512.

(3) The commissioner shall require that the plan of dissolution provide adequate reserves in trust or otherwise for satisfaction of all obligations of the insurer.

[1967 c.359 §170]

732.240 Trusts of life insurance proceeds. (1) Any domestic insurer may hold in trust the proceeds of any life insurance policy issued by it. Such a trust shall be upon such terms and subject to such limitations as to revocation by the policyholder and control by the beneficiary thereunder as are agreed to in writing by the insurer and the policyholder.

(2) Trust provisions authorized by this section shall in no manner subject the insurer to any of the provisions of the laws of this state relating to banks or trust companies.

(3) The forms of such trust agreements shall be first submitted to and approved by the commissioner.

[Formerly 739.410]

732.245 Home office; records, assets; unlawful removal. (1) Every domestic insurer shall have and maintain its principal place of business and home office in this state, and shall keep therein accurate and complete accounts and records of its assets, transactions, and affairs in accordance with the provisions of the Insurance Code.

(2) Every domestic insurer shall have and maintain its assets in this state, except as to:

(a) Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this state, and

(b) Such property of the insurer as may

be customary, necessary and convenient to enable and facilitate the operation of its branch offices and regional home offices located outside this state as referred to in subsection (4) of this section.

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under ORS 732.505 to 732.570, or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal, or concealment of such records or assets or such material part thereof from the commissioner, is prohibited. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state beyond the period therefor specified in the commissioner's consent under which the records were so removed, or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer as provided in ORS 734.150.

(4) This section shall not prohibit an insurer from:

(a) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business, and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request; or

(b) Having, depositing or transmitting funds and assets of the insurer in or to jurisdictions outside of this state required by the law of such jurisdiction or as reasonably and customarily required in the regular course of its business.

[1967 c.359 §172]

732.250 Continuity of management in event of national emergency. (1) The specific purpose of this section is to facilitate the continued operation of all domestic insurers in the event a national emergency makes it impossible or impracticable for an insurer to conduct its business in strict accordance with applicable provisions of law, its bylaws or its charter.

(2) The board of directors of any domestic insurer may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws for the insurer, which shall be operative during such a national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes or of the insurer's charter, make any provision that may be reasonably necessary for the operation of the insurer during the period of such emergency.

(3) In the event the board of directors of a domestic insurer has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of such a national emergency:

(a) Three directors shall constitute a quorum for the transaction of business at all meetings of the board; and

(b) Any vacancy in the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(4) If there are no surviving directors, but at least three vice presidents of the insurer survive, the three vice presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors and such powers as are granted by this section. By majority vote such emergency board of directors may elect other directors. If there are not at least three surviving vice presidents, the commissioner shall appoint three persons as directors who shall possess all of the powers of the previous board of directors and such powers as are granted by this section, and these persons by majority vote may elect other directors.

(5) At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency and in the event of the death or incapacity of the president, the secretary or the treasurer of the insurer, such officers or any of them shall be succeeded in the office by the person named or described in a succession list adopted by the board of directors. Such list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under which the powers of the office shall be exercised.

(6) At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national

emergency the home office or principal place of business of the insurer shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference.

[1967 c.359 §173]

DIRECTORS, OFFICERS AND EMPLOYEES

732.305 Board of directors. The number of directors of a domestic insurer shall be not less than five. Directors need not be shareholders or members of the insurer unless the articles so require but shall be 21 years of age or older, and a majority of them shall be residents of this state. The majority of directors shall be persons who are not salaried officers of the insurer.

[1967 c.359 §174]

732.310 Classification of directors. Notwithstanding the provisions of ORS 57.190, a domestic insurer that has cumulative voting may not provide for classification of directors.

[1967 c.359 §175]

732.315 Salary of officers, directors and employes. No domestic insurer 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 \$20,000, to any person, unless such payment is first authorized and directed by a vote of two-thirds of the board of directors of such insurer, duly taken and recorded in the minutes of a board meeting.

[Formerly 738.200]

732.320 Supporting documents for expenditures. No domestic insurer 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 receiving the money or, if a voucher cannot be obtained, by an affidavit stating the reason for not obtaining the voucher;

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

(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 insurer, based upon provisions of a policy issued by the insurer.

[Formerly 738.420]

732.325 Certain transactions and compensation between insurers and directors, trustees, officers, agents or employes prohibited. (1) Except as set forth in a plan of acquisition approved by the shareholders and, in the case of the issuance or sale of the insurer's securities, as approved by a majority of the board of directors having no interest therein except as shareholders or directors or failing such majority by the shareholders, no director, trustee, officer, agent or employe, or spouse or relative thereof, shall receive any fee, commission, compensation or other valuable consideration whatsoever, directly or indirectly, for aiding, promoting or assisting:

(a) The planning, preparing or executing of a plan of acquisition as defined in ORS 732.505; or

(b) The planning, preparing or executing of any plan for the issuance, sale or acquisition of shares or other securities of the insurer for any purpose.

(2) Except as permitted in subsection (3) 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 the making of 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 subsection shall not include payments to be made upon death of a person insured under a credit life insurance policy.

(3) An insurer may contract, or otherwise enter into a transaction, for the provision of goods or services to the insurer in the normal course of business with a director, trustee, or officer, or a partnership or corporation in which a director, trustee or officer has, directly or indirectly, the proprietary interest in excess of five percent, if the interest of the director, trustee or officer is fully disclosed to the board of directors of the in-

surer, 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.

(4) The prohibitions set forth in this section shall not apply to or affect:

(a) The payment to any officer of reasonable compensation, whether based in whole or in part upon commission or otherwise;

(b) 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;

(c) The making of loans or advances to agents or other employes of an insurer as required or as is expedient in the conduct of its business; or

(d) The exercising of any rights under any policy of insurance.

[1967 c.359 §178; 1971 c.231 §17]

SHARES, SHAREHOLDERS AND MEMBERS

(General Provisions)

732.405 Authorized shares. No domestic insurer shall issue or have outstanding more than one class of shares, whether with or without par value.

[1967 c.359 §179]

732.410 Right to acquire own shares. A domestic insurer shall have the right to purchase or otherwise acquire, hold, pledge, transfer or dispose of its own issued shares. An insurer may acquire any such shares by purchase, exchange or disposition of its assets only from earned surplus not otherwise restricted or, with the prior written approval of the commissioner, from other of its surplus.

[1967 c.359 §180]

732.415 Stock insurer's 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 domestic stock insurer at any regular or special stockholders' 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 rules. Any proxy or consent obtained in violation of this section shall be void.

(4) The commissioner may issue rules to carry out the purposes of this section and to prevent fraud or deception in connection with proxies and consents. Such rules 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.

[Formerly 738.190]

(Insider Trading)

732.420 "Equity security" defined. As used in ORS 732.220 and 732.420 to 732.455, "equity security" means:

(1) Any stock or similar security;

(2) 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;

(3) Any such warrant or right; or

(4) Any other security which the commissioner shall consider to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

[Formerly 738.710]

732.425 Application of insider trading regulation. The provisions of ORS 732.430, 732.435 and 732.440 do not apply to equity securities of a domestic stock insurer if:

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

(2) Such insurer does 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 insurer would be subject to the provisions of ORS 732.430, 732.435 and 732.440 except for the provisions of this subsection.

[Formerly 738.720]

732.430 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 insurer, or who is a director or an officer of such insurer, 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 insurer 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.

[Formerly 738.730]

732.435 Suit to recover insider profits; exempted transactions. (1) For the purpose of preventing the unfair use of information which may have been obtained by a beneficial owner, director or officer as described in ORS 732.430 by reason of his relationship to such insurer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such insurer 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 insurer, 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. An action to recover such profit may be instituted at law or in equity in any court of

competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such action within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such action 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 that the commissioner by rules may exempt as not comprehended within the purpose of this section.

[Formerly 738.740]

732.440 Prohibited sales of securities.

(1) No beneficial owner, director or officer, as described in ORS 732.430 directly or indirectly, shall sell any equity security of such insurer if the person selling the security or his principal:

(a) Does not own the security sold; or

(b) 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.

(2) 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.

[Formerly 738.750]

732.445 Establishing or maintaining primary or secondary market in securities; rules of commissioner. (1) The provisions of ORS 732.435 do not apply to any purchase and sale, or sale and purchase, and the provisions of ORS 732.440 do not apply to any sale, of an equity security of a domestic stock insurer not then or theretofore held by him in an investment account, by a security 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 as he considers necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securi-

ties 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.

[Formerly 738.760]

732.450 Arbitrage transactions exempt.

The provisions of ORS 732.430, 732.435 and 732.440 do not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner may adopt in order to carry out the purposes of ORS 732.420 to 732.455.

[Formerly 738.770]

732.455 Rules of commissioner.

The commissioner shall have the power to make such rules as may be necessary for the execution of the functions vested in him by ORS 732.420 to 732.455, and may for such purpose classify domestic stock insurers, securities, and other persons or matters within his jurisdiction. No provision of ORS 732.430, 732.435 and 732.440 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

[Formerly 738.780]

(Shareholders and Members)

732.460 Annual report to shareholders or members. Every domestic stock insurer shall send to each shareholder within 90 days after the end of each fiscal year of such insurer and every domestic insurer without capital stock shall make available at its annual meeting an annual report of the organization, operation and activities of such insurer, its parent if any and its subsidiaries and affiliates if any, and financial statements showing the financial condition of the insurer at the end of such fiscal year and the results of its operations for such fiscal year. The annual report shall contain such other information and financial statements and shall be in such form as the commissioner may by rule prescribe.

[1967 c.359 §190]

732.465 Members of domestic mutual insurers. (1) A domestic mutual insurer shall be owned by and operated in the interest of its members.

(2) Each owner of one or more valid and existing policies of insurance issued by a domestic mutual insurer, other than a policy of reinsurance, is a member of such insurer possessing the rights and obligations of such membership.

(3) An owner is the person given the rights of ownership or the power to make transactions with the insurer under terms of the policy, including an assignee, other than the insurer which issued the policy, who has received an assignment absolute on its face subject to any reasonable minimum requirements relating to assignments found in the policy or in the bylaws of the insurer. In a policy of group life or health insurance the person contracting with the insurer and to whom the master contract is issued is the member; the lives insured and individuals holding certificates thereunder are not policyholders or members.

(4) A person who, because of the death of the life insured in a policy of insurance or the death of the life referred to in an annuity policy, has obtained rights as a beneficiary to death benefits or settlement payments is not a policyholder or member.
[Formerly 739.165]

732.470 Voting rights of members of mutual insurer. (1) Each member of a domestic mutual insurer is entitled to one vote on each matter coming before a meeting of the members and for each director to be elected regardless of the number of policies or amount of insurance and benefits held by such member.

(2) The member under a group policy shall have but one vote regardless of the number of individuals insured or benefited thereunder.

(3) Two or more persons who qualify as policyholders under a single policy shall be deemed one policyholder and member for purposes of voting and collectively shall be entitled to one vote.

(4) Fractional voting shall not be permitted.

(5) Where a member is a minor, the vote shall be vested in the parent or legal guardian of such minor.

(6) Cumulative voting for directors shall not be permitted unless expressly provided for in the insurer's articles of incorporation.

(7) The right to vote shall be subject to such reasonable minimum requirements as to duration of membership as may be made in the articles of incorporation and bylaws of the insurer.

(8) A member may in every case vote in person or by proxy; the right to vote by proxy shall be subject to reasonable provisions pertaining thereto contained in the articles of incorporation and bylaws of the insurer.

[Formerly 739.170]

732.475 Members' meetings and procedures of domestic mutual and reciprocal insurers. The following provisions shall apply to and govern meetings of members of a domestic mutual insurer and, to the extent applicable, meetings of subscribers of a domestic reciprocal insurer:

(1) Unless the notice of the meeting is by personal mail or delivery to the members, or as provided in subsection (5) of this section, the annual meeting, and all special meetings of members shall be held at or in the immediate vicinity of the home office of the insurer.

(2) In lieu of personal notice mailed or delivered to members, notice of the annual meeting or of a special meeting of members may be given by publishing a notice thereof once a week for two consecutive weeks in the newspaper with the largest general circulation in this state and, if the home office is located outside the city of such newspaper, then also in the newspaper with the largest general circulation published at or nearest the home office city of the insurer. The published notice shall state the time and place of the meeting and the matters to be presented and considered and, if a special meeting, shall also state the purpose for which it is called. The date of the first publication thereof shall be not less than 20 nor more than 50 days prior to the meeting date.

(3) A copy of the meeting notice mailed, delivered or published shall be mailed or delivered to the commissioner at least 20 days prior to the meeting date. The commissioner may attend any such meeting.

(4) The date and time of the annual meeting shall be set forth in the bylaws. Such date and time and location of the home office of the insurer shall be set forth in the policy issued to the member or in a notice forwarded to the policyholder within 30 days after the issuance of the policy. If the date or time of such meeting is changed by amendment to the bylaws, which amendment may be adopted in the same manner as any other amendment to the bylaws, there shall be mailed or delivered to each member not less

than 30 days before the date of the annual meeting, the date or time of which has been changed, a notice of the change thereof. Such a notice may be given by policy or policy endorsement or by a separate notice document.

(5) Notwithstanding the provisions of subsections (1) to (4) of this section, if the commissioner finds, after inquiry and investigation, that the operations of an insurer are not financially sound or that its management is not acting in a sound and prudent manner for the benefit of the members or that certain practices and procedures of or involving the insurer's operations or management ought to be presented to the members, he may direct that the insurer call a special meeting for such purpose or that such matters be put on the agenda at an annual meeting. In such case, he may further direct that notice of such meeting be given in the manner prescribed in ORS 57.150. The notice shall also state that the special meeting is called, or that the particular matters are included on the agenda of the regular meeting, at the direction of the commissioner.

(6) The members present in person or represented by proxy shall constitute a quorum at a duly called meeting of members. The affirmative vote of a majority of members voting on any matter presented at such meeting shall constitute the act of the members unless the voting of a greater number is required by law or the insurer's articles of incorporation or bylaws.

[1967 c.359 §193; 1971 c.231 §43]

ACQUISITIONS AND MERGERS

732.505 "Acquisition" and "acquire" defined. As used in ORS 732.505 to 732.570, "acquisition" or "acquire" includes:

- (1) Merger of two or more insurers.
- (2) Consolidation of two or more insurers.
- (3) Acquisition by the acquiring corporation, whether or not an insurer of all or substantially all of the assets of an insurer by purchase, exchange or otherwise.

(4) Acquisition by the acquiring corporation, whether or not an insurer, of a controlling interest of the capital stock of an insurer, by purchase, exchange or otherwise, from such insurer or from its shareholders.

(5) Bulk reinsurance by one insurer of all or substantially all of the insurance, or a major class of such insurance, in force with another insurer or related or affiliated group

of insurers. The provisions of this subsection shall not apply to ordinary or customary reinsurance, or reinsurance pursuant to a treaty or treaties approved by the commissioner.

(6) Any other arrangement which brings together under common ownership, control or responsibility all or substantially all of the assets, liabilities and insurance in force of two or more insurers.

[Formerly 738.610; 1969 c.336 §7]

732.510 "Controlling interest," "substantially all," "purchase, exchange or otherwise" defined. As used in ORS 732.505 to 732.570:

(1) "Controlling interest" or "substantially all" means, when acquired in one transaction or in a related or integrated series of transactions, more than 25 percent of the following:

- (a) The capital stock of the insurer;
- (b) The assets of the insurer; or
- (c) The insurance or a major class of insurance in force of the insurer.

(2) "Purchase, exchange or otherwise" includes acquisition, directly or indirectly, or ownership directly, beneficially or through a subsidiary, parent or affiliate, for cash, securities or property, with or without any consideration.

[1967 c.359 §195; 1969 c.336 §8]

732.515 "Acquiring corporation" defined. As used in ORS 732.505 to 732.570, "acquiring corporation" includes any intermediary or subsidiary corporation or insurer, or the insurer or corporation which acquires or holds, directly or indirectly, the assets or capital stock or assumes the liabilities of another insurer or other corporation.

[1967 c.359 §196]

732.520 Acquisition of insurers. A domestic insurer may be a party to an acquisition involving the insurer and one or more other domestic or foreign insurers or corporations, or alien insurers organized under the laws of Canada or any of its provinces, by complying with the provisions of ORS 732.505 to 732.570.

[1967 c.359 §197]

732.525 Plan of acquisition. The parties to the acquisition shall prepare a written plan setting forth:

- (1) The names of the insurers and other parties to the plan, the name of the acquiring corporation, and, in the case of a merger or consolidation, the name of the insurer

which shall be the surviving or continuing insurer.

(2) All essential terms and provisions of the plan, 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 interest, or partly in such exchange and partly for cash.

(3) In the case of a merger, consolidation or exchange of securities, the manner and basis of converting the securities of each party into securities, guaranties or obligations of any party to the plan.

(4) A statement of any changes in the articles of incorporation of the surviving, continuing or acquiring corporation to be effected by such plan.

(5) Such other provisions with respect to the proposed plan as are necessary or desirable.

[1967 c.359 §198]

732.530 Procedure for acquisition. (1) The board of directors of each insurer and each other party to the plan of acquisition shall by resolution approve the written plan.

(2) Duplicate originals of the written plan approved by the directors, executed in duplicate by each insurer and verified by one of the officers of each insurer or other party, together with certified copies of the authorizing resolution of each board of directors showing adoption and approval, shall be filed with the commissioner.

(3) Any insurer or other party to the plan may, if it so desires, include with the filing, or file within 10 days thereafter, a written request for a hearing on the plan.

[1967 c.359 §199]

732.535 Hearing on plan. (1) If a written request for a hearing has been duly filed or if, within 10 days after filing of the plan, the commissioner considers it necessary or advisable to hold such a hearing, the commissioner shall direct that such a hearing upon the fairness of the plan and other matters requisite to the commissioner's approval be held.

(2) The hearing shall be held within 30 days after the filing of the written request for hearing or the commissioner's order directing that such a hearing be held at such time and place and upon such reasonable notice as the commissioner may designate, which notice shall be given by any one or more of the insurers or other parties to the plan as directed by the commissioner.

(3) Each insurer and other party to the plan of acquisition, each person to whom it is proposed to issue securities pursuant to the plan, each policyholder or shareholder of the insurers or other parties, and each other person who may be adversely affected thereby, shall have an opportunity to be heard at the hearing.

[1967 c.359 §200]

732.540 Approval of plan. (1) The commissioner shall approve the plan within 30 days after filing of the plan or within 30 days after the hearing if one is called and held, unless he finds that 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 shareholders of any insurer 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 insurer involved, in this state or elsewhere;

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

(e) Is detrimental to free competition;

or

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

(2) If the commissioner does not approve the plan, he shall promptly notify each insurer and other party to the plan in writing, specifying the bases, factors and reasons therefor and giving each insurer and other party to the plan an opportunity to amend the plan, if possible, to obviate his objections.

(3) Any amendment to the plan pursuant to the commissioner's objection shall be adopted by the insurers and other parties to the plan pursuant to ORS 732.530 and, if a hearing was held on the plan, shall be resubmitted at a hearing held pursuant to this section unless the commissioner finds that such a hearing is not necessary for the protection of the policyholders, shareholders or any other person affected thereby.

(4) Any insurer or other party to the plan may, within 60 days after receipt of a notice of disapproval, petition the circuit

court for Marion County, or the circuit court of the county in which the objector has its principal place of business in this state, if any, for judicial review of the commissioner's action. The provisions of ORS 183.310 to 183.500 shall, to the extent applicable, govern such judicial review and any appeal therefrom to the Supreme Court. For purposes of the 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.

(5) On petition to such court, the court's power shall extend to affirming the order of the commissioner, modifying all or any part of the commissioner's objections, adding additional objections, approving the plan as submitted or subject to such modifications or changes as the court may find proper, and requiring resubmission to the boards of directors or for hearing as provided in ORS 732.535.

[1967 c.359 §201]

732.545 Approval by shareholders, members or subscribers. (1) Following approval of the plan by the commissioner or pursuant to court order or decree, the plan shall be submitted to the members or subscribers of an insurer without capital stock and to the shareholders of an insurer with capital stock, and to the shareholders of any other corporation which is a party to the plan at a meeting of each called for that purpose. The commissioner or the court, at his or its discretion, may waive the requirement of such meeting with respect to any foreign insurer or foreign corporation that is a party to the plan.

(2) A notice of such meeting shall set forth the time, place and purpose of the meeting, and the notice, the procedure to be followed at such meeting and the voting thereat shall be governed by the provisions applicable to regular or special meetings of members, subscribers or shareholders in the Insurance Code, the articles of incorporation and the bylaws of the insurer, except that ORS chapter 57 shall apply to the notice, procedure and voting by any party to the plan which is not an insurer.

(3) Unless the articles or bylaws of any insurer or other party to the plan provides for a greater percentage or number of votes, the plan shall be approved by at least two-thirds of the votes cast, in person or by proxy, at a meeting duly called and held.

(4) If the plan is approved by such vote and becomes effective as provided in ORS 732.565, the terms of the plan shall bind all members and subscribers of an insurer without capital stock, all shareholders of an insurer with capital stock and all shareholders of any other corporation that is a party to the plan. The provisions of ORS 57.432 to 57.450 with regard to procedures for and rights and liabilities of dissenting shareholders shall apply to all acquisitions subject to ORS 732.505 to the extent that an insurer with capital stock or other corporation is a party to the plan or is otherwise affected by or involved in the acquisition.

[1967 c.359 §202; 1973 c.515 §2]

732.550 Acquisition of assets or insurance of mutual insurers. (1) If the plan of acquisition will result in the acquisition by an insurer with capital stock of all or substantially all of the assets of an insurer without capital stock, or reinsurance in an insurer with capital stock of all or substantially all of the insurance in force of an insurer without capital stock, the plan must provide for payment to each member or subscriber of the insurer without capital stock entitled thereto, as provided in subsection (2) of this section, of his equity, if any, in such insurer to be so acquired or reinsured as determined under a fair formula approved by the commissioner.

(2) The insurer without capital stock shall make a reasonable classification of its policies held by its members or subscribers to determine the value or basis of each member's or subscriber'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 section shall be shared equitably by the insurers involved.

(3) Payment for the member's or subscriber's equity shall be made in cash, except that the acquiring insurer may offer an option to the member or subscriber to take cash or stock in the acquiring insurer for his equitable interest.

(4) To qualify for an equitable distribution, a policyholder must have been a member or subscriber of the insurer for at least one year at the time such plan was approved and adopted by the members or subscribers.

[1967 c.359 §203]

732.555 Filing articles of acquisition; issuance of certificate. (1) If the plan of acquisition is approved by the shareholders, members or subscribers as the case may be, the acquiring corporation or, if there is none, any insurer or other party to the plan, shall file with the commissioner duplicate originals of the articles of merger, consolidation or acquisition, executed and verified by one of the officers of each such insurer or other party, setting forth:

(a) The names of each insurer and other party to the plan and the name of the surviving, resulting or continuing insurer and acquiring insurer, if any;

(b) A certified copy of the plan of acquisition as it is to be carried out;

(c) That the plan as filed has been duly adopted by the members, subscribers or shareholders of each insurer and other party to the plan, and setting forth by class and series the number of persons present, the number of shares represented, the number of members or subscribers of any such insurer, the authorized shares of each such insurer and other party and the number of members, subscribers or shares of each class and series, as the case may be, voting for and against the plan; and

(d) A statement of the effective date of the acquisition not otherwise provided in the plan.

(2) If the commissioner finds that the articles conform to law, he shall, when all applicable fees and charges have been paid:

(a) Indorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof;

(b) File one such duplicate original in his office;

(c) Issue a certificate of merger, consolidation or acquisition, as the case may be, to which he shall affix the other duplicate original of the articles; and

(d) Return the certificate together with the duplicate original of the articles affixed thereto to the acquiring corporation, if any, or the surviving, resulting or continuing insurer, as the case may be, or to the party filing such articles, or its representative.

[1967 c.359 §204]

732.560 Compliance with foreign or alien laws. (1) The action taken by any foreign or alien insurer or other party to the plan must be authorized by the laws of the state, country or province under which it is incorporated or organized, and each such insurer or other party must satisfy and com-

ply with any applicable laws thereof and with the provisions of its articles of incorporation and bylaws.

(2) If any such foreign or alien insurer or other party to the plan is to be the acquiring, surviving, resulting or continuing insurer, it must qualify for and receive a certificate of authority to transact insurance in this state.

[1967 c.359 §205]

732.565 Effective date of acquisition. The plan of acquisition shall be effective whenever all of the following have occurred:

(1) The certificate of the commissioner has been issued pursuant to ORS 732.555;

(2) The laws of any state, country or province referred to in subsection (1) of ORS 732.560 have been satisfied; and

(3) All of the conditions for such effectiveness set forth in the plan or referred to therein have been met and the plan by its terms has become effective.

[1967 c.359 §206]

732.570 Effect of acquisition. (1) In the event of a merger or consolidation, ORS 57.480 shall apply to the merging or consolidating insurers or other party to the plan.

(2) In the event of reinsurance pursuant to the plan, the applicable provisions of the Insurance Code shall govern the effects thereof.

[1967 c.359 §207]

INSURANCE HOLDING COMPANY REGISTRATION

732.605 Definitions for ORS 732.605 to 732.705. As used in ORS 732.605 to 732.705:

(1) "Affiliate" of, or person "affiliated" with, a specific person means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption

may be rebutted by a showing made in the manner provided by ORS 732.695 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer.

[1971 c.373 §2]

732.615 Holding company system members required to register. Every domestic insurer that is a member of an insurance holding company system shall register with the commissioner not later than the 60th day after June 9, 1971, or 15 days after the date the insurer becomes subject to registration, whichever date is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time.

[1971 c.373 §3]

732.625 Registration statement; contents. Every insurer subject to the registration requirements of ORS 732.615 shall file a registration statement on a form prescribed by the commissioner, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.

(2) The identity of every member of the insurance holding company system of which the insurer is a member.

(3) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of its affiliates by the insurer or of the insurer by its affiliates;

(b) Purchases, sales or exchanges of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in a contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(e) All management and service contracts and all cost-sharing arrangements, other than cost-allocation arrangements based upon generally accepted accounting principles; and

(f) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding insurer.

(4) Other matters concerning transactions between registered insurers and their affiliates as may be included from time to time in any registration forms prescribed by the commissioner.

[1971 c.373 §4]

732.635 Certain information not required to be disclosed. Information that is not material for the purposes of ORS 732.605 to 732.705 need not be disclosed on the registration statement filed pursuant to ORS 732.625. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit or investments involving one-half of one percent or less of an insurer's admitted assets as of the December 31 next preceding the date of the registration statement or amendment shall not be deemed material for purposes of ORS 732.605 to 732.705.

[1971 c.373 §5]

732.645 Registration information required to be kept current; reports of distributions to shareholders required. Each registered insurer shall keep current the information required to be disclosed on its registration statement by reporting all material changes or additions on amendment forms prescribed by the commissioner within 15 days after the end of the month in which the insurer learns of each such change or addition. However, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

[1971 c.373 §6]

732.655 Termination of registration by commissioner. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

[1971 c.373 §7]

732.665 Consolidated registration. The commissioner may require or allow two or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their

consolidated registration statement or their individual registration statements.

[1971 c.373 §8]

732.675 Registration for affiliated insurers. The commissioner may allow another authorized insurer which is part of an insurance holding company system to register on behalf of an affiliated insurer which is required to register under ORS 732.615 and to file all information and material required to be filed under ORS 732.605 to 732.705.

[1971 c.373 §9]

732.685 Exemption from ORS 732.605 to 732.705 by commissioner. ORS 732.605 to 732.705 do not apply to any insurer, information or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of such sections.

[1971 c.373 §10]

732.695 Disclaimer of affiliation; contents; subsequent duty to register; disallowance of disclaimers by commissioner. Any person may file with the commissioner a disclaimer of affiliation with any registered insurer, and such a disclaimer may be filed

by any insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under ORS 732.605 to 732.705 which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

[1971 c.373 §11]

732.705 Rulemaking authority. The commissioner may adopt such rules and orders as are necessary to carry out ORS 732.605 to 732.705 and to provide such further disclosure requirements and standards as shall be required to exempt domestic insurers from registration of insurance company holding systems pursuant to the laws of any other jurisdiction.

[1971 c.373 §12]

732.990 [Repealed by 1967 c.359 §704]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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 1, 1973.

Thomas G. Clifford
Legislative Counsel

