

# Chapter 732

## 1983 REPLACEMENT PART

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## GENERAL PROVISIONS

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

(2)(a) The following sections in ORS chapter 57 shall not apply to insurers: ORS 57.045 to 57.060; 57.306 to 57.331; 57.455 to 57.500; 57.506 and 57.511; 57.655 to 57.685 and 57.716 to 57.745; 57.755 and 57.757; 57.761 to 57.769; 57.776 to 57.783, 57.793 to 57.799, 57.811 and 57.815; and 57.992 to 57.994.

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

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

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

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

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

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

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

**732.010** [Repealed by 1967 c.359 §704]

## ORGANIZATION

**732.015 Permit to organize insurer required.** No person shall organize or solicit or receive any money for the organization of a domestic insurer without a subsisting permit to organize an insurer issued by the commissioner pursuant to ORS 732.055. The fee for filing an application for such a permit is as set forth in ORS 731.804, except that no fee will be required in the case of the organization of a reciprocal insurer which exchanges policies of insurance covering only wet marine hull insurance for individuals whose earned income is at least 50

percent derived from taking and selling food resources living in an ocean, bay or river. [1967 c.359 §147; 1977 c.651 §4]

**732.020** [Repealed by 1967 c.359 §704]

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

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

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

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

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

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

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

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

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

**732.035 Application for permit to organize insurer without capital stock.** Any one or more persons desiring to organize a domestic insurer without capital stock shall, as

prospective organizers, first file an application with the commissioner for a permit to organize such an insurer. The provisions and requirements of ORS 732.025 shall govern such application; in addition, the application shall be accompanied by:

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

(2) A schedule of premiums or premium rates proposed to be charged in connection with such insurance for which applications shall be solicited. [1967 c.359 §149]

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

**732.045 Investigation of applications to organize insurers.** Upon receipt of an application for a permit to organize an insurer, the commissioner shall make such investigation of the facts and conditions as he deems necessary, including the holding of a public hearing on the application if he considers it desirable or if requested by the applicant. [1967 c.359 §150]

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

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

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

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

(a) The application is complete;

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

(c) The proposed financial structure is adequate;

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

(e) The proposed directors are collectively competent to assume responsibility for the man-

agement and general policies and procedures of an insurer proposing to issue the class or classes of insurance specified;

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

(g) No fact is then known to the commissioner which would prevent the proposed insurer from completing its organization and receiving a certificate of authority to transact insurance in this state. [1967 c.359 §151]

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

**732.065 Applicants for permit to report changes to commissioner.** Any changes in the information furnished in the application for a permit to organize an insurer shall be reported immediately to the commissioner by the persons to whom the permit was issued. [1967 c.359 §152]

**732.070** [Repealed by 1967 c.359 §704]

**732.075 Revoking or suspending permit to organize insurer.** After notice to the applicant stating the grounds therefor, the commissioner may revoke or suspend a permit to organize an insurer for any ground for which the issuance of the permit could be denied. [1967 c.359 §153]

**732.080** [Repealed by 1967 c.359 §704]

**732.085 Incorporators.** One or more natural persons of the age of 21 years or older or one or more financially responsible corporations may act as incorporators of a domestic insurer upon compliance with the provisions of the Insurance Code. [1967 c.359 §154]

**732.090** [Repealed by 1967 c.359 §704]

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

(2) The articles or other basic document of a mutual or reciprocal insurer shall include the qualifications and rights of members or subscribers of the insurer. [1967 c.359 §155]

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

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

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

(2) A corporate surety bond payable to the commissioner and his successors, as trustee, in the sum of \$25,000, or, in lieu thereof, a like amount in approved securities or cash, conditioned upon the faithful accounting to the insurer upon completion of its organization and the receipt of its certificate of authority from the commissioner, or to the shareholders, members, applicants for policies and creditors, or to the trustee, receiver or assignee of the insurer, duly appointed in any proceeding in any court or department of competent jurisdiction in this state, in accordance with their respective rights in case the organization of the insurer is not completed and the certificate of authority is not procured from the commissioner. Such bond or deposit shall be in the form prescribed by the commissioner. [1967 c.359 §156]

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

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

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

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

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

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

(2) Upon the issuance of the certificate of incorporation, the insurer's corporate existence shall begin and the insurer shall have all authority and power, subject to the limitations prescribed in the Insurance Code, as may be neces-

sary and proper to complete its organization, obtain its initial capital and otherwise complete the requirements to qualify for a certificate of authority to transact the class or classes of insurance proposed in its articles of incorporation. In the case of an insurer without capital stock, the authority and power shall include the solicitation of applications for insurance and receipt in advance of premium payments for any insurance for which the proposed form of application, policies, literature and advertisements pertaining thereto have been filed with and approved by the commissioner. An insurer shall not otherwise transact any business or incur any indebtedness until its certificate of authority to transact insurance has been granted.

(3) The issuance of the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the insurer has been incorporated under the laws of this state, except as against this state in a proceeding to cancel or revoke the certification of incorporation or any certificate of authority to transact insurance or for involuntary dissolution of the insurer. [1967 c.359 §157]

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

**732.125 Registration of securities subsequent to issuance of organization permit and certificate of incorporation.** If the proposed domestic insurer is to issue securities, it shall comply with the applicable provisions of ORS chapter 59. However, the Corporation Commissioner shall not allow the registration of securities of a proposed domestic insurer unless the organizers of such insurer have been issued an organization permit under ORS 732.055, and have received a certificate of incorporation under ORS 732.115. [1967 c.359 §158]

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

**732.135 Soliciting subscriptions and applications.** No person shall solicit subscriptions for the capital stock of, or, in the case of an insurer without capital stock, applications for insurance in, any insurer in the process of organization unless the insurer has filed his name and address with the commissioner. [1967 c.359 §159]

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

**732.145 Stipulations required in subscriptions and applications; disposition of subscribed funds.** (1) Every subscription to the capital stock of an insurer in the process of

organization shall contain a stipulation that no sum shall be used for commission, promotion or organization expenses in excess of a stated percent of the amount paid upon the subscription. This stated amount shall not exceed 15 percent.

(2) All sums paid by subscribers and applicants shall be deposited under an escrow agreement approved by the commissioner in a bank, trust company or savings and loan association in the state until the insurer has procured a certificate of authority from the commissioner.

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

[1967 c.359 §160]

**732.150** [Amended by 1967 c 359 §672, renumbered 751 125]

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

(2) If any domestic insurer does not commence to issue policies within one year from the date of receiving its certificate of authority, the commissioner shall proceed as for an impaired insurer. [1967 c 359 §161]

**732.160** [Amended by 1967 c 359 §673, renumbered 751 135]

**732.165 Liability of directors and incorporators.** The directors, incorporators, and organizers of any insurer organized under the Insurance Code and those entitled to participation in the profits of such insurer shall be jointly and severally liable for all debts or liabilities of such insurer until it has received a certificate of authority. [1967 c 359 §162]

**732.175 Liability for acting as corporate insurer without authority.** Any person who assumes to act as a corporate insurer without a permit to organize and without the issuance of a certificate of incorporation by the commissioner or who assumes to transact insur-

ance business without a certificate of authority to transact such business issued by the commissioner shall be jointly and severally liable, as provided in ORS 57.793 (1). [1967 c.359 §163; 1981 c.633 §80]

## CORPORATE PROCEDURES GENERALLY

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

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

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

(3) All powers necessary or convenient to effect any or all of the purposes for which the corporation is organized or to perform any or all of the acts expressly or impliedly authorized or required under the Insurance Code. [1967 c.359 §164]

**732.210 Assertion of ultra vires.** The provision of ORS 57.040 shall not affect the right of any policyholder of a domestic insurer or the commissioner from asserting the lack of capacity or power of an insurer, by reason of any provision of the Insurance Code, to do any act or make any conveyance or transfer of real or personal property. [1967 c.359 §165]

**732.215 Management contracts prohibited.** No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors or other governing body. [1967 c.359 §166]

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

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

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

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

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

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

(a) Subjects the insurer to charges that are disproportionate to those that the insurer might reasonably be expected to incur under alternative arrangements for the production of his business;

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

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

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

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

(5) This section does not apply as to any contract entered into prior to June 8, 1967, nor to any extension or amendment to such contract to the extent that such extension or amendment may be effected merely by notice and without further consideration. [1967 c.359 §167]

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

(1) Its required capitalization; or

(2) A greater amount which the commissioner, by rule or by order after hearing upon his own motion or the petition of any interested person, finds necessary to avoid injury or prejudice to the interest of policyholders or creditors. [1967 c.359 §168]

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

(2) If the amount of any such impairment is not made good within the time prescribed by the commissioner under subsection (1) of this section, the commissioner shall proceed under the provisions of ORS chapter 734. [1967 c 359 §169]

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

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

(3) The commissioner shall require that the plan of dissolution provide adequate reserves in trust or otherwise for satisfaction of all obligations of the insurer. [1967 c 359 §170]

**732.240 Trusts of life insurance proceeds.** (1) Any domestic insurer may hold in trust the proceeds of any life insurance policy issued by it. Such a trust shall be upon such

terms and subject to such limitations as to revocation by the policyholder and control by the beneficiary thereunder as are agreed to in writing by the insurer and the policyholder.

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

(3) The forms of such trust agreements shall be first submitted to and approved by the commissioner. [Formerly 739.410]

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

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

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

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

(3) Removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a plan of merger or consolidation approved by the commissioner under ORS 732.505 to 732.595, or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal, or concealment of such records or assets or such material part thereof from the commissioner, is prohibited. Upon any removal or attempted removal of such records or assets or upon retention of such records or assets or material part thereof outside this state beyond the period therefor specified in the commissioner's consent under which the records were so removed, or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer as provided in ORS 734.150.

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

(a) Establishing and maintaining branch offices or regional home offices in other states where necessary or convenient to the transaction of its business, and keeping therein the detailed

records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request;

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

(c) Using custodial arrangements for the holding of securities owned by the insurer, either in or outside of this state, and either segregated from or commingled with securities owned by others, if the arrangements conform to rules adopted by the commissioner for safeguarding the assets and facilitating the commissioner's examination of insurers using such custodial arrangements. [1967 c 359 §172, 1979 c.846 §3]

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

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

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

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

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

(4) If there are no surviving directors, but at least three vice presidents of the insurer survive, the three vice presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors

and such powers as are granted by this section. By majority vote such emergency board of directors may elect other directors. If there are not at least three surviving vice presidents, the commissioner shall appoint three persons as directors who shall possess all of the powers of the previous board of directors and such powers as are granted by this section, and these persons by majority vote may elect other directors.

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

(6) At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency the home office or principal place of business of the insurer shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference. [1967 c.359 §173]

### DIRECTORS, OFFICERS AND EMPLOYEES

**732.305 Board of directors.** The number of directors of a domestic insurer shall be not less than five. Directors need not be shareholders or members of the insurer unless the articles so require but shall be 21 years of age or older, and a majority of them shall be residents of this state. The majority of directors shall be persons who are not salaried officers of the insurer. [1967 c.359 §174]

**732.310 Classification of directors.** Notwithstanding the provisions of ORS 57.190, a domestic insurer that has cumulative voting may not provide for classification of directors. [1967 c.359 §175]

**732.315** [Formerly 738.200; repealed by 1983 c.24 §1]

**732.320 Supporting documents for expenditures.** No domestic insurer shall make any disbursement of \$100 or more unless the sum is evidenced by:

(1) A voucher signed by or on behalf of the person receiving the money or, if a voucher

cannot be obtained, by an affidavit stating the reason for not obtaining the voucher;

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

(3) An authorization of the board of directors, or a committee thereof or officer duly delegated by the board with authority to so authorize, in regard to compensation of officers, employees and agents; or

(4) Satisfactory proof of claim, accepted and approved in the manner prescribed by the insurer, based upon provisions of a policy issued by the insurer. [Formerly 738.420]

**732.325 Certain transactions and compensation between insurers and directors, trustees, officers, agents or employees prohibited.** (1) Except as set forth in a plan of acquisition described in ORS 732.525 and approved by the shareholders and, in the case of the issuance or sale of the insurer's securities, as approved by a majority of the board of directors having no interest therein except as shareholders or directors or failing such majority by the shareholders, no director, trustee, officer, agent or employe, or spouse or relative thereof, shall receive any fee, commission, compensation or other valuable consideration whatsoever, directly or indirectly, for aiding, promoting or assisting:

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

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

(2) Except as permitted in subsection (3) of this section, no director, trustee or officer of an insurer shall receive, directly or indirectly, any money or thing of value for negotiating, procuring, recommending or aiding in the purchase or sale by the insurer of property, or the making of a loan from or to the insurer, or be pecuniarily interested, either as principal, coprincipal, agent or beneficiary, in such a purchase, sale or loan. No insurer shall make any such payments or loans, or make any advances to directors, trustees or officers for future services to be performed, or guarantee in any manner the financial obligations of such persons. The word "guarantee" as used in this subsection shall not include payments to be made upon death of a person insured under a credit life insurance policy.

(3) An insurer may contract, or otherwise enter into a transaction, for the provision of goods or services to the insurer in the normal

course of business with a director, trustee, or officer, or a partnership or corporation in which a director, trustee or officer has, directly or indirectly, the proprietary interest in excess of five percent, if the interest of the director, trustee or officer is fully disclosed to the board of directors of the insurer, and the board thereafter approves and authorizes the contract or transaction by a vote sufficient for the purpose without counting the vote of such interested person.

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

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

(b) The payment of a fee to any approved person for legal or other specialized or professional services rendered to the insurer and approved by the board of directors;

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

(d) The exercising of any rights under any policy of insurance. [1967 c.359 §178; 1971 c.231 §17; 1983 c.498 §20]

**Note:** 732.325, 732.505, 732.510, 732.515, 732.525, 732.535, 732.540, 732.545 and 732.560, as amended by chapter 498, Oregon Laws 1983, and 732.517, 732.522, 732.523, 732.575, 732.580, 732.585, 732.590 and 732.595 apply to any acquisition not fully consummated on July 26, 1983. See section 21, chapter 498, Oregon Laws 1983.

### SHARES, SHAREHOLDERS AND MEMBERS (General Provisions)

**732.405 Authorized shares.** No domestic insurer shall issue or have outstanding more than one class of shares, whether with or without par value. [1967 c.359 §179]

**732.410 Right to acquire own shares.** A domestic insurer shall have the right to purchase or otherwise acquire, hold, pledge, transfer or dispose of its own issued shares. An insurer may acquire any such shares by purchase, exchange or disposition of its assets only from earned surplus not otherwise restricted or, with the prior written approval of the commissioner, from other of its surplus. [1967 c.359 §180]

**732.415 Stock insurer's proxies; regulation by commissioner.** (1) A proxy may be authorized in writing to vote the shares of any stockholder, or where authorized of a policyholder, of a domestic stock insurer at any regular or special stockholders' meeting.

(2) Such stockholders and policyholders shall be provided with adequate and accurate information with respect to the affairs of the insurer, the interests of those involved in the solicitation of proxies or consents, and the matters regarding which the proxies or consents are solicited.

(3) Every form of proxy or consent and soliciting material to be used in connection therewith shall be filed with the commissioner in advance of any circulation or other use by at least 10 days, or such shorter period as the commissioner may authorize. Circulation or use of a filed document may be made when such 10-day or shorter period has expired, unless or until the commissioner has disapproved the filing by written notice showing wherein the document does not comply with this section or the pertinent rules. Any proxy or consent obtained in violation of this section shall be void.

(4) The commissioner may issue rules to carry out the purposes of this section and to prevent fraud or deception in connection with proxies and consents. Such rules may differ as to different types of insurers, and may include, but not by way of limitation, provisions as to:

(a) Exemption from the requirements of this section for insurers subject to similar provisions of federal law, or with less than a prescribed number of stockholders;

(b) Disclosure of equivalent information when no proxies or consents are solicited;

(c) Form and content of proxies, consents and solicitation materials, and filing procedures therefor;

(d) Procedure for presentation of stockholder proposals; and

(e) Election contests. [Formerly 738 190]

### (Insider Trading)

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

(1) Any stock or similar security;

(2) Any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security;

(3) Any such warrant or right; or

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

security. [Formerly 738.710]

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

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

(2) Such insurer does not have any class of its equity securities held of record by 100 or more persons on the last business day of the year next preceding the year in which equity securities of the insurer would be subject to the provisions of ORS 732.430, 732.435 and 732.440 except for the provisions of this subsection.

[Formerly 738.720]

**732.430 Filing statement of security ownership with commissioner.** Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall file with the commissioner on or before January 31, 1966, or within 10 days after he becomes such beneficial owner, director or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such insurer of which he is the beneficial owner, and within 10 days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. [Formerly 738.730]

**732.435 Suit to recover insider profits; exempted transactions.** (1) For the purpose of preventing the unfair use of information which may have been obtained by a beneficial owner, director or officer as described in ORS 732.430 by reason of his relationship to such insurer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. An action to recover such

profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such action within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such action shall be brought more than two years after the date such profit was realized.

(2) This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions that the commissioner by rules may exempt as not comprehended within the purpose of this section. [Formerly 738.740]

**732.440 Prohibited sales of securities.**

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

(a) Does not own the security sold; or

(b) If owning the security, does not deliver it against such sale within 20 days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation.

(2) No person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense. [Formerly 738.750]

**732.445 Establishing or maintaining primary or secondary market in securities; rules of commissioner.** (1) The provisions of ORS 732.435 do not apply to any purchase and sale, or sale and purchase, and the provisions of ORS 732.440 do not apply to any sale, of an equity security of a domestic stock insurer not then or theretofore held by him in an investment account, by a security dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security.

(2) The commissioner may, by such rules as he considers necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. [Formerly 738.760]

**732.450 Arbitrage transactions exempt.** The provisions of ORS 732.430, 732.435 and 732.440 do not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the commissioner may adopt in order to carry out the purposes of ORS 732.420 to 732.455. [Formerly 738.770]

**732.455 Rules of commissioner.** The commissioner shall have the power to make such rules as may be necessary for the execution of the functions vested in him by ORS 732.420 to 732.455, and may for such purpose classify domestic stock insurers, securities, and other persons or matters within his jurisdiction. No provision of ORS 732.430, 732.435 and 732.440 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the commissioner, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [Formerly 738 780]

#### (Shareholders and Members)

**732.460 Annual report to shareholders or members.** Every domestic stock insurer shall send to each shareholder within 90 days after the end of each fiscal year of such insurer and every domestic insurer without capital stock shall make available at its annual meeting an annual report of the organization, operation and activities of such insurer, its parent if any and its subsidiaries and affiliates if any, and financial statements showing the financial condition of the insurer at the end of such fiscal year and the results of its operations for such fiscal year. The annual report shall contain such other information and financial statements and shall be in such form as the commissioner may by rule prescribe. [1967 c.359 §190]

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

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

(3) An owner is the person given the rights of ownership or the power to make transactions with the insurer under terms of the policy, including an assignee, other than the insurer which issued the policy, who has received an assignment absolute on its face subject to any reason-

able minimum requirements relating to assignments found in the policy or in the bylaws of the insurer. In a policy of group life or health insurance the person contracting with the insurer and to whom the master contract is issued is the member; the lives insured and individuals holding certificates thereunder are not policyholders or members.

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

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

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

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

(4) Fractional voting shall not be permitted.

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

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

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

(8) A member may in every case vote in person or by proxy; the right to vote by proxy shall be subject to reasonable provisions pertaining thereto contained in the articles of incorporation and bylaws of the insurer. [Formerly 739.170]

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

(1) Unless the notice of the meeting is by personal mail or delivery to the members, or as provided in subsection (5) of this section, the

annual meeting, and all special meetings of members shall be held at or in the immediate vicinity of the home office of the insurer.

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

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

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

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

matters are included on the agenda of the regular meeting, at the direction of the commissioner.

(6) The members present in person or represented by proxy shall constitute a quorum at a duly called meeting of members. The affirmative vote of a majority of members voting on any matter presented at such meeting shall constitute the act of the members unless the voting of a greater number is required by law or the insurer's articles of incorporation or bylaws. [1967 c.359 §193; 1971 c.231 §43]

## ACQUISITIONS AND MERGERS

**Note:** 732.325, 732.505, 732.510, 732.515, 732.525, 732.535, 732.540, 732.545 and 732.560, as amended by chapter 498, Oregon Laws 1983, and 732.517, 732.522, 732.523, 732.575, 732.580, 732.585, 732.590 and 732.595 apply to any acquisition not fully consummated on July 26, 1983. See section 21, chapter 498, Oregon Laws 1983.

**732.505 "Acquisition" and "acquire" defined.** As used in ORS 732.505 to 732.595, "acquisition" or "acquire" includes:

(1) Merger of two or more insurers.

(2) Consolidation of two or more insurers.

(3) Acquisition by the acquiring party, whether or not an insurer, of all or substantially all of the assets of an insurer by purchase, exchange or otherwise.

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

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

(6) Bulk reinsurance by one insurer of all or substantially all of the insurance, or a major class of such insurance, in force with another insurer or related or affiliated group of insurers. The provisions of this subsection shall not apply to ordinary or customary reinsurance, or reinsurance pursuant to a treaty or treaties approved by the commissioner.

(7) Any other arrangement which brings together under common ownership, control or responsibility all or substantially all of the assets, liabilities and insurance in force of two or more insurers. [Formerly 738.610; 1969 c.336 §7; 1983 c.498 §1]

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

to 732.595:

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

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

(2) "Purchase, exchange or otherwise" includes acquisition, directly or indirectly, or ownership directly, beneficially or through a subsidiary, parent or affiliate, for cash, securities or property, with or without any consideration, and includes a tender offer, a request or invitation for tenders, an acquisition or series of acquisitions in the open market, an exchange offer or agreement, an agreement providing an option to purchase, or a purchase of or offer to purchase securities convertible into voting securities. [1967 c.359 §195; 1969 c.336 §8; 1983 c.498 §2]

**732.515 "Acquiring party" defined.** As used in ORS 732.505 to 732.595, "acquiring party" means any person, including any intermediary or subsidiary corporation or insurer, who acquires or holds, directly or indirectly, the assets or capital stock or assumes the liabilities of an insurer or other corporation. [1967 c.359 §196; 1983 c.498 §3]

**732.517 Purpose of ORS 732.505 to 732.595.** The purpose of ORS 732.505 to 732.595 is to prevent the acquisition of control of an insurer or of an insurance holding company system, as defined in ORS 732.605, when the acquisition would be adverse to the public interest and the interests of policyholders and shareholders. A further purpose of ORS 732.505 to 732.595 is to promote the public interest and the interests of policyholders and shareholders by facilitating, consistent with those interests, better use of management skills and services, diversification through acquisitions, free access to capital markets, sound tax planning and open competition. [1983 c.498 §5]

**732.520 Acquisition of insurers.** A domestic insurer may be a party to an acquisition involving the insurer and one or more other domestic or foreign insurers or corporations, or alien insurers organized under the laws of Canada or any of its provinces, by complying with the provisions of ORS 732.505 to 732.595. [1967 c.359 §197]

**732.522 Application of 732.505 to 732.595 to acquisition of controlling interest of capital stock.** (1) ORS 732.525,

732.530, 732.540 (3), 732.545 (4), 732.550, 732.555, 732.565 and 732.570 shall not apply to an acquisition which involves only transactions of the type described in ORS 732.505 (5).

(2) ORS 732.545 (1), (2), (3) and (5) shall apply to an acquisition described in ORS 732.505 (5) only if:

(a) The acquiring party is to acquire 50 percent or more of the capital stock of an insurer; or

(b) Upon consummation of the acquisition, the acquiring party will possess, directly or indirectly, the power to direct or cause the direction of the management and policies of the insurer to be acquired.

(3) Except as provided in this section, ORS 732.505 to 732.595 shall apply to an acquisition described in ORS 732.505 (5). [1983 c.498 §6]

**732.523 Procedure for acquiring controlling interest of capital stock; filing of statement; request for hearing.** (1) Neither an acquiring party nor any other person shall effect an acquisition described in ORS 732.505 (5), or engage in any activity that will in fact or is intended in fact to lead directly or indirectly to such an acquisition, unless all of the following requirements are met:

(a) The acquiring party or other person has filed with the commissioner a statement containing the information required in this section. If more than one acquiring party or other person is required to file a statement under this paragraph, any or all such persons acting in concert may file a joint statement.

(b) The acquiring party or other person, concurrently with filing the statement under paragraph (a) of this subsection, has delivered or mailed to the insurer to be acquired a statement containing the information required by this section. A statement mailed under this paragraph shall be sent by certified mail, return receipt requested. If a joint statement is filed under paragraph (a) of this subsection, the joint statement shall be the statement mailed or delivered under this paragraph.

(c) The consummation of the acquisition has been approved by the commissioner under ORS 732.540 and by the shareholders of any insurer or other corporation whose approval is required pursuant to ORS 732.545.

(2) The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each acquiring party or other person required to file the statement, and:

(A) If any acquiring party or other person required to file a statement is an individual, the principal occupation of the person and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; and

(B) If any acquiring party or other person required to file a statement is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the acquiring party or other person and any predecessors of the acquiring party or other person have been in existence, an informative description of the business intended to be done by the acquiring party or other person and its subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the acquiring party or other person, or who perform or will perform functions appropriate to the positions. The list shall include for each individual the information required by subparagraph (A) of this paragraph.

(b) The source, nature and amount of the consideration used or to be used in effecting the acquisition, a description of any transaction in which funds were or are to be obtained for the acquisition and the identity of persons furnishing the consideration. However, when a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the acquiring party or other person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party or other person required to file a statement for the preceding five fiscal years of the acquiring party or other person, or for such lesser period as the acquiring party or other person and any predecessors of the acquiring party or other person has been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

(d) Any plan or proposals of the acquiring party or other person required to file a statement to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security which each acquiring party or other person required to file a statement proposes to acquire in connection with the acquisition, the terms of

any proposed offer or agreement relating to the acquisition and a statement as to the method by which the fairness of the proposal was determined.

(f) The amount of each class of any security of the type to be acquired in connection with the acquisition which is beneficially owned or concerning which there is a right to acquire beneficial ownership by any acquiring party or other person required to file a statement.

(g) A full description of any contracts, arrangements or understandings with respect to any security of the type to be acquired in connection with the acquisition in which any acquiring party or other person required to file a statement is involved, including, without limitation, those involving transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered.

(h) A description of the purchase of any security of the type to be acquired in connection with the acquisition during the 12 calendar months preceding the filing of the statement, by any acquiring party or other person required to file a statement, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid for the security.

(i) A description of any recommendation to purchase any security of the type to be acquired in connection with the acquisition made by any acquiring party or other person required to file a statement, or by anyone based upon interviews or at the suggestion of any acquiring party or other person required to file a statement, during the 12 calendar months preceding the filing of the statement.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities of the type to be acquired in connection with the acquisition and, if distributed, copies of additional soliciting material relating thereto.

(k) A description of the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation for tender of securities of the type to be acquired in connection with the acquisition, including the amount of any fees, commissions or other compensation to be paid to any broker-dealer in connection with the agreement, contract or understanding.

(L) Any additional information as the commissioner by rule may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and shareholders of the insurer.

(3) All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of securities for control of an insurer made by or on behalf of any acquiring party or other person required to file the statement under this section shall contain any of the information specified in subsection (2) of this section as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and shareholders. Copies of the materials shall be filed with the commissioner at least 10 days prior to the time the materials are first published or sent or given to security holders. Any additional materials soliciting or requesting the tenders subsequent to the initial solicitation or request shall contain such information as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and shareholders. Copies of the additional materials shall be filed with the commissioner at least 10 days prior to the time the materials are first published or sent or given to security holders.

(4) If any acquiring party or other person required to file the statement under this section is a partnership, limited partnership, syndicate or other group, the information called for by subsection (2) of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls the partner or member. If the acquiring party or other person required to file the statement under this section is a corporation, the information called for by subsection (2) of this section shall be given with respect to the corporation and each officer and director of the corporation and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding securities of the corporation.

(5) Any acquiring party or other person required to file the statement under this section may file with the statement or within 10 days thereafter a written request for a hearing on the acquisition. The insurer to be acquired may file with the commissioner a written request for a hearing on the acquisition within 10 days after the filing of the statement. [1983 c.498 §9]

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

(1) The names of the insurers and other parties to the plan, the name of the acquiring party, and, in the case of a merger or consolidation, the name of the insurer which shall be the surviving or continuing insurer.

(2) All essential terms and provisions of the plan, including but not limited to the terms and conditions of issuance of any security in exchange for one or more outstanding securities, claims or property interest, or partly in such exchange and partly for cash.

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

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

(5) Such other provisions with respect to the proposed plan as are necessary or desirable. [1967 c.359 §198; 1983 c.498 §7]

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

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

(3) Any insurer or other party to the plan may, if it so desires, include with the filing, or file within 10 days thereafter, a written request for a hearing on the plan. [1967 c.359 §199]

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

(2) The hearing shall be held within 30 days after the filing of the written request for hearing or the commissioner's order directing that a hearing be held at a time and place designated by the commissioner and upon such reasonable notice to the persons described in subsection (3) of this section as the commissioner may order. The notice shall be given by any one or more of

the insurers or other parties to the proposed acquisition as directed by the commissioner. The acquiring party shall bear the expense of providing the notice and, as security for the payment of the expense, shall file with the commissioner a bond or other deposit in a form and amount acceptable to the commissioner.

(3) The following persons shall have an opportunity to be heard at the hearing:

(a) Each insurer and other party to the proposed acquisition;

(b) Each person to whom it is proposed to issue securities in connection with the proposed acquisition;

(c) Each policyholder or shareholder of the insurers or other parties; and

(d) Each other person who may be adversely affected by the proposed acquisition. [1967 c.359 §200; 1983 c.498 §10]

**732.540 Approval of proposed acquisition.** (1) The commissioner shall approve the proposed acquisition within 30 days after filing of the proposed acquisition or within 30 days after the hearing if one is called and held, unless the commissioner finds that the proposed acquisition:

(a) Is contrary to law or would result in a prohibited combination of risks or classes of insurance;

(b) Is inequitable or unfair to the policyholders or shareholders of any insurer involved or to any other person affected by the proposed acquisition, provided that, in connection with an acquisition described in ORS 732.505 (5), the commissioner shall evaluate the fairness of the proposed acquisition to the shareholders of the insurer to be acquired only with respect to any shareholders remaining after consummation of the acquisition who are unaffiliated with the acquiring party or parties;

(c) Would substantially reduce the security of and service to be rendered to policyholders of any domestic insurer involved, in this state or elsewhere;

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

(e) Is detrimental to free competition; or

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

(2) If the commissioner does not approve the proposed acquisition, the commissioner shall

promptly notify each insurer and other party to the proposed acquisition in writing, specifying the bases, factors and reasons for the disapproval and giving each insurer and other party which filed the plan or statement relating to the proposed acquisition an opportunity to amend the plan or statement, if possible, to obviate the commissioner's objections.

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

(4) Any amendment to the statement filed under ORS 732.523 pursuant to the commissioner's objection shall be filed by the acquiring party or parties or other person or persons filing the statement and, if a hearing was held on the proposed acquisition, shall be resubmitted at a hearing held pursuant to this section unless the commissioner finds that such a hearing is not necessary for the protection of the policyholders, shareholders or any other person affected by the proposed acquisition.

(5) Any insurer or other party to the proposed acquisition, including the insurer proposed to be acquired, within 60 days after receipt of a notice of approval or disapproval, may petition the Circuit Court for Marion County, or the circuit court for the county in which the objector has its principal place of business in this state, if any, for judicial review of the commissioner's action. The provisions of ORS 183.310 to 183.550, to the extent applicable, shall govern the judicial review and any appeal therefrom to the Court of Appeals. For purposes of the judicial review the specifications required to be set forth in the written notice from the commissioner shall be deemed the findings of fact and conclusions of law of the division.

(6) On petition to the court, the court's power shall extend to affirming the order of the commissioner, modifying all or any part of the commissioner's objections, adding additional objections, approving the proposed acquisition as submitted or subject to such modifications or changes as the court may find proper, and requiring resubmission to the boards of directors or other governing bodies or for hearing as provided in ORS 732.535. [1967 c.359 §201; 1979 c.562 §32; 1983 c.498 §11]

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

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

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

(4) If the proposed acquisition is approved under this section and becomes effective as provided in ORS 732.565, the terms of the proposed acquisition shall bind all members and subscribers of an insurer without capital stock, all shareholders of an insurer with capital stock and all shareholders of any other corporation that is a party to the proposed acquisition.

(5) Except as otherwise provided in ORS 732.522, the provisions of ORS 57.870 to 57.895 with regard to procedures for and rights and liabilities of dissenting shareholders shall apply to all acquisitions subject to ORS 732.505 to the extent that an insurer with capital stock or other corporation is a party to the proposed acquisition or is otherwise affected by or involved in the proposed acquisition. [1967 c.359 §202; 1973 c.515 §2; 1981 c.633 §81; 1983 c.498 §12]

**732.550 Acquisition of assets or insurance of mutual insurers.** (1) If the plan of acquisition will result in the acquisition by an insurer with capital stock of all or substantially all of the assets of an insurer without capital stock, or reinsurance in an insurer with capital stock of all or substantially all of the insurance

in force of an insurer without capital stock, the plan must provide for payment to each member or subscriber of the insurer without capital stock entitled thereto, as provided in subsection (2) of this section, of his equity, if any, in such insurer to be so acquired or reinsured as determined under a fair formula approved by the commissioner.

(2) The insurer without capital stock shall make a reasonable classification of its policies held by its members or subscribers to determine the value or basis of each member's or subscriber's equitable share. The formula shall take into consideration all of the financial data normally required to be reported annually to the commissioner. The expenses of the acquisition which is the subject of this section shall be shared equitably by the insurers involved.

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

(4) To qualify for an equitable distribution, a policyholder must have been a member or subscriber of the insurer for at least one year at the time such plan was approved and adopted by the members or subscribers. [1967 c.359 §203]

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

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

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

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

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

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

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

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

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

(d) Return the certificate together with the duplicate original of the articles affixed thereto to the acquiring corporation, if any, or the surviving, resulting or continuing insurer, as the case may be, or to the party filing such articles, or its representative. [1967 c.359 §204]

**732.560 Compliance with foreign or alien laws.** (1) The action taken by any foreign or alien insurer or other party to the proposed acquisition must be authorized by the laws of the state, country or province under which it is incorporated or organized, and each foreign or alien insurer or other party must satisfy and comply with any applicable laws thereof and with the provisions of its articles of incorporation and bylaws.

(2) If a foreign or alien insurer or other party to the proposed acquisition is to be the acquiring, surviving, resulting or continuing insurer, it must qualify for and receive a certificate of authority to transact insurance in this state. [1967 c.359 §205; 1983 c.498 §13]

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

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

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

(3) All of the conditions for such effectiveness set forth in the plan or referred to therein have been met and the plan by its terms has become effective. [1967 c.359 §206]

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

(2) In the event of reinsurance pursuant to the plan, the applicable provisions of the Insur-

ance Code shall govern the effects thereof. [1967 c.359 §207]

**732.575 Rulemaking authority for ORS 732.505 to 732.595.** The commissioner may adopt rules and orders to carry out ORS 732.505 to 732.595. [1983 c.498 §15]

**732.580 Jurisdiction over person obtaining or attempting to obtain control.** Any person who obtains or attempts to obtain control of a domestic insurer shall be subject to the jurisdiction of the courts of this state. [1983 c.498 §16]

**732.585 Violations of 732.505 to 732.595 described.** The following are violations of ORS 732.505 to 732.595:

(1) The failure to file the plan required under ORS 732.525 or the statement required under ORS 732.523.

(2) Effecting or any attempt to effect an acquisition of an insurer:

(a) Unless the commissioner or the reviewing court has approved the acquisition pursuant to ORS 732.540, and the members, subscribers or shareholders of any insurer or other corporation whose approval is required have given their approval pursuant to ORS 732.545; or

(b) After disapproval of the acquisition by the commissioner or the reviewing court or by the members, subscribers or shareholders of any insurer or other corporation whose approval is required.

(3) Any other failure to comply with the provisions of ORS 732.505 to 732.595 or with any rule or order issued by the commissioner under ORS 732.505 to 732.595. [1983 c.498 §17]

**732.590 Remedies for violation of ORS 732.505 to 732.595.** (1) Whenever it appears to the commissioner that any person has committed or is about to commit a violation of any provision of ORS 732.505 to 732.595 or of any rule or order issued by the commissioner under ORS 732.505 to 732.595, the commissioner may apply to the Circuit Court for Marion County for an order enjoining the person, and any director, officer, employe or agent of the person, from violating or continuing to violate any provision of ORS 732.505 to 732.595, or of any rule or order issued by the commissioner under ORS 732.505 to 732.595, and for such other equitable relief as the nature of the case and the interests of the policyholders, creditors and shareholders of any insurer or the public may require.

(2) No security that is the subject of any agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of ORS 732.505 to 732.595 or of any rule or order issued by the commissioner under ORS 732.505 to 732.595, may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding. However, no action taken at any such meeting shall be invalidated by the voting of such securities unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of ORS 732.505 to 732.595 or any rule or order issued by the commissioner under ORS 732.505 to 732.595, the insurer or the commissioner may apply to the Circuit Court for Marion County, or to the circuit court for the county in which the insurer has its principal place of business in this state, if any, to enjoin any offer, request, invitation, agreement or acquisition made in contravention of ORS 732.505 to 732.595 or any rule or order issued by the commissioner under ORS 732.505 to 732.595, to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

(3) In any case in which a person has acquired or is proposing to acquire any voting securities of an insurer in violation of ORS 732.505 to 732.595 or any rule or order issued by the commissioner under ORS 732.505 to 732.595, the Circuit Court for Marion County, or the circuit court for the county in which the insurer has its principal place of business in this state, if any, upon the application of the insurer or the commissioner and on such notice as the court deems appropriate, may seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue any order with respect to the voting securities as may be appropriate to effect the provisions of ORS 732.505 to 732.595. Notwithstanding any other provision of law, for the purposes of this section, the situs of the ownership of the securities of domestic insurers is located in this state. [1983 c.498 §18]

**732.595 Severability.** If any provision of ORS 732.505 to 732.595 or the application thereof to any person or circumstance is held

invalid, such invalidity shall not affect other provisions or applications of ORS 732.505 to 732.595 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 732.505 to 732.595 are declared to be severable. [1983 c.498 §19]

### INSURANCE HOLDING COMPANY REGISTRATION

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

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

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by ORS 732.695 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer. [1971 c.373 §2]

**732.615 Holding company system members required to register; exception.** Every domestic insurer, except a home protection insurer, that is a member of an insurance holding company system shall register with the commissioner not later than 15 days after the date the insurer becomes subject to registration, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. [1971 c.373 §3; 1981 c.247 §8]

**732.625 Registration statement; contents.** Every insurer subject to the registration requirements of ORS 732.615 shall file a registration statement on a form prescribed by the

commissioner, which shall contain current information about:

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

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

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

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

(b) Purchases, sales or exchanges of assets;

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

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

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

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

(4) Other matters concerning transactions between registered insurers and their affiliates as may be included from time to time in any registration forms prescribed by the commissioner. [1971 c.373 §4]

**732.635 Certain information not required to be disclosed.** Information that is not material for the purposes of ORS 732.605 to 732.705 need not be disclosed on the registration statement filed pursuant to ORS 732.625. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit or investments involving one-half of one percent or less of an insurer's admitted assets as of the December 31 next preceding the date of the registration statement or amendment shall not be deemed material for purposes of ORS 732.605 to 732.705. [1971 c.373 §5]

**732.645 Registration information required to be kept current; reports of distributions to shareholders required.** Each registered insurer shall keep current the information required to be disclosed on its registration statement by reporting all material

changes or additions on amendment forms prescribed by the commissioner within 15 days after the end of the month in which the insurer learns of each such change or addition. However, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof. [1971 c.373 §6]

**732.655 Termination of registration by commissioner.** The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system. [1971 c.373 §7]

**732.665 Consolidated registration.** The commissioner may require or allow two or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements. [1971 c.373 §8]

**732.675 Registration for affiliated insurers.** The commissioner may allow another authorized insurer which is part of an insurance holding company system to register on behalf of an affiliated insurer which is required to register under ORS 732.615 and to file all information and material required to be filed under ORS 732.605 to 732.705. [1971 c.373 §9]

**732.685 Exemption from ORS 732.605 to 732.705 by commissioner.** ORS 732.605 to 732.705 do not apply to any insurer, information or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of such sections. [1971 c.373 §10]

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

of fact to support such disallowance. [1971 c.373 §11]

**732.705 Rulemaking authority for ORS 732.605 to 732.705.** The commissioner may adopt such rules and orders as are necessary to carry out ORS 732.605 to 732.705 and to provide such further disclosure requirements and standards as shall be required to exempt domes-

tic insurers from registration of insurance company holding systems pursuant to the laws of any other jurisdiction. [1971 c.373 §12]

**732.990** [Repealed by 1967 c.359 §704]

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