Chapter 734

1981 REPLACEMENT PART

Rehabilitation and Liquidation of Insurers

GENERALLY

734.010 Application of chapter; "insurer" specially defined
734.020 "Impairment" defined
734.030 "Delinquency proceeding" defined
734.040 "Foreign country" defined
734.050 "Domiciliary," "ancillary" and "reciprocal state" defined
734.060 "General assets" defined
734.070 "Preferred," "special deposit" and "secured" claims defined
734.080 "Receiver" defined
734.110 Jurisdiction of delinquency proceedings; venue
734.120 Exclusive remedy; appeal
734.130 Commencement of delinquency proceeding
734.140 Injunctions
734.150 Grounds for rehabilitation, domestic insurers
734.160 Order of rehabilitation, domestic insurers
734.170 Grounds for liquidation, domestic insurers
734.180 Order of liquidation, domestic insurers
734.190 Grounds for conservation, foreign and alien insurers
734.200 Conservation or ancillary receivership, foreign and alien insurers
734.210 Conduct of delinquency proceedings, domestic insurers
734.220 Powers of commissioner as receiver
734.230 Deputies and assistants
734.240 Conduct of delinquency proceedings, foreign insurers
734.250 Right of domiciliary receiver to sue in this state
734.260 Claims of nonresidents against domestic insurers
734.270 Claims of residents against foreign insurers
734.280 Form of claim; notice; hearing
734.290 Priority of preferred claims
734.300 Priority of special deposit claims
734.310 Priority of secured claims
734.320 Attachment and garnishment of assets
734.330 Uniform Insurers Liquidation Act; short title; interpretation
734.340 Date rights fixed on liquidation
734.350 Voidable transfers
734.360 Preference of claims
734.370 Offsets
734.380 Allowance of certain claims
734.390 Time to file claims
734.400 Report for assessment, domestic mutual and reciprocal insurers
734.410 Levy of assessment, domestic mutual and reciprocal insurers
734.420 Order to pay assessment
734.430 Publication and transmittal of assessment order
734.440 Judgment upon assessment

OREGON INSURANCE GUARANTY ASSOCIATION

734.510 Definitions for ORS 734.510 to 734.710
734.520 Purpose
734.530 Construction
734.540 Application
734.550 Oregon Insurance Guaranty Association; all insurers required to be members; formation of operating plan
734.555 Application to association of certain laws governing corporations; exception
734.560 Association board of directors; terms; vacancies; compensation and expenses; quorum
734.570 Required functions of association
734.575 Members of association allowed to offset assessments against tax liability
734.580 Discretionary functions of association
734.590 Plan of operation; submission to commissioner
734.600 Contents of plan of operation
734.610 Notification to association of insurer insolvency; furnishing association with premium information
734.620 Notification of insolvency to insured persons; revocation of designation of servicing facility
734.630 Assignment of claim rights; filing statements of paid claims; effect of claim settlements
734.635 Disbursing assets of insolvent insurer to association; court approval; notice to other states
734.640 Claim priority
734.650 Notifying commissioner of impaired insurers; examination; reports on impaired insurers
734.660 Regulation of association as insurer
734.670 Exemption of association from payment of fees and taxes
734.690 Immunity from legal action
734.695 Liability of insured of insolvent insurer
734.700 Defense of claims on default of insolvent insurer
734.710 Administration of delinquency proceeding claims and expenses; application of ORS 734.010 to 734.440 to insurers

OREGON LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

734.750 Short title
734.760 Definitions for ORS 734.750 to 734.890
734.770 Purpose
734.780 Construction
734.790 Application
734.800 Oregon Life and Health Insurance Guaranty Association; all insurers required to be members; required accounts
734.805 Association board of directors; terms; selection; vacancies; compensation and expenses
734.810 Duties and powers of association

734.815 Assessment of members; classes of assessments; amounts; refunds
734.820 Plan of operation; submission to commissioner; contents of plan
734.825 Powers and duties of commissioner
734.830 Notifying commissioner of impaired insurers; examination; reports on impaired insurers
734.835 Assessments offset against tax liabilities; rate
734.840 Conduct of liquidation, rehabilitation or conservation proceeding involving impaired or insolvent insurer
734.850 Examination and regulation of association by commissioner; required reports
734.860 Exemption of association from payment of fees and taxes
734.870 Immunity from legal action
734.880 Delay of proceeding involving insolvent insurer
734.890 Association not to be used in sales or solicitation

CROSS REFERENCES

Definitions and general provisions applicable, 731 004 to 731 194
"Insurance Code" defined, 731 004

734.150

Action to annul existence of corporation, 30 570, 30 580

734.330

Construction of Insurance Code, 731 016

GENERALLY

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

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

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

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

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

734.030 "Delinquency proceeding" defined. "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this chapter for the purpose of liquidating, rehabilitating or conserving such insurer. [Formerly 751 010]

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

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

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

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

(3) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the Uniform Insurers Liquidation Act, as defined in ORS 734.330, are in force, including the provisions requiring that the commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer. [1967 c 359 §261]

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

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

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

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

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

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

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

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

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

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

(2) An appeal shall lie to the Court of Appeals from an order granting or refusing rehabilitation, liquidation, or conservation, and from every order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein. [1967 c 359 §266, 1979 c 562 §33]

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

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

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

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

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

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

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

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

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

(1) Is impaired;

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

(3) Has by contract of reinsurance, or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business into the property or business of any other insurer, without first having complied with ORS 731.512 and 732.505 to 732.570;

(4) Is found to be in such condition that its further transaction of business would be hazardous to its policyholders, creditors, stockholders or the public;

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

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

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

trustee, custodian, or sequestrator has been appointed by a federal court or if such appointment is imminent;

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

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

(10) Has had its certificate of authority to transact insurance in this state revoked. [Formerly 738 450]

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

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

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply for an order terminating the rehabilitation proceeding and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be granted except after a full hearing. [1967 c 359 §270]

734.170 Grounds for liquidation, domestic insurers. The commissioner or any interested person may apply for an order directing the commissioner to liquidate the business of a domestic insurer, regardless of whether there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in ORS 734.150, or if the insurer:

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

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

(3) Has not organized or completed its organization and obtained a certificate of authority as an insurer within the time authorized by law. [1967 c 359 §271]

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

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

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

(b) Upon the grounds specified in ORS 734 170 (3), regardless of whether an order of liquidation is sought or has been obtained. [Formerly 738 470]

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

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

(2) That its property has been sequestrated in any jurisdiction. [1967 c 359 §273]

734.200 Conservation or ancillary receivership, foreign and alien insurers. (1) An order to conserve the assets of a foreign or alien insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

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

(3) An order to liquidate the assets in this state of a foreign or alien insurer shall direct the commissioner forthwith to take possession

of the property of the insurer within this state and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this chapter. [1967 c 359 §274]

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

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

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

(4) The commissioner as domiciliary receiver shall be responsible on his official bond for the proper administration of all property coming into his possession or control. The court may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the property. [Formerly 751 020]

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

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

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

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

(c) Perform and do all acts which he may deem necessary, advisable or expedient for the accomplishment or in aid of the purpose for which such possession was taken. [1967 c 359 §276]

734.230 Deputies and assistants. In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. Unless otherwise provided by the commissioner, no person so appointed shall be deemed a state employe solely by reason of such appointment. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the delinquent insurer and of conducting the delinquency proceedings shall be paid out of the funds or assets of the insurer Within the limits of the duties imposed upon them special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all the duties imposed upon, the receiver with respect to delinquency proceedings. [1967 c 359 §277]

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

(a) If he finds that there are sufficient assets of such insurer located in this state to

justify the appointment of an ancillary receiver; or

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

(2) The domiciliary receiver of an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all the property, contracts and rights of action, and all the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the provisions of this section the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state. [Formerly 751 030]

734.250 Right of domiciliary receiver to sue in this state. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state. [1967 c 359 §279]

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

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

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

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

(3) In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in ORS 734.270 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. [Formerly 751 040]

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

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

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

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

(3) In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver in the manner provided by this chapter for the proving of claims against insurers domiciled in this state, and he shall give notice in writing to the receiver in the domiciliary state, either by registered or certified mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within 30 days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered or certified mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be repre-

sented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state. [Formerly 751 050]

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

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

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

(4) At the hearing all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order. [1967 c 359 §282]

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

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state. [1967 c 359 §283]

734.300 Priority of special deposit claims. The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit. [1967 c 359 §284]

734.310 Priority of secured claims. The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state. [Formerly 751 080]

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

ceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding. [1967 c 359 §286]

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

(2) The Uniform Insurers Liquidation Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. [Formerly 751 110]

734.340 Date rights fixed on liquidation. The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers, and all other persons interested in its estate, shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which makes the order, subject to the provisions of ORS 734.380 with respect to the rights of claimants holding contingent claims. [1967 c 359 §288]

734.350 Voidable transfers. (1) Any transfer of, or lien upon, the property of an insurer, other than as provided in ORS 734.320 which is made or created within four months prior to the commencement of a delinquency proceeding with the intent of giving to any creditor, or of enabling him to obtain, a greater percentage of his debt than any other creditor of the same class, and which is accepted by such creditor having reasonable cause to believe that such a preference will occur, shall be voidable.

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

(3) The commissioner, as receiver in any proceeding under this chapter, may avoid any transfer of, or lien upon, the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided, and may recover the property so transferred, unless such person was a bona fide holder for value prior to the commencement of the delinquency proceeding. Such property or its value may be recovered from anyone who has received it, except a bona fide holder for value as specified in this subsection. [1967 c 359 §289]

734.360 Preference of claims. Except as provided in ORS 734.310 for secured claims, the debts and claims to be paid in full in delinquency proceedings prior to the payment of any other debts or claims, and the order of payment, shall be:

(1) Expenses of administration of the delinquency proceedings;

(2) If the insurer is domiciled in this state, compensation or wages actually owing to salaried employes other than officers of the insurer, for services rendered within three months prior to the commencement of the delinquency proceeding, but not exceeding $600 for each such employe;

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

(4) Debts or claims, including special deposit claims, owing to any person, including this state, who by the laws of this state is entitled to priority. [1967 c 359 §290; 1977 c.793 §7]

734.370 Offsets. No offsets shall be allowed in cases of mutual debts or mutual credits between the insurer and another person in connection with any delinquency proceeding under this chapter, except for cases of policy loans and cases of reinsurance. [1967 c 359 §291]

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

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

(b) If the claim is based upon a cause of action or suit against an insured of the insurer, a judgment is obtained against the insured or it may be reasonably inferred from proof presented that the claimant would be able to obtain such a judgment; in no case, however,

shall all of the claims so presented and allowed arising out of a single act of the insured exceed the maximum liability of the insurer under its policy with or affecting the insured.

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

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

(4) No judgment entered after the date of entry of a liquidation order shall be considered in the liquidation proceedings as evidence of liability or of the amount of damages, and no judgment entered on default or inquest or by collusion after commencement of a delinquency proceeding shall be considered as conclusive evidence in the liquidation proceeding, either of liability or of the amount of damages. [1967 c 359 §292]

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

(2) Proofs of claims may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed on or before such date, have been paid in full. [1967 c 359 §293]

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

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

(2) The insurer's probable liabilities; and

(3) The probable necessary assessment, if any, to pay all claims and expenses in full, including expenses of administration. [1967 c 359 §294]

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

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

(3) No assessment shall be levied against any member or subscriber with respect to any

nonassessable policy issued in accordance with the Insurance Code. [1967 c 359 §295]

734.420 Order to pay assessment. After levy of assessment as provided in ORS 734.410 and upon the filing of a further detailed report by the commissioner, the court shall issue an order directing each member (in the case of a mutual insurer) or each subscriber (in the case of a reciprocal insurer) if he shall not pay the amount assessed against him to the commissioner on or before a day to be specified in the order, to show cause why he should not be held liable to pay such assessment together with costs as set forth in ORS 734.440, and why the commissioner should not have judgment therefor. [1967 c 359 §296]

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

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

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

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

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

(3) A judgment upon any such order shall have the same force and effect, and may be entered and docketed, and may be appealed from, as if it were a judgment in an original action brought against a member or subscriber in the court in which the delinquency proceeding is pending. [1967 c 359 §298]

OREGON INSURANCE GUARANTY ASSOCIATION

734.510 Definitions for ORS 734.510 to 734.710. As used in ORS 734.510 to 734.710, unless the context requires otherwise:

(1) "Association" means the Oregon Insurance Guaranty Association created by ORS 734.550.

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

(3) "Controlled insurer" means an insurer 70 percent or more of whose stock is owned by a corporation, or by two or more corporations that are under common ownership.

(4) (a) "Covered claim" means an unpaid claim, including a claim for unearned premiums, that arises out of and is within the coverage and limits of an insurance policy to which ORS 734.510 to 734.710 apply and which is in force at the time of the occurrence giving rise to the unpaid claim, made by a person insured under such policy or by a person suffering injury or damage for which a person insured under such policy is legally liable, if:

(A) The insurer issuing the policy becomes an insolvent insurer after September 9, 1971; and

(B) The claimant or insured is a resident of this state at the time of the occurrence giving rise to the unpaid claim, or the property for which claim arises is permanently located in this state.

(b) "Covered claim" does not include:

(A) Any amount in excess of the applicable limits of liability provided by an insurance policy to which ORS 734.510 to 734.710 apply; nor

(B) Any amount due any reinsurer, insurer, insurance pool or underwriting association as subrogated recoveries or otherwise.

(5) "Dividend" means any payment made to the stockholders of a controlled insurer,

which payment is directly related to ownership of the stock.

(6) "Insolvent insurer" means a member insurer:

(a) Authorized to transact insurance in this state either at the time the policy was issued or at the time of the occurrence giving rise to the unpaid claim; and

(b) Against which a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the insurer's domicile after September 9, 1971; and

(c) With respect to which no order, decree, or finding relating to the insolvency of the insurer, whether preliminary or temporary in nature or otherwise, has been issued by a court of competent jurisdiction or by any insurance commissioner, insurance department or similar official or body prior to September 9, 1971, or which was in fact insolvent prior to September 9, 1971, and such de facto insolvency was or should have been known by the chief insurance regulatory official of its domicile.

(7) "Member insurer" means an insurer, including a reciprocal insurer, authorized to transact insurance in this state that writes any kind of insurance to which ORS 734.510 to 734.710 apply.

(8) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which ORS 734.510 to 734.710 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.

(9) "Plan" means the plan of operation of the association established pursuant to ORS 734.590. [1971 c 616 §5, 1977 c 793 §8]

734.520 Purpose. The purpose of ORS 734.510 to 734.710 is to provide for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, to provide an association to assess the cost of such protection among insurers and to assist in the liquidation of insurers as provided in this chapter. [1971 c 616 §2]

734.530 Construction. ORS 734.510 to 734.710 shall be liberally construed to effect the purposes provided in ORS 734.520. [1971 c 616 §3]

734.540 Application. ORS 734.510 to 734.710 apply to all kinds of direct insurance except life, health, title, surety, credit, mortgage guaranty, home protection insurance and wet marine and transportation insurance. [1971 c 616 §4, 1977 c 600 §2, 1981 c 247 §14]

734.550 Oregon Insurance Guaranty Association; all insurers required to be members; formation of operating plan. There is created the Oregon Insurance Guaranty 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 under ORS 734.590, and shall exercise its powers through its board of directors. [1971 c 616 §6]

734.555 Application to association of certain laws governing corporations; exception. The provisions, procedures and requirements of ORS chapter 57 relating to a registered office, registered agent and to service of process, notice and demand shall govern the Oregon Insurance Guaranty Association, except that the Insurance Commissioner shall be substituted for the Corporation Commissioner as the person with whom all filings shall be made and upon whom, in the circumstances specified by statute, such service may be effected. [1977 c 600 §6]

734.560 Association board of directors; terms; vacancies; compensation and expenses; quorum. (1) The board of directors of the association shall consist of nine members selected by the member insurers, subject to the approval of the commissioner. The term of each member of the board 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 is not made within 60 days after September 9, 1971, the commissioner may select the 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 by 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 616 §7]

734.570 Required functions of association. The association shall:

(1) Be obligated to pay covered claims existing at the time of determination of insolvency of an insurer or arising within 30 days after the determination of insolvency. Except for covered claims arising out of workers' compensation policies, such obligation shall include only that amount of each covered claim that is less than $300,000. The association shall pay the full amount of any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises, or for claims arising after the policy expiration, policy replacement by the insured or policy cancellation caused by the insured.

(2) Be the insurer to the extent of the association's obligation on the covered claims and to such extent have all the rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent.

(3) 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 ORS 734.510 to 734.710. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year, but shall in no event exceed in any one year two percent of the member insurer's net direct written premiums for the 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 obligations and expenses of the association, the funds available shall be prorated among the obligations and expenses, and the unpaid portions shall be paid as soon thereafter as funds become available. If an assessment would cause a member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance, the association may exempt from or defer payment of the assessment, in whole or in part, by the member insurer. However, if the member insurer is a controlled insurer, the association, in making determinations regarding the exemption or deferral of assessments, shall treat all dividends paid during the three calendar years immediately preceding the year in which the assessment is made as assets of the insurer just as if such dividends had not been paid. Each member insurer designated as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer in its capacity as a servicing facility.

(4) Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation, and review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

(5) Reimburse servicing facilities and employes of the association for obligations and expenses incurred and paid in the handling of claims on behalf of the association, and pay all other expenses the association incurs in carrying out ORS 734.510 to 734.710. [1971 c 616 §8; 1977 c 793 §9]

734.575 Members of association allowed to offset assessments against tax liability. (1) A member insurer may offset against its premium or corporate excise tax liabilities to this state an assessment described in ORS 734.570 (3) at the rate of 20 percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If a member insurer ceases doing business, all uncredited assessments may be credited against its premium or corporate excise tax liabilities for the year in which it ceases doing business.

(2) Any sums acquired by refund from the association that have previously been written off by contributing insurers and offset against premium or corporate excise taxes as provided

in subsection (1) of this section, and are not then needed for purposes of ORS 734.510 to 734.710, shall be paid by the association to the commissioner and by him deposited with the State Treasurer for credit to the General Fund of this state. [1977 c 793 §3]

734.580 Discretionary functions of association. The association may:

(1) With the approval of the commissioner, employ or retain such persons or designate such servicing facilities as are necessary to handle claims and perform the other duties of the association. Servicing facilities so designated may be foreign corporations or associations.

(2) Borrow funds necessary to carry out ORS 734.510 to 734.710, 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 ORS 734.510 to 734.710.

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

(6) Perform such other acts as are necessary or proper to carry out ORS 734.510 to 734.710. [1971 c 616 §9]

734.590 Plan of operation; submission to commissioner. (1) The association shall submit to the commissioner not later than 90 days after September 9, 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 thereafter 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 of operation. [1971 c 616 §10]

734.600 Contents of plan of operation. A plan of operation shall:

(1) Establish procedures for the submission, processing and payment of claims against the association.

(2) Establish procedures for record keeping, payment of 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 the board of directors and for approval of that selection by the commissioner.

(5) Establish a procedure for appeal by a member insurer 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. [1971 c 616 §11]

734.610 Notification to association of insurer insolvency; furnishing association with premium information. The commissioner shall:

(1) Notify the association of the insolvency of an insurer not later than three days after the commissioner receives notice of the determination of insolvency.

(2) Upon request of the board, provide the association with a statement of the net direct written premiums of each member insurer for the preceding calendar year. [1971 c 616 §12]

734.620 Notification of insolvency to insured persons; revocation of designation of servicing facility. The commissioner may:

(1) Require the association to notify the insureds of an insolvent insurer of the determination of insolvency and of their rights under ORS 734.510 to 734.710. Such notification may be by:

(a) Certified or first-class mail to the address of each such person as it last appears in the records of the commissioner or the insurer;

(b) Publication in a newspaper of general circulation in this state if the addresses of those persons to be notified is not available from the records of the commissioner or the insurer; or

(c) Any combination of the methods referred to in paragraphs (a) and (b) of this subsection that the association considers likely to inform the persons of their rights under ORS 734.510 to 734.710.

(2) Revoke the designation of any servicing facility that the commissioner finds is not processing and paying claims in the manner provided in the plan and in ORS 734.510 to 734.710. [1971 c 616 §13]

734.630 Assignment of claim rights; filing statements of paid claims; effect of claim settlements. (1) Any person who recovers on a covered claim under ORS 734.510 to 734.710 thereby assigns his rights under the insurance policy to the association to the extent of such recovery Every person who seeks the protection of ORS 734.510 to 734.710 shall cooperate with the association to the same extent such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insureds of an insolvent insurer for any sums paid, except for those causes of action the insolvent insurer would have had if such sums had been paid by the insolvent insurer. If an insolvent insurer operates on the assessment plan, the payment of claims by the association does not reduce the liability of the insured to the receiver for unpaid assessments.

(2) Periodically the association shall file with the receiver statements of the covered claims paid by the association and estimates of anticipated claims against the association Such filings shall preserve the rights of the association against the assets of the insolvent insurer.

(3) The receiver shall be bound by settlements of covered claims by the association or a similar organization in another state The court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled in the absence of ORS 734.510 to 734.710 against the assets of the insolvent insurer. The expenses of the association or similar organization in another state in handling claims shall be accorded the same priority as the expenses of administration of the delinquency proceedings. [1971 c 616 §14]

734.635 Disbursing assets of insolvent insurer to association; court approval; notice to other states. (1) Not later than 120 days from the date the order of liquidation of a member insurer is filed in the office of the clerk of the court by which the order was made, that insurer's receiver shall make application to the court for approval of a proposal to disburse the insurer's marshalled assets to the association from time to time as those assets become available.

(2) A proposal made by a receiver under subsection (1) of this section shall include, but not be limited to, provisions for:

(a) Reserving amounts for the payment of those debts and claims described in ORS 734.360;

(b) Disbursing the marshalled assets of the insolvent insurer to the association in an amount estimated to be at least equal to the claim payments to be made by the association for which the association could assert a claim against the insolvent insurer;

(c) Disbursing the marshalled assets in the amount available when the marshalled assets do not equal the amount of the claim payments to be made by the association for which the association could assert a claim against the insolvent insurer;

(d) Securing an agreement from the association to return to the receiver any assets previously disbursed that may be required to pay the claims of secured creditors and the debts and claims described in ORS 734.360; and

(e) A complete report by the association to the receiver accounting for all assets disbursed to the association under this section, expenditures made from those assets and any interest earned by the association on those assets.

(3) When an insurer's receiver intends to make application to a court for approval of a proposal to disburse the insurer's marshalled assets to the association under this section, the receiver shall give notice of the application, at least 30 days prior to filing the application with the court, to the insurance supervisory official and the insurance guaranty agency that performs functions similar to that of the association of each state in which the insolvent insurer was authorized. [1977 c 793 §2]

734.640 Claim priority. (1) Any person who has a claim under an insurance policy against an insurer other than an insolvent insurer which would also be a covered claim against an insolvent insurer must first exhaust his remedies under such policy.

(2) Any person who has a claim that may also be recovered from one or more insurance guaranty agencies that perform functions similar to that of the association shall first seek recovery from whichever organization serves the place of residence of the insured, except that:

(a) Recovery on first party claims for damage to property with a permanent location shall first be sought from whichever organization serves the location of the property; and

(b) Recovery on workers' compensation claims shall first be sought from whichever organization serves the residence of the claimant.

(3) Any recovery under ORS 734.510 to 734.710 from the association shall be reduced by the amount of any recovery pursuant to subsections (1) and (2) of this section. [1971 c 616 §16, 1977 c 793 §10]

734.650 Notifying commissioner of impaired insurers; examination; reports on impaired insurers. (1) Whenever the board obtains any information indicating that any member insurer is impaired or in a financial condition hazardous to the policyholders or the public, the board shall so notify the commissioner.

(2) The board may request the commissioner to examine any member insurer that the board in good faith believes to be impaired or in a financial condition hazardous to the policyholders or the public. The commissioner shall cause the examination to begin within 30 days after the receipt of any such request. Except as otherwise provided in ORS 734.510 to 734.710, the examination shall be conducted as provided in ORS chapter 731.

(3) The commissioner shall report the results of an examination to the board and shall notify the board whenever he has reasonable cause to believe during an examination that the insurer is impaired or insolvent. The results of the completed examination shall not be released to the board before release to the public. The request for examination shall not be available for public inspection before release of the results of the examination to the public.

(4) The board may make such reports and recommendations to the commissioner regarding the insolvency, liquidation, rehabilitation or conservation of member insurers as the board considers appropriate. Any such reports or recommendations are not public records. [1971 c 616 §17]

734.660 Regulation of association as insurer. The association is subject to regulation by the commissioner in the same manner as an insurer. Not later than March 30 of each year, the board shall submit to the commissioner, in a form approved by the commissioner, a financial report for the preceding year. [1971 c 616 §18]

734.670 Exemption of association from payment of 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 616 §19]

734.680 [1971 c 616 §20, repealed by 1977 c 793 §11]

734.690 Immunity from legal action. No person shall have a cause of action against any member insurer, 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 ORS 734.510 to 734 710. [1971 c 616 §21]

734.695 Liability of insured of insolvent insurer. The insured of an insolvent insurer shall not be personally liable for amounts due any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries or otherwise up to the applicable limits of liability provided by the insurance policy issued by the insolvent insurer. [1977 c 793 §4]

734.700 Defense of claims on default of insolvent insurer. (1) Any pending proceeding in which an insolvent insurer is a party or is obligated to defend a party in any court of this state shall be stayed for 60 days after the date a receiver is appointed by the court to permit the association time to prepare a defense in such proceedings.

(2) If any covered claim arises from a judgment based on the default of the insolvent insurer or its failure to defend an insured, the association may apply to have such judgment set aside, and, upon such application shall be permitted to defend against the claim on the merits. [1971 c 616 §22]

734.710 Administration of delinquency proceeding claims and expenses; application of ORS 734.010 to 734.440 to insurers. (1) In any delinquency proceeding involv-

ing a member insurer, the claims and expenses of the insurer shall be administered as provided in ORS 734.510 to 734.710.

(2) Except as otherwise provided in ORS 734.510 to 734.710, ORS 734.010 to 734.440 apply to a member insurer. [1971 c 616 §23]

OREGON LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

734.750 Short title. ORS 734.750 to 734.890 may be cited as the Oregon Life and Health Insurance Guaranty Association Act. [1975 c 251 §2]

734.760 Definitions for ORS 734.750 to 734.890. As used in ORS 734.750 to 734.890, unless the context requires otherwise:

(1) "Account" means any of the three accounts created under ORS 734.800.

(2) "Association" means the Oregon Life and Health Insurance Guaranty Association created under ORS 734.800.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract to which ORS 734.750 to 734.890 apply.

(5) "Impaired insurer" means a member insurer deemed by the commissioner after September 13, 1975, to be potentially unable to fulfill its contractual obligations, excluding insolvent insurers.

(6) "Insolvent insurer" means a member insurer which, after September 13, 1975, becomes insolvent and is placed under a final order of liquidation, rehabilitation or conservation by a court of competent jurisdiction.

(7) "Member insurer" means any insurer authorized to transact in this state any kind of insurance to which ORS 734.750 to 734.890 apply.

(8) "Premiums" means direct gross insurance, including annuity, premiums written on covered policies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Premiums" does not include premiums on contracts between insurers and reinsurers.

(9) "Resident" means a person to whom contractual obligations are owed by a member insurer which is determined to be an impaired or insolvent insurer at a time when the person is a resident of this state. [1975 c 251 §6]

734.770 Purpose. The purpose of ORS 734.750 to 734.890 is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance, including annuity, policies, health insurance policies, and contracts supplemental thereto, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing such policies or contracts. To provide this protection:

(1) An association of insurers is created to enable the guarantee of payment of benefits and continuation of coverages;

(2) Members of the association are subject to assessment to provide funds to carry out the purpose of ORS 734.750 to 734.890; and

(3) The association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments or insolvencies. [1975 c 251 §3]

734.780 Construction. ORS 734.750 to 734.890 shall be liberally construed to effect the purpose provided in ORS 734.770. [1975 c.251 §5]

734.790 Application. (1) ORS 734.750 to 734.890 apply to direct life insurance, including annuity, policies, health insurance policies, and contracts supplemental to life and health insurance policies, issued by authorized insurers.

(2) ORS 734.750 to 734.890 do not apply to:

(a) That portion or part of a variable life insurance or variable annuity policy not guaranteed by an insurer.

(b) That portion or part of any policy or contract under which the risk is borne by the policyholder.

(c) Any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

(d) Any policy or contract issued by a health care service contractor complying with ORS 750.005 to 750.065.

(e) Any policy or contract issued by a fraternal benefit society. [1975 c 251 §4]

734.800 Oregon Life and Health Insurance Guaranty Association; all insurers required to be members; required accounts. (1) There is created a nonprofit

legal entity to be known as the Oregon Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under ORS 734.820, and shall exercise its powers through a board of directors established under ORS 734.805. For purposes of administration and assessment, the association shall maintain three accounts:

(a) The health insurance account;

(b) The life insurance account; and

(c) The annuity account.

(2) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. [1975 c 251 §7]

734.805 Association board of directors; terms; selection; vacancies; compensation and expenses. (1) The board of directors of the association shall consist of not less than five nor more than nine member insurers, serving terms as established in the plan of operation. The members of the board shall be selected by member insurers, subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the commissioner may appoint the initial members.

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

(3) Members of the board of directors may be reimbursed from the assets of the association for expenses incurred by them as members of the board, but members of the board shall not otherwise be compensated by the association for their services. [1975 c 251 §8]

734.810 Duties and powers of association. In addition to the powers and duties enumerated in ORS 734.750 to 734.805 and 734.815 to 734.890:

(1) If a domestic insurer is an impaired insurer, the association may, subject to any conditions imposed by the association and approved by the impaired insurer and the commissioner, other than those which impair the contractual obligations of the impaired insurer:

(a) Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer.

(b) Provide such money, pledges, notes, guarantees or other means as are proper to implement paragraph (a) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a) of this subsection.

(c) Loan money to the impaired insurer.

(2) If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer;

(b) Assure payment of the contractual obligations of the insolvent insurer; and

(c) Provide such money, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties.

(3) This subsection does not apply where the commissioner has determined that the foreign or alien insurer's domicile provides statutory protection substantially similar to that provided by ORS 734.750 to 734.890 for residents of this state. In other cases, if a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents;

(b) Assure payment of the contractual obligations of the insolvent insurer to residents; and

(c) Provide such money, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties.

(4) (a) In carrying out its duties under subsections (2) and (3) of this section, permanent policy liens or contract liens may be

imposed in connection with any guaranteed, assumption or reinsurance agreement, if the court finds that the amounts which can be assessed under ORS 734.750 to 734.890 are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations or that the economic or financial conditions affecting member insurers are sufficiently adverse to render the imposition of policy or contract liens to be in the public interest, and approves the specific policy liens or contract liens to be used.

(b) Before being obligated under subsections (2) and (3) of this section the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans, in addition to any contractual provisions for deferral of cash or policy loan values, and such temporary moratoriums and liens may be imposed if they are approved by the court.

(5) If the association fails to act as required in subsections (2) and (3) of this section within a reasonable time, the commissioner shall have the powers and duties of the association under ORS 734.750 to 734.890 with respect to insolvent insurers.

(6) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuance of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

(7) The association shall have standing, or appear, before any court in this state having jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under ORS 734.750 to 734.890. Such standing shall extend to all matters germane to the powers and duties of the association including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

(8) (a) Any person receiving benefits under ORS 734.750 to 734.890 shall be considered to have assigned the rights under the covered policy to the association to the extent of the benefits received because of ORS 734.750 to 734.890, whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by ORS 734.750 to 734.890 upon such person. The association shall be subrogated to these rights against the assets of any insolvent insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under ORS 734.750 to 734.890.

(9) The contractual obligations of the insolvent insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the insolvent insurer would have been in the absence of an insolvency, unless such obligations are reduced as permitted by subsection (4) of this section, but the aggregate liability of the association shall not exceed $100,000 in cash values, or $300,000 for all benefits including cash values, with respect to any one life.

(10) The association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of ORS 734.750 to 734.890.

(b) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under ORS 734.815.

(c) Borrow money to effect the purposes of ORS 734.750 to 734.890. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(d) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under ORS 734.750 to 734.890.

(e) Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the association.

(f) Take such legal action as may be necessary to avoid payment of improper claims.

(g) Exercise, for the purposes of ORS 734.750 to 734.890 and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue policies other than those issued to perform the contractual obligations

of the impaired or insolvent insurer. [1975 c 251 §9]

734.815 Assessment of members; classes of assessments; amounts; refunds. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There shall be three classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired or insolvent insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under ORS 734.810 with regard to an impaired or insolvent domestic insurer.

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under ORS 734.810 with regard to an insolvent foreign or alien insurer.

(3) (a) The amount of any class A assessment shall be determined by the board and may be made on other than a pro rata basis. The assessment shall be credited against future insolvency assessments and shall not exceed $50 per insurer in any one calendar year. The amount of any class B or C assessment shall be allocated for assessment purposes among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies covered by each account, for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums, bears to the premiums received by such insurer for such calendar year on all covered policies.

(b) Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bears to such premiums received on business in this state for the calendar year preceding the assessment by all assessed member insurers

(c) Class B assessments for each account shall be made separately for each state in which the impaired or insolvent domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired or insolvent insurer on policies covered by such account, for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums, bears to such premiums received in all such states for such calendar year by the impaired or insolvent insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account for the calendar year preceding the assessment bears to such premiums received on business in such state for the calendar year preceding the assessment by all assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of ORS 734.750 to 734.890. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of the insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4) of this section, the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in the account, does not provide in any one year in the account an amount sufficient to carry out the responsibilities of the association, the

necessary additional funds shall be assessed as soon thereafter as permitted by ORS 734.750 to 734.890.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impracticable.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends for any kind of insurance within the scope of ORS 734.750 to 734.890, to consider the amount reasonably necessary to meet its assessment obligations under ORS 734.750 to 734.890.

(8) The association shall issue to each insurer paying an assessment under ORS 734.750 to 734.890, other than a class A assessment, a certificate of contribution in a form prescribed by the commissioner for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve. [1975 c 251 §10]

734.820 Plan of operation; submission to commissioner; contents of plan. (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within 180 days following September 13, 1975, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to implement the provisions of ORS 734.750 to 734.890. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in ORS 734.750 to 734.890:

(a) Establish procedures for handling the assets of the association.

(b) Establish the amount and method of reimbursing members of the board of directors.

(c) Establish regular places and times for meetings of the board of directors.

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(e) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner.

(f) Establish any additional procedures for assessments under ORS 734.815.

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under of ORS 734.810 (10)(c) and 734.815, may be delegated to a corporation, association or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by ORS 734.750 to 734.890. [1975 c 251 §11]

734.825 Powers and duties of commissioner. In addition to the duties and powers enumerated elsewhere in ORS 734.750 to 734.820 and 734.830 to 734.890:

(1) The commissioner shall:

(a) Upon request of the board of directors, provide the association with a statement of

the premiums in the appropriate states for each member insurer.

(b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under ORS 734.750 to 734.890.

(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than $100 per month.

(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(4) The liquidator, rehabilitator or conservator of any impaired insurer may notify all interested persons of the effect of ORS 734.750 to 734.890. [1975 c 251 §12]

734.830 Notifying commissioner of impaired insurers; examination; reports on impaired insurers. To aid in the detection and prevention of insurer impairments and insolvencies:

(1) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be an impaired insurer or insolvent insurer.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes to be an impaired or insolvent insurer. The commissioner may conduct such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports in this state. In no event shall the examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from his obligation to comply with subsection (3) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is an impaired insurer or insolvent insurer.

(3) The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be an impaired insurer or insolvent insurer.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public records.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments or insolvencies.

(6) The board of directors shall, at the conclusion of any insurer impairment or insolvency in which the association carried out its duties under ORS 734.750 to 734.890 or exercised any of its powers under ORS 734.750 to 734.890, prepare a report on the history and causes of such impairment or insolvency, based on the information available to the association, and submit such report to the commissioner. [1975 c 251 §13]

734.835 Assessments offset against tax liabilities; rate. (1) A member insurer may offset against its premium or corporate excise tax liabilities to this state an assessment described in ORS 734.815 (8), at the rate of 20 percent of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium or

corporate excise tax liabilities for the year it ceases doing business.

(2) Any sums acquired by refund pursuant to ORS 734.815 (6) from the association which have theretofore been written off by contributing insurers and offset against premium or corporate excise taxes as provided in subsection (1) of this section, and are not then needed for purposes of ORS 734.750 to 734.890, shall be paid by the association to the commissioner and by him deposited with the State Treasurer for credit to the General Fund of this state. [1975 c 251 §14]

734.840 Conduct of liquidation, rehabilitation or conservation proceeding involving impaired or insolvent insurer. (1) Nothing in ORS 734.750 to 734.890 shall be construed to reduce the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under ORS 734.810. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under ORS 734.850.

(3) For the purpose of carrying out its obligations under ORS 734.750 to 734.890, the association shall be considered to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to ORS 734.810 (8). All assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by ORS 734.750 to 734.890. "Assets attributable to covered policies," as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(4) (a) Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association for funds expended in carrying out its powers and duties under ORS 734.810 with respect to such insurer have been fully recovered by the association.

(5) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation, subject to the limitations of paragraphs (b), (c) and (d) of this subsection.

(b) No such dividend shall be recoverable if the insurer shows that, when paid, the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(e) If any person liable under paragraph (c) of this subsection is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate. [1975 c 251 §15]

734.850 Examination and regulation of association by commissioner; required reports. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner, and a report of its activities during the preceding calendar year. [1975 c 251 §16]

734.860 Exemption of association from payment of fees and taxes. The association shall be exempted from payment of all fees and all taxes levied by this state or any of its political subdivisions, except taxes levied on real property. [1975 c 251 §17]

734.870 Immunity from legal action. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employes, the association or its agents or employes, members of the board of directors, or the commissioner or his representatives, for any action taken by them in the performance of their powers and duties under ORS 734.750 to 734.890. [1975 c 251 §18]

734.880 Delay of proceeding involving insolvent insurer. All proceedings in which an insolvent insurer is a party in any court in this state shall be stayed 60 days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict or finding based on default the association may apply to have such judgment set aside by the same court that made the judgment, and shall be permitted to defend against such suit on the merits. [1975 c 251 §19]

734.890 Association not to be used in sales or solicitation. No insurer or agent shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the Oregon Life and Health Insurance Guaranty Association for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by the Oregon Life and Health Insurance Guaranty Association Act. This section shall not apply however to the Oregon Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance or to public service institutional advertisements by individual insurers. [1975 c 251 §20]