Chapter 732 — Organization and Corporate Procedures of Domestic Insurers; Regulation of Insurers Generally

2001 EDITION

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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 60, shall, to the extent applicable, govern the powers, duties and relationships of domestic insurers.

(2) The following sections in ORS chapter 60 may not apply to insurers: ORS 60.004, 60.007 to 60.014, 60.016, 60.017 to 60.024, 60.031, 60.044, 60.051 to 60.057, 60.094 to 60.101, 60.311, 60.470 to 60.534, 60.701 to 60.717, 60.734 to 60.744, 60.787, 60.954, 60.957 to 60.967 and 60.992.

(3) ORS 60.224, 60.774 (2)(c) and 60.777 (4) may not apply to insurers without capital stock.

(4) The enumeration in subsections (2) and (3) of this section of inapplicable sections in ORS chapter 60 may not be deemed exclusive or a limitation upon subsection (1) of this section.

(5) To the extent applicable and not inconsistent with subsections (1) to (4) of this section, ORS chapter 60 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 60 to "shareholders" shall be deemed references to "policyholders" or "subscribers" as the case may be.

(6) In applying ORS chapter 60 as provided in this section, unless the context requires otherwise:

(a) "Office of Secretary of State" or "office" means the Department of Consumer and Business Services.

(b) "Secretary of State" means the Director of the Department of Consumer and Business Services.

(c) "Corporation" and "domestic corporation" mean a domestic insurer. [1967 c.359 §146; 1985 c.728 §108; 1987 c.846 §1; 2001 c.352 §7]

732.010 [Repealed by 1967 c.359 §704]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 Director of the Department of Consumer and Business Services pursuant to ORS 732.055. The director shall not require a fee for filing an application for such a permit in the case of the organization of a reciprocal insurer that exchanges policies of insurance covering only wet marine hull insurance for persons whose earned income, in whole or in part, is derived from taking and selling food resources living in an ocean, bay or river. [1967 c.359 §147; 1977 c.651 §4; 1989 c.413 §6; 1991 c.401 §3; 1993 c.709 §6]

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 Director of the Department of Consumer and Business Services for a permit to organize such an insurer. The applicants shall pay the applicable fee to the director at the time the application is filed. The application shall be on forms provided by the director, 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 director may by rule or otherwise require. [1967 c.359 §148; 1989 c.413 §7; 1991 c.401 §4]

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 Director of the Department of Consumer and Business Services 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 Director of the Department of Consumer and Business Services shall make such investigation of the facts and conditions as the director deems necessary, including the holding of a public hearing on the application if the director 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 Approval or disapproval of application for permit. (1) Within 90 days after the filing of the application

for a permit to organize an insurer, the Director of the Department of Consumer and Business Services shall approve or disapprove the application.

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

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

(a) The application is complete;

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

(c) The proposed financial structure is adequate;

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

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

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

(g) No fact is then known to the director 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 director. Any changes in the information furnished in the application for a permit to organize an insurer shall be reported immediately to the Director of the Department of Consumer and Business Services 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 Director of the Department of Consumer and Business Services 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 60.047 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; 1987 c.846 §4]

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

732.105 Filing articles of incorporation and surety bond, letter of credit or deposit. The incorporators shall file with the Director of the Department of Consumer and Business Services 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 director and the director's successors, as trustee, in the sum of $25,000, or, in lieu thereof, a like amount in an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or 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 director, 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 director. Such bond, letter of credit or deposit shall be in the form prescribed by the director. [1967 c.359 §156; 1991 c.331 §127; 1997 c.631 §546]

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

732.115 Approval of articles, documents and bond, letter of credit or deposit; certificate of incorporation. (1) If the Director of the Department of Consumer and Business Services finds that the articles of incorporation and the bond, letter of credit or securities filed with the director conform to law and the sureties on any bond are acceptable, the director shall, when all fees established by the director have been paid:

(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 the director's office.

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

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

(2) Upon the issuance of the certificate of incorporation, the insurer's corporate existence shall begin and the insurer shall have all authority and power, subject to the limitations prescribed in the Insurance Code, as may be necessary and proper to complete its organization, obtain its initial capital and otherwise complete the requirements to qualify for a certificate of authority to transact the class or classes of insurance proposed in its articles of incorporation. In the case of an insurer without capital stock, the authority and power shall include the solicitation of applications for insurance and receipt in advance of premium payments for any insurance for which the proposed form of application, policies, literature and advertisements pertaining thereto have been filed with and approved by the director. 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; 1989 c.413 §8; 1991 c.331 §128]

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 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995. However, the Director of the Department of Consumer and Business Services 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; 1987 c.414 §162]

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 the insurer's name and address with the Director of the Department of Consumer and Business Services. [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 Director of the Department of Consumer and Business Services in a bank, trust company or savings and loan association in the state until the insurer has procured a certificate of authority from the director.

(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 the subscriber or applicant 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 Director of the Department of Consumer and Business Services 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, the director may order the application abandoned and close the files in which event its corporate powers shall expire and the director 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 director 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 Director of the Department of Consumer and Business Services or who assumes to transact insurance business without a certificate of authority to transact such business issued by the director shall be jointly and severally liable for all liabilities created while so acting. [1967 c.359 §163; 1981 c.633 §80; 1987 c.846 §5]

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 and emergency powers granted to corporations by ORS 60.077 and 60.081;

(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; 1987 c.846 §6]

732.210 Assertion of ultra vires. The provision of ORS 60.084 shall not affect the right of any policyholder of a domestic insurer or the Director of the Department of Consumer and Business Services 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; 1987 c.846 §7]

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

732.220 Exclusive agency contracts. (1) No domestic insurer shall make any contract whereby any person is granted or is to enjoy in fact the controlling or preemptive right to produce substantially all insurance business for the insurer, unless the contract is filed with and approved by the Director of the Department of Consumer and Business Services. The contract filed with the director shall be accompanied by such application for approval as the director by rule may consider reasonably appropriate to the purposes of this section. The contract shall be deemed approved unless disapproved by the director within 20 days after date of filing, subject to such reasonable extension of time as the director 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 employee 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 director 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, the director 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 the insurer's 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 director 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 director may, after a hearing held thereon, withdraw approval of any such contract theretofore approved by the director, if the director finds that the bases of the 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 Director of the Department of Consumer and Business Services, by rule or by order after hearing upon the motion of the director 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 Order to cure impairment; confidentiality of order. (1) Whenever the Director of the Department of Consumer and Business Services determines from any showing or statement made to the director or from any examination made by the director that the assets of a domestic insurer are less than its liabilities plus required capitalization, the director may proceed immediately under the provisions of ORS chapter 734 or the director 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 director under subsection (1) of this section, the director shall proceed under the provisions of ORS chapter 734.

(3) An order directing an insurer to cure an impairment is confidential as provided in ORS 705.137, for such time as the director considers proper but not exceeding the time prescribed by the director for making the amount of the

impairment good. If the director determines that the public interest in disclosure outweighs the public interest in protecting or salvaging the solvency of the insurer, the director may make the order available for public inspection. [1967 c.359 §169; 1991 c.401 §5; 2001 c.377 §9]

732.235 Voluntary dissolution of insurer. (1) No insurer may be dissolved voluntarily until the Director of the Department of Consumer and Business Services 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 732.517 to 732.546.

(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 director 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; 1993 c.447 §107]

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 Director of the Department of Consumer and Business Services. [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 or attempted removal of all or a material part of the records or assets of a domestic insurer from this state except pursuant to a merger approved by the Director of the Department of Consumer and Business Services under ORS 732.517 to 732.546, or for such reasonable purposes and periods of time as may be approved by the director in writing in advance of such removal, or concealment or attempted concealment of such records or assets or such material part thereof from the director, is prohibited. Upon violation of this section, the director 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 director at the director's 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 director for safeguarding the assets and facilitating the director's examination of insurers using such custodial arrangements. [1967 c.359 §172; 1979 c.846 §3; 1993 c.447 §108]

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 Director of the Department of Consumer and Business Services 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 fewer than five. Directors need not be shareholders or members of the insurer unless the articles of incorporation so require but shall be 21 years of age or older. Not fewer than five directors or one-third of the directors, whichever is fewer, shall be residents of this state. A majority of directors shall be persons who are not salaried officers of the insurer. [1967 c.359 §174; 1997 c.771 §18]

732.310 [1967 c.359 §175; repealed by 1987 c.846 §19]

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; other prohibited conduct. (1) Except as set forth in a statement of acquisition described in ORS 732.523 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, a director, trustee, officer, agent or employee, or spouse or relative thereof, shall not 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 activity described in ORS 732.521 (1); 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 provided in subsections (4) and (5) of this section, a director, trustee or officer of an insurer shall not:

(a) Accept any money or thing of value for negotiating, procuring, recommending or aiding in:

(A) The purchase or sale of property by the insurer; or

(B) The making of a loan to or from the insurer.

(b) Have a pecuniary interest, whether as principal, agent or beneficiary, in a purchase, sale or loan under paragraph (a) of this subsection.

(3) Except as provided in subsections (4) and (5) of this section, an insurer shall not do any of the following:

(a) Pay any money or thing of value to a director, trustee or officer of the insurer for negotiating, procuring, recommending or aiding in:

(A) The purchase or sale of property by the insurer; or

(B) The making of a loan to or from the insurer.

(b) Make a loan to a director, trustee or officer of the insurer.

(c) Make any advances to a director, trustee or officer of the insurer for future services to be performed.

(d) Guarantee any financial obligations of a director, trustee or officer of the insurer. The prohibition under this paragraph does not apply to any guarantee of payments to be made upon death of a person insured under a credit life insurance policy.

(4) 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, a 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 the interested person.

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

(a) The payment to any director, officer or trustee 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 employees of an insurer as required or as is expedient in the conduct of its business;

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

(e) The issuance of a debt obligation by an insurer to a director, officer or trustee of the insurer; and

(f) The advance of expenses to a director, officer or trustee for travel or other related business activities of the insurer. [1967 c.359 §178; 1971 c.231 §17; 1983 c.498 §20; 1989 c.425 §1; 1993 c.447 §109]

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 as defined by rule, that is not otherwise restricted or, with the prior written approval of the Director of the Department of Consumer and Business Services, from other of its surplus. [1967 c.359 §180; 1987 c.846 §8]

732.415 Stock insurer's proxies; regulation by director; rules of director. (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 Director of the Department of Consumer and Business Services in advance of any circulation or other use by at least 10 days, or such shorter period as the director 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 director 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 director 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; rules of director. 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 Director of the Department of Consumer and Business Services shall consider to be of similar nature and consider necessary or appropriate, by such rules as the director 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 director. 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 Director of the Department of Consumer and Business Services on or before January 31, 1966, or within 10 days after the person becomes such beneficial owner, director or officer, a statement, in such form as the director may prescribe, of the amount of all equity securities of such insurer of which the person 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 director a statement, in such form as the director may prescribe, indicating the person’s ownership at the close of the calendar month and such changes in the person’s 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 the beneficial owner, director or officer’s relationship to such insurer, any profit realized by the beneficial owner, director or officer 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 Director of the Department of Consumer and Business Services 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 the person's 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 the person proves that notwithstanding the exercise of good faith the person 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 director. (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 the insurer in an investment account, by a security dealer in the ordinary course of the insurer's business and incident to the establishment or maintenance by the insurer 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 Director of the Department of Consumer and Business Services may, by such rules as the director 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 Director of the Department of Consumer and Business Services may adopt in order to carry out the purposes of ORS 732.420 to 732.455. [Formerly 738.770]

732.455 Rules of director. The Director of the Department of Consumer and Business Services shall have the power to make such rules as may be necessary for the execution of the functions vested in the director by ORS 732.420 to 732.455, and may for such purpose classify domestic stock insurers, securities, and other persons or matters within the director's 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 director, 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 Director of the Department of

Consumer and Business Services 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. However, two or more persons who qualify as owners under a single policy of insurance collectively shall be considered to be one member.

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

(4) A person who, because of the death of the life insured in a policy of insurance or the death of the life referred to in an annuity policy, has obtained rights as a beneficiary to death benefits or settlement payments is not a policyholder or member. [Formerly 739.165; 2001 c.352 §5]

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 may 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 may 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, including the duration of proxies, contained in the articles of incorporation or bylaws of the insurer. [Formerly 739.170; 2001 c.352 §6]

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 Director of the Department of Consumer and Business Services at least 20 days prior to the meeting date. The director 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 director 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, the director 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, the director may further direct that notice of such meeting be given in the manner prescribed in ORS 60.214. 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 director.

(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; 1987 c.846 §9]

732.480 Copy of bylaws of domestic mutual insurer to be provided to director; provisions of bylaws. A copy of the bylaws of a domestic mutual insurer, including any amendments, shall be provided to the Director of the Department of Consumer and Business Services. The bylaws of a mutual insurer may contain any provision for managing the business and regulating the affairs of the insurer that is not inconsistent with law or the articles of incorporation. The bylaws shall contain a provision that governs the involvement of the mutual insurer in a member's communication with other members regarding the business and affairs of the insurer. The bylaws may contain a provision eliminating or limiting the personal liability of a member of the board of directors to the mutual insurer or its members for monetary damages for conduct as a director, provided that no such provision may eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective and no such provision may eliminate or limit the liability of a director for:

(1) Any breach of the director's duty of loyalty to the mutual insurer or its members;

(2) Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(3) Any unlawful distribution; or

(4) Any transaction from which the director derived an improper personal benefit. [2001 c.352 §4]

732.505 [Formerly 738.610; 1969 c.336 §7; 1983 c.498 §1; repealed by 1993 c.447 §122]

732.510 [1967 c.359 §195; 1969 c.336 §8; 1983 c.498 §2; repealed by 1993 c.447 §122]

732.515 [1967 c.359 §196; 1983 c.498 §3; repealed by 1993 c.447 §122]

ACQUISITIONS AND MERGERS

732.517 Purpose of ORS 732.517 to 732.546. The purpose of ORS 732.517 to 732.546 is that of regulating the control or ownership of an insurer or of an insurance holding company system. A further purpose of ORS 732.517 to 732.546 is that of promoting 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; 1993 c.447 §25]

732.518 Definitions for ORS 732.517 to 732.546. As used in ORS 732.517 to 732.546:

(1) "Acquiring party" means each person by whom or on whose behalf an acquisition of control referred to in ORS 732.521 (1)(a), a merger or other acquisition of control referred to in ORS 732.521 (1)(b) or an activity referred to in ORS 732.521 (1)(c) is to be effected. The term includes any intermediary or subsidiary corporation or insurer who acquires or holds, directly or indirectly, the assets or voting securities or assumes the liabilities of an insurer or other corporation.

(2) A "domestic insurer" includes any person controlling a domestic insurer.

(3) "Person" does not include any securities broker holding, in the usual and customary broker's function, less than

20 percent of the voting securities of an insurer or of any person that controls an insurer.

(4) “A significant portion” means, when acquired in one transaction or in a related or integrated series of transactions, within any 12 consecutive month period, 10 percent or more of the following:

(a) The assets of the insurer; or

(b) The insurance or a major class of insurance in force of the insurer. [1993 c.447 §26]

732.520 [1967 c.359 §197; repealed by 1993 c.447 §122]

732.521 Activities that are prohibited unless specified procedures followed; exceptions. (1) Unless the provisions of ORS 732.517 to 732.546 are first satisfied, a person shall not engage in any of the activities described in this subsection as follows:

(a) A person other than the issuer of voting securities of a domestic insurer shall not acquire or attempt to acquire control of the domestic insurer. For purposes of this paragraph, a person acquires or attempts to acquire control of a domestic insurer when the person engages in any of the actions described in this paragraph, in the open market or otherwise, and if after consummation thereof the person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of the domestic insurer. The actions are as follows:

(A) Making a tender offer for or a request or invitation for tenders of any voting security of the domestic insurer;

(B) Entering into any agreement to exchange securities for any voting security of the domestic insurer; or

(C) Acquiring or seeking to acquire any voting security of the domestic insurer.

(b) A person shall not enter into an agreement to merge with or otherwise acquire control of a domestic insurer.

(c) A person shall not engage or attempt to engage in any of the following activities:

(A) Acquiring, directly or indirectly, ownership of all or a significant portion of the assets of a domestic insurer. For purposes of this subparagraph, such an acquisition includes an offer, a request or invitation for offers, 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.

(B) Bulk reinsurance by one insurer of all or a significant portion 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 subparagraph do not apply to ordinary or customary reinsurance, or reinsurance pursuant to a treaty or treaties approved by the director.

(C) Any other arrangement that brings together under common ownership, control or responsibility all or a significant portion of the assets, liabilities or insurance in force of two or more persons, at least one of which is a domestic insurer.

(2) The provisions of subsection (1) of this section do not apply to any offer, request, invitation, agreement or acquisition exempted by the Director of the Department of Consumer and Business Services by order as:

(a) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control or ownership of a domestic insurer; or

(b) Otherwise not comprehended within the purposes of subsection (1) of this section.

(3) Subject to the requirements of ORS 732.517 to 732.546, a domestic stock insurer, domestic mutual insurer, domestic reciprocal insurer or domestic health care service contractor that is a corporation for profit may merge or consolidate with a stock insurer, mutual insurer, reciprocal insurer or health care service contractor that is a corporation for profit. [1993 c.447 §§27,28; 1997 c.771 §19; 1999 c.362 §65]

732.522 [1983 c.498 §6; repealed by 1993 c.447 §122]

732.523 Procedure for acquiring controlling interest of capital stock; filing of statement; request for hearing. (1) An acquiring party:

(a) Must file with the Director of the Department of Consumer and Business Services for approval a statement containing the information required in this section. If more than one acquiring party is required to file a statement under this paragraph, any or all such parties acting in concert may file a joint statement.

(b) Must deliver or mail to the domestic insurer to which the activity described in ORS 732.521 (1) applies, concurrently with filing the statement under paragraph (a) of this subsection, 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.

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

(a) The name and address of the domestic insurer involved and each acquiring party required to file the statement, and additional biographical and business information about each acquiring party required to file the statement, business plans and information regarding persons who will serve as or perform functions of directors or officers, as required by the director.

(b) The source, nature and amount of the consideration used or to be used in effecting the activity, a description of any transaction in which funds were or are to be obtained for the activity 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 as provided in ORS 705.137, if the acquiring party filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of the acquiring party, or for such lesser period as the acquiring party and any predecessors of the acquiring party have 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 each acquiring party 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) As required by the director, information regarding shares to be acquired by an acquiring party in connection with the activity, information regarding related offers or agreements, information regarding classes of security to be acquired and related contracts, arrangements or understandings, and information regarding related purchases of securities and recommendations to purchase.

(f) Any additional information required by the director.

(3) All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of securities for control of a domestic insurer made by or on behalf of any acquiring party required to file the statement under this section shall contain such information specified in subsection (2) of this section as the director may prescribe. Copies of the materials shall be filed with the director 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 director may prescribe. Copies of the additional materials shall be filed with the director 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 required to file the statement under this section is a partnership, limited partnership, syndicate or other group, the director may require that the information called for by subsection (2) of this section 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 any such partner, member or person is a corporation or if the acquiring party is a corporation, the director may require that the information called for by subsection (2) of this section 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) If any material change occurs in the facts set forth in the statement filed under this section, the party who filed the statement must file with the director and send to the insurer, within two business days after the party learns of the change, an amendment setting forth the change together with copies of all documents and other material relevant to the change.

(6) If an offer, request, invitation, agreement or acquisition referred to in ORS 732.521 (1) is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the party or parties required to file the statement under this section may use such documents in furnishing the information called for by that statement.

(7) Any acquiring party may file with the completed statement or within 10 days thereafter a written request for a hearing on the acquisition. The insurer to be acquired may file with the director a written request for a hearing on the acquisition within 10 days after the filing of the completed statement. [1983 c.498 §9; 1993 c.447 §29; 1995 c.79 §359; 2001 c.377 §10]

732.525 [1967 c.359 §198; 1983 c.498 §7; repealed by 1993 c.447 §122]

732.526 Hearing on proposed activity; notice. (1) If a written request for a hearing has been duly filed or if, within 10 days after the filing of a completed statement, the Director of the Department of Consumer and Business Services considers it necessary or advisable to hold a hearing, the director shall direct that a hearing be held.

(2) The hearing shall be held within 30 days after the filing of the written request for hearing or within 30 days after the director's order directing that a hearing be held, at a time and place designated by the director. One or more of the insurers or other parties to the proposed activity shall give notice as required by the director to parties designated by the director. The acquiring party shall bear the expense of providing the notice and, as security for the payment of the expense, shall file with the director a bond or other deposit in a form and amount acceptable to the director. [Formerly 732.535]

732.528 Approval of proposed activity; grounds for refusing approval. (1) Except as provided in this subsection, the Director of the Department of Consumer and Business Services shall approve the proposed activity described in ORS 732.521 (1) within 30 days after filing of the completed statement or, if a hearing is called and held, within 30 days after the record for the hearing is closed, unless the director finds that any of the grounds specified in this subsection apply to the proposed activity. If a proposed activity described in ORS 732.521 (1) involves a financial holding company or is otherwise subject to the federal Gramm-Leach-Bliley Act (P.L. 106-102), the director shall approve the activity not later than the 60th day before the effective date of the activity unless the director finds that any of the grounds specified in this subsection apply to the proposed activity. The grounds upon which the director may refuse to approve a proposed activity are as follows:

(a) The activity is contrary to law or would result in a prohibited combination of risks or classes of insurance.

(b) The activity is inequitable or unfair to the policyholders or shareholders of any insurer involved or to any other person affected by the proposed activity. However, in connection with an acquisition of the voting securities of an insurer from the shareholders of the insurer, the director 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) The activity would substantially reduce the security of and service to be rendered to policyholders of any domestic insurer involved, or would otherwise prejudice the interests of such policyholders in this state or elsewhere.

(d) The activity provides for a foreign or alien insurer to be an acquiring party, and the director 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 activity.

(e) The activity or its consummation would substantially lessen competition in insurance in this state or tend to create a monopoly.

(f) After the change of control or ownership, the domestic insurer to which the activity described in ORS 732.521 (1) applies would not be able to satisfy the requirements for the issuance of a certificate of authority to transact the line or lines of insurance for which it is currently authorized.

(g) The financial condition of any acquiring party might jeopardize the financial stability of the insurer.

(h) The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest.

(i) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the activity or its consummation.

(j) The activity or its consummation is likely to be hazardous or prejudicial to the insurance-buying public.

(k) The activity is subject to other material and reasonable objections.

(2) If the director does not approve the proposed activity, the director shall promptly notify each insurer and each acquiring party to the proposed activity in writing, specifying the bases, factors and reasons for the disapproval and giving each insurer and each acquiring party who filed the statement relating to the proposed activity an opportunity to amend the statement, if possible, to obviate the director's objections.

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

(4) The director may retain at the acquiring person's expense any actuaries, accountants and other experts not otherwise a part of the director's staff as may be reasonably necessary to assist the director in reviewing the proposed

activity.

(5) The director may establish the effective date of an activity to which ORS 732.521 (1) applies in the order approving the activity.

(6) Any insurer or other party to a proposed activity, including the insurer proposed to be acquired, within 60 days after receipt of a notice of approval or disapproval, may appeal the final order of the director as provided in ORS 183.310 to 183.550. For purposes of the judicial review the specifications required to be set forth in the written notice from the director shall be deemed the findings of fact and conclusions of law of the department.

(7) On petition to the court, the court's power shall extend to affirming the order of the director, modifying all or any part of the director's objections, adding additional objections, approving the proposed activity 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 732.526. [Formerly 732.540; 2001 c.377 §37]

732.529 Procedures following approval by director of proposed activity. (1) Following approval of a proposed activity by the Director of the Department of Consumer and Business Services or pursuant to a court order or decree, the proposed activity shall be submitted for approval to the members of a domestic mutual insurer, the subscribers of a domestic reciprocal insurer or the shareholders of a domestic stock insurer.

(2) A notice of the meeting at which the proposed activity will be submitted for approval shall set forth the time, place and purpose of the meeting. The notice, the procedure to be followed at the meeting, quorum requirements and voting at the meeting shall be governed by the provisions in the Insurance Code and the articles of incorporation and bylaws of the insurer applicable to annual or special meetings of members, subscribers or shareholders. The notice of the meeting must contain or be accompanied by a copy or summary of the statement filed under ORS 732.523.

(3)(a) Unless the articles of incorporation require a greater number of affirmative votes, the proposed activity is approved:

(A) By the subscribers of a domestic reciprocal insurer or the shareholders of a domestic stock insurer entitled to vote at a meeting duly called and held if the votes cast in favor of the proposed activity exceed the votes cast opposing the proposed activity; or

(B) By the members of a domestic mutual insurer entitled to vote at a meeting duly called and held if the proposed activity is approved by two-thirds or more of the members voting on the proposed activity.

(b) If provided in the statement filed under ORS 732.523 and approved by the director, voting on the proposed activity by the members of a domestic mutual insurer may be limited to eligible members determined in accordance with ORS 732.531 (2), and voting on the proposed activity by the subscribers of a domestic reciprocal insurer may be limited to eligible subscribers determined in accordance with ORS 732.531 (2).

(c) The board of directors of a domestic mutual insurer may condition its submission of the proposed activity to the members on any legal basis.

(4) If the proposed activity is approved by the members, subscribers or shareholders in accordance with this section and the activity is consummated, the activity shall bind all members of a domestic mutual insurer, all subscribers of a domestic reciprocal insurer and all shareholders of a domestic stock insurer.

(5) Dissenters' rights provided in ORS 60.551 to 60.594 are not available to any member of a domestic mutual insurer or any subscriber of a domestic reciprocal insurer with respect to an activity that is subject to the approval of the director.

(6) An insurer, other than a domestic insurer, or another corporation that is a party to a proposed activity described in a statement filed under ORS 732.523 is subject to the laws of its domiciliary jurisdiction governing approval of its members, subscribers or shareholders. [1997 c.771 §22; 2001 c.352 §1]

732.530 [1967 c.359 §199; repealed by 1993 c.447 §122]

732.531 Acquisition of assets or insurance of mutual or reciprocal insurers. (1) If a statement filed under ORS 732.523 will result in the acquisition by a stock insurer of all or a significant portion of the assets of a domestic mutual insurer or domestic reciprocal insurer, or reinsurance in a stock insurer of all or a significant portion of the insurance in force of a domestic mutual insurer or domestic reciprocal insurer, the plan must provide for consideration to each eligible member of the domestic mutual insurer or each eligible subscriber of the domestic reciprocal insurer as provided in this section.

(2) A member of a domestic mutual insurer or a subscriber of a domestic reciprocal insurer shall be an eligible member or eligible subscriber if the policy of the member or subscriber is in force as of the record date, which is the

date that the board of directors of the domestic mutual insurer or the domestic reciprocal insurer approves the proposed activity or some other date specified as the record date in the statement and approved by the Director of the Department of Consumer and Business Services.

(3) Any consideration to be received by the eligible members or eligible subscribers shall be described in the statement. The consideration shall be allocated among the eligible members or eligible subscribers in the manner described in ORS 732.612 (6) if the domestic mutual insurer or domestic reciprocal insurer transacts primarily life or health insurance, or both. The consideration shall be allocated among the eligible members or eligible subscribers in the manner described in ORS 732.612 (7) if the domestic mutual insurer or domestic reciprocal insurer transacts primarily property or casualty insurance, or both. The allocation of the consideration among the eligible members or eligible subscribers shall be approved by the director.

(4) If the proposed activity described in the statement is primarily a plan to convert the domestic mutual insurer or domestic reciprocal insurer to a stock insurer, the director may require that the proposed activity be governed by ORS 732.600 to 732.630. [Formerly 732.550; 1997 c.771 §20]

732.533 Statement of acquisition. Not later than the 30th day after consummation of an activity described in ORS 732.521 (1), the acquiring party shall submit to the Director of the Department of Consumer and Business Services a statement that the activity has been consummated. The statement must be made under the oath of the presiding officer of the board of directors of the acquiring party. [1993 c.447 §33]

732.535 [1967 c.359 §200; 1983 c.498 §10; 1993 c.447 §30; renumbered 732.526 in 1993]

732.536 Compliance with foreign or alien laws. (1) The action taken by any foreign or alien insurer or other party to the proposed activity described in ORS 732.521 (1) 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 activity 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. [Formerly 732.560]

732.538 Effect of merger or acquisition. (1) When a merger or consolidation becomes effective, the effect on the insurers and other parties to the merger or consolidation is as follows:

(a) The several insurers and other parties to the plan of merger or consolidation shall be a single insurer or other corporation, which, in the case of a merger, shall be that insurer or other corporation designated in the plan of merger as the surviving insurer or corporation, and, in the case of a consolidation, shall be the new insurer or other corporation provided for in the plan of consolidation.

(b) The separate existence of all insurers and other corporations party to the plan of merger or consolidation, except the surviving or new insurer or other corporation, shall cease.

(c) The surviving or new insurer or other corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of an insurer organized under this chapter. If the surviving corporation is a health care service contractor, the corporation shall be subject to all the duties and liabilities of a health care service contractor under the Insurance Code.

(d) The surviving or new insurer or other corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating insurers and other corporations. All property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the insurers and other corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in the single insurer or corporation without further act or deed. The title to any real estate, or any interest therein, vested in any of such insurers and other corporations shall not revert or be in any way impaired by reason of the merger or consolidation.

(e) The surviving or new insurer or other corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the insurers and other corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such insurers or other corporations may be prosecuted as if the merger or consolidation had not taken place, or such surviving or new insurer or other corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such insurer or other corporation

shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving insurer or other corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation that are required or permitted to be set forth in the articles of incorporation of corporations organized under ORS chapter 60 shall be deemed to be the original articles of incorporation of the new corporation.

(2) Subject to any shareholder rights under ORS 60.554 and 60.557, when a merger or consolidation becomes effective, in the case of an insurer or other corporation that has ceased to exist because of a merger or consolidation, the shares of that insurer or other corporation that are to be converted under the plan of merger or consolidation are void.

(3) As of the date on which a merger or consolidation becomes effective, the holders of converted shares are entitled only to the shares, obligations, other securities, cash or other property into which the shares have been converted in accordance with the plan of merger or consolidation.

(4) In the event of reinsurance pursuant to the plan, the applicable provisions of the Insurance Code shall govern the effects thereof. [Formerly 732.570; 1999 c.362 §66]

732.540 [1967 c.359 §201; 1979 c.562 §32; 1983 c.498 §11; 1993 c.447 §31; renumbered 732.528 in 1993]

732.541 Jurisdiction over person obtaining or attempting to obtain control. The courts of this state are vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who is required to file a statement with the Director of the Department of Consumer and Business Services under ORS 732.523 and over all actions involving such a person arising out of violations of ORS 732.517 to 732.546. Each such person shall be considered to have appointed the director for the purpose of service of process. [Formerly 732.580]

732.543 Remedies for violation of ORS 732.517 to 732.546. (1) Whenever it appears to the Director of the Department of Consumer and Business Services that any person has committed or is about to commit a violation of any provision of ORS 732.517 to 732.546 or of any rule or order issued by the director under ORS 732.517 to 732.546, the director may apply to the Circuit Court for Marion County for an order enjoining the person, and any director, officer, employee or agent of the person, from the violation, 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 732.517 to 732.546 or of any rule or order issued by the director under ORS 732.517 to 732.546, 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 director has reason to believe that any security of the insurer has been or is about to be acquired in contravention of ORS 732.517 to 732.546 or any rule or order issued by the director under ORS 732.517 to 732.546, the insurer or the director 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 the violation, 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 732.517 to 732.546 or any rule or order issued by the director under ORS 732.517 to 732.546, 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 director 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 732.517 to 732.546. 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.

(4) The director may exercise remedies available under this section in addition to or in lieu of any other remedy or administrative action available to the director under the Insurance Code. [Formerly 732.590]

732.545 [1967 c.359 §202; 1973 c.515 §2; 1981 c.633 §81; 1983 c.498 §12; 1987 c.846 §10; repealed by 1993 c.447 §122]

732.546 Severability. If any provision of ORS 732.517 to 732.546 or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of ORS 732.517 to 732.546 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 732.517 to 732.546 are declared to be severable. [Formerly 732.595]

INSURANCE HOLDING COMPANY REGISTRATION

732.548 Definitions for ORS 732.517 to 732.592. As used in ORS 732.517 to 732.592:

(1) "Affiliate" of, or person "affiliated" with, a specified 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," including its use in the terms "controlling," "controlled," "controlled by" and "under common control with," 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 732.568 that control does not exist in fact. The Director of the Department of Consumer and Business Services 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, and includes a financial holding company as referred to in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

(4) A "subsidiary" of a specified person is an affiliate controlled by the specified person directly or indirectly through one or more intermediaries.

(5) A "voting security" includes any security convertible into a voting security or evidencing a right to acquire a voting security. [Formerly 732.605; 2001 c.377 §38]

732.549 Subsidiaries. (1) A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged only in one or more of the kinds of business described in ORS 733.635.

(2) If an insurer ceases to control a subsidiary, the insurer must dispose of any investment in the subsidiary made pursuant to this section within three years after the time of the cessation of control or within such further time as the Director of the Department of Consumer and Business Services may prescribe, unless at any time after the investment was made, the investment meets the requirements for investment under any other provision of the Insurance Code and the insurer has notified the director of that fact. [1993 c.447 §24]

732.550 [1967 c.359 §203; 1993 c.447 §32; renumbered 732.531 in 1993]

732.551 Registration of insurer members of holding company systems. (1) Every authorized insurer that is a member of an insurance holding company system shall register with the Director of the Department of Consumer and Business Services as provided in this section. A foreign insurer need not register if the foreign insurer is subject to registration requirements and standards adopted by statute or rule in the jurisdiction of its domicile that are substantially similar to those contained in:

(a) This section, ORS 732.552, 732.553 and 732.554;

(b) ORS 732.574 (1), 732.576 and 732.582; and

(c) ORS 732.574 (2) or a provision that requires each registered insurer to keep current the information required to be disclosed in its registration statement by reporting all material changes or additions not later than 15 days after the end of the month in which it learns of each such change or addition.

(2) An insurer that is subject to registration under this section shall register not later than 15 days after the date the insurer becomes subject to registration, and annually thereafter on or before April 30 for the previous calendar year,

unless the director for good cause shown extends the time for registration, and then within such extended time. The director may require any authorized insurer that is a member of a holding company system and is not subject to registration under this section to furnish a copy of the registration statement, the summary required in ORS 732.552 or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction. [Formerly 732.615]

732.552 Registration statement; form; contents. (1) Every insurer subject to the registration requirements of ORS 732.551 shall file a registration statement on a form prescribed by the Director of the Department of Consumer and Business Services. For purposes of the form, the director shall consider and may prescribe the registration statement form prescribed by the National Association of Insurance Commissioners. The registration statement shall contain current information about:

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

(b) The identity and relationship of every member of the insurance holding company system.

(c) The following agreements in force and transactions currently outstanding or that have occurred during the last calendar year between such insurer and its affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the 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 that result in an actual 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 agreements, service contracts and all cost-sharing arrangements;

(F) Reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation agreements.

(d) Any pledge of the stock of the insurer, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

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

(2) Each registration statement must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement. [Formerly 732.625]

732.553 Certain information not required to be disclosed. Information that is not material for the purposes of registration under ORS 732.517 to 732.592 need not be disclosed on the registration statement filed pursuant to ORS 732.552. Unless the Director of the Department of Consumer and Business Services by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees 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 registration under ORS 732.517 to 732.592. [Formerly 732.635]

732.554 Changes in registration information; reports of distributions to shareholders. 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 Director of the Department of Consumer and Business Services within 15 days after the end of the month in which the insurer learns of each such change or addition. However, except as provided in ORS 732.576, each registered insurer shall so report all dividends and other distributions to shareholders within five business days following the declaration thereof and not less than 10 business days prior to payment of the dividends and distributions, commencing from the date of receipt of the report by the director. [Formerly 732.645]

732.555 [1967 c.359 §204; repealed by 1993 c.447 §122]

732.556 Requirement that certain persons provide information to insurers. Any person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer when

such information is necessary to enable the insurer to comply with the registration requirements of ORS 732.517 to 732.592. [1993 c.447 §41]

732.558 Termination of registration by director. The Director of the Department of Consumer and Business Services shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system. [Formerly 732.655]

732.560 [1967 c.359 §205; 1983 c.498 §13; 1993 c.447 §34; renumbered 732.536 in 1993]

732.562 Consolidated registration. The Director of the Department of Consumer and Business Services may require or allow two or more affiliated insurers subject to registration to file a consolidated registration statement. [Formerly 732.665]

732.564 Registration for affiliated insurers. The Director of the Department of Consumer and Business Services may allow an authorized insurer that is part of an insurance holding company system to register on behalf of an affiliated insurer that is required to register under ORS 732.551 and to file all information and material required to be filed under the registration requirements of ORS 732.517 to 732.592. [Formerly 732.675]

732.565 [1967 c.359 §206; repealed by 1993 c.447 §122]

732.566 Exemption from ORS 732.517 to 732.592 by director. The registration requirements of ORS 732.517 to 732.592 do not apply to any insurer, information or transaction exempted by the Director of the Department of Consumer and Business Services by rule or order. [Formerly 732.685]

732.568 Disclaimer of affiliation; contents; subsequent duty to register; disallowance of disclaimers by director. Any person may file with the Director of the Department of Consumer and Business Services a disclaimer of affiliation with any authorized insurer, or such a disclaimer may be filed by any insurer or any member of an insurance holding company system. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under ORS 732.517 to 732.592 that may arise out of the insurer's relationship with such person unless the director disallows such a disclaimer. The director may 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 the disallowance. [Formerly 732.695]

732.570 [1967 c.359 §207; 1987 c.846 §11; renumbered 732.538 in 1993]

732.572 Rulemaking authority for ORS 732.517 to 732.592. The Director of the Department of Consumer and Business Services may adopt rules to carry out ORS 732.517 to 732.592. [Formerly 732.705]

STANDARDS AND MANAGEMENT OF INSURER WITHIN AN INSURANCE HOLDING COMPANY SYSTEM

732.574 Standards for transactions within holding company; notice. (1) A transaction within an insurance holding company system to which an insurer subject to registration is a party is subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts and records of each party to the transaction must be so maintained as to disclose clearly and accurately the nature and details of the transaction, including accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The combined capital and surplus of the insurer following any transaction with an affiliate or any shareholder dividend must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) A transaction described in this subsection that involves a domestic insurer and any person in its insurance holding company system may be entered into only if the insurer has notified the Director of the Department of

Consumer and Business Services in writing not later than the 30th day before the transaction, or a shorter period allowed by the director, of its intention to enter into the transaction and if the director has not disapproved the transaction within the period. This subsection does not authorize or permit any transaction that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law. This subsection applies to the following transactions:

(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments, when the transactions equal or exceed the following:

(A) With respect to insurers not authorized to transact life insurance, the lesser of three percent of the insurer's allowed assets or 25 percent of the insurer's combined capital and surplus, each as of the 31st day of December immediately preceding.

(B) With respect to insurers authorized to transact life insurance, three percent of the insurer's allowed assets, as of the 31st day of December immediately preceding.

(b) Loans or extensions of credit to any person who is not an affiliate, when the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the insurer making such loans or extensions of credit. This paragraph applies to such transactions that equal or exceed the following:

(A) With respect to insurers not authorized to transact life insurance, the lesser of three percent of the insurer's allowed assets or 25 percent of the insurer's combined capital and surplus, each as of the 31st day of December immediately preceding.

(B) With respect to insurers authorized to transact life insurance, three percent of the insurer's allowed assets, as of the 31st day of December immediately preceding.

(c) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the liabilities of the insurer equals or exceeds five percent of the insurer's combined capital and surplus, as of the 31st day of December immediately preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer.

(d) All management agreements, service contracts and all cost-sharing arrangements.

(e) Any material transactions, as specified by rule, that the director determines may adversely affect the interests of the policyholders of the insurer.

(3) A domestic insurer may not enter into one or more transactions during any 12-month period that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

(4) In reviewing a transaction pursuant to subsection (2) of this section, the director must consider whether the transaction complies with the standards set forth in subsection (1) of this section and whether the transaction may adversely affect the interests of policyholders.

(5) A domestic insurer shall notify the director not later than the 30th day after any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds 10 percent of the voting securities of the corporation. [1993 c.447 §47]

732.575 [1983 c.498 §15; repealed by 1993 c.447 §122]

732.576 Dividends and distributions. The following provisions of this section apply to dividends and other distributions within an insurance holding company system:

(1) A domestic insurer subject to registration shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders either until 30 days after the Director of the Department of Consumer and Business Services has received notice of the declaration thereof if the director has not disapproved the payment within the 30-day period, or until the date on which the director approves the payment if approval occurs within the 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the period of 12 consecutive months ending on the date on which the proposed dividend or other distribution is scheduled to be paid or made, exceeds the greater of:

(a) Ten percent of the combined capital and surplus of the insurer as of the 31st day of December immediately

preceding; or

(b) The net gain from operations of the insurer after dividends to policyholders and federal income taxes and before realized capital gains or losses, if the insurer is authorized to transact life insurance, or the net income, if the insurer is not authorized to transact life insurance, for the 12-month period ending the 31st day of December immediately preceding.

(3) An extraordinary dividend or distribution does not include pro rata distributions of any class of the insurer's own securities.

(4) Except as provided in this subsection, a domestic insurer may declare or pay dividends to shareholders only from earned surplus. A domestic insurer may declare a dividend from other than earned surplus only if the director approves the declaration prior to payment of the dividend.

(5) For purposes of this section, earned surplus does not include surplus arising from unrealized capital gains or revaluation of assets.

(6) An insurer may declare an extraordinary dividend or distribution that is conditional upon the director's approval thereof. Such a declaration confers no rights upon shareholders until the date on which the director approves the payment of such a dividend or distribution or until 30 days after the director received notice of the declaration thereof under subsection (1) of this section if the director does not disapprove the payment within the 30-day period. [1993 c.447 §48]

732.578 Effect of control of insurer subject to registration on director and officer liability. Control by any person of a domestic insurer subject to registration does not relieve the officers and directors of the insurer of any obligation or liability to which they would otherwise be subject by law. The insurer must be managed so as to assure its separate operating identity in accordance with the Insurance Code. [1993 c.447 §49]

732.580 [1983 c.498 §16; 1993 c.447 §35; renumbered 732.541 in 1993]

732.582 Determination of reasonableness and adequacy of capital and surplus. For purposes of ORS 732.517 to 732.592, in order to determine whether the combined capital and surplus is reasonable in relation to the outstanding liabilities of the insurer and adequate to its financial needs, the Director of the Department of Consumer and Business Services must consider at least the applicable factors stated in ORS 731.554 for determining the reasonableness and adequacy of the insurer's capital and surplus. [1993 c.447 §50]

EXAMINATIONS, CONFIDENTIALITY, REGULATORY POWERS

732.584 Examinations. (1) In addition to other powers of the Director of the Department of Consumer and Business Services under the Insurance Code relating to the examination and investigation of insurers, the director may also order any insurer registered under ORS 732.517 to 732.592 to produce such books, records, accounts, papers, documents and computer and other recordings in the possession of the insurer or its affiliates as are necessary to ascertain the financial condition of the insurer or to determine compliance with the Insurance Code. If the insurer fails to comply with such an order, the director may examine the affiliates to obtain such information.

(2) An insurer shall pay the costs of an examination of the insurer under this section as provided in ORS 731.316. [1993 c.447 §51]

732.585 [1983 c.498 §17; repealed by 1993 c.447 §122]

732.586 Confidentiality of information; permitted disclosures. (1) All information, documents and copies thereof obtained by or disclosed to the Director of the Department of Consumer and Business Services or any other person in the course of an examination or investigation made pursuant to ORS 732.584 are subject to the provisions of ORS 731.312.

(2) All information reported pursuant to ORS 732.552, 732.554, 732.574 and 732.576 is confidential and may not be made public except as provided in this subsection. The director may disclose reported information only as provided in ORS 705.137. Otherwise, the director may disclose such reported information only as follows:

(a) If the director obtains the prior written consent of the insurer to which the reported information pertains; or

(b) If the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication

thereof. If the director determines that one or more of such interests will be so served, the director may publish all or any part thereof in any manner that the director determines to be appropriate. [1993 c.447 §52; 2001 c.377 §11]

732.588 Supervision, rehabilitation or liquidation. If the Director of the Department of Consumer and Business Services determines that a violation by any person of any provision of ORS 732.517 to 732.592 so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, the director may place the insurer under supervision or in rehabilitation or liquidation as provided in ORS chapter 734. [1993 c.447 §53]

732.590 [1983 c.498 §18; 1993 c.447 §36; renumbered 732.543 in 1993]

732.592 Recovery from parent corporation or holding company if domestic insurer ordered into liquidation or rehabilitation. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order may recover, on behalf of the insurer, from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock, or any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, when such a distribution or payment is made at any time during the 12 calendar months preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3) and (4) of this section.

(2) A distribution to which subsection (1) of this section applies is not recoverable if the parent or affiliate shows that the distribution was lawful and reasonable when paid and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time a distribution to which subsection (1) of this section applies was paid shall be liable in an amount that is not more than the amount of distributions or payments received by the person under subsection (1) of this section. Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions the person would have received if the distributions had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from the person pursuant to subsection (3) of this section, its parent corporation or holding company or other person who otherwise controlled the person liable under subsection (3) of this section when the distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it. [1993 c.447 §54; 1995 c.638 §6]

732.595 [1983 c.498 §19; renumbered 732.546 in 1993]

732.597 [1985 c.327 §2; 1993 c.447 §110; repealed by 1997 c.771 §28]

732.598 [1985 c.327 §3; repealed by 1997 c.771 §28]

732.599 [1985 c.327 §4; 1993 c.447 §111; repealed by 1997 c.771 §28]

CONVERSION OR REORGANIZATION OF DOMESTIC MUTUAL INSURER

732.600 Definitions for ORS 732.600 to 732.630. As used in ORS 732.600 to 732.630:

(1) “Conversion” means the process by which a domestic mutual insurer is converted to a domestic stock insurer in accordance with ORS 732.600 to 732.630.

(2) “Converted stock insurer” means the domestic stock insurer to which the domestic mutual insurer is converted in accordance with ORS 732.600 to 732.630.

(3) “Converting mutual insurer” means the domestic mutual insurer that is converted to a domestic stock insurer in

accordance with ORS 732.600 to 732.630.

(4) “Effective date” means, with respect to a plan, the date on which the plan becomes effective as set forth in an order of the Director of the Department of Consumer and Business Services. If the plan establishes different effective dates for separate parts of the plan, the effective date for a part of a plan is the date on which that part becomes effective as set forth in an order of the director.

(5) “Intermediate stock holding company” means a corporation that owns, either directly or through a wholly owned subsidiary, all of the outstanding shares of capital stock of the converted stock insurer and:

(a) A majority of whose outstanding shares of voting capital stock are owned by a mutual holding company; and

(b) A majority in total value of whose outstanding shares of capital stock are owned by a mutual holding company.

(6) “Issuer” means any of the following, and in addition, any other corporation approved by the director:

(a) With respect to a conversion in which there is no reorganization, the converted stock insurer.

(b) With respect to a reorganization involving the organization of a stock holding company, the stock holding company.

(c) With respect to a restructuring, the restructured stock holding company.

(7) “Member” means:

(a) With respect to a domestic mutual insurer, any owner of one or more policies of insurance, other than a policy of reinsurance, issued by the mutual insurer. For purposes of this definition, “owner” has the meaning given that term in ORS 732.465 (3). A member is an eligible member of a domestic mutual insurer for purposes of ORS 732.600 to 732.630 if the policy of the member is in force as of the record date for the plan of conversion or reorganization, which is the date the board of directors of the mutual insurer adopts the plan or some other date specified as the record date in the plan and approved by the director.

(b) With respect to a mutual holding company, any owner of one or more policies of insurance, other than a policy of reinsurance, issued by the stock insurer resulting from a reorganization involving the organization of a mutual holding company and, if set forth in an order of the director, any owner of one or more policies of insurance, other than a policy of reinsurance, issued by any other insurer that is a direct or indirect subsidiary of the mutual holding company. For purposes of this definition, “owner” has the meaning given that term in ORS 732.465 (3). A member is an eligible member of a mutual holding company for purposes of ORS 732.622 and 732.624 if the policy of the member is in force as of the record date for the plan of restructuring, which is the date the board of directors of the mutual holding company adopts the plan or some other date specified as the record date in the plan and approved by the director.

(8) “Membership interest” means:

(a) With respect to a domestic mutual insurer, any right that a member of the mutual insurer may hold by virtue of membership in the mutual insurer.

(b) With respect to a mutual holding company, any right that a member of the mutual holding company may hold by virtue of membership in the mutual holding company.

(9) “Mutual holding company” means a corporation organized under the laws of this state in accordance with ORS 732.620.

(10) “Plan” means a plan of conversion, reorganization or restructuring.

(11) “Reorganization” means the process by which a domestic mutual insurer is converted to a domestic stock insurer and either a stock holding company or a mutual holding company is organized in accordance with ORS 732.600 to 732.630.

(12) “Restructured stock holding company” means the stock holding company resulting from the restructuring of a mutual holding company.

(13) “Restructuring” means the process by which a mutual holding company is restructured to a stock holding company in accordance with ORS 732.622 and 732.624.

(14) “Restructuring mutual holding company” means the mutual holding company that is restructured to a stock holding company.

(15) “Stock holding company” means a corporation that:

(a) Owns, either directly or through one or more subsidiaries, all or part of the outstanding shares of capital stock of the converted stock insurer;

(b) Is organized either as a result of a reorganization or as a result of a restructuring; and

(c) Immediately after the effective date of the reorganization or restructuring, is not controlled by any other person, as “controlled” is defined in ORS 732.548, unless the control by such person is set forth in the plan and approved by the director.

(16) “Voting capital stock” means capital stock whose holder has the right to vote in the election of directors. Voting capital stock does not include capital stock as to which the right to vote in the election of directors is conditional upon the occurrence or nonoccurrence of a specified event. [1997 c.771 §2]

732.602 Intent of ORS 732.600 to 732.630. ORS 732.600 to 732.630 are intended to enable a domestic mutual insurer, to the extent consistent with the interests of its members and the insurance buying public, to:

(1) Adopt any other type of organizational structure, including a stock insurer, stock holding company or mutual holding company, that enhances its financial strength and flexibility; and

(2) Support long-term growth through creative internal strategies, mergers and acquisitions. [1997 c.771 §17]

732.604 Permissible actions of domestic mutual insurer; rules of director. (1) A domestic mutual insurer may engage in either of the following actions:

(a) A conversion to a domestic stock insurer; or

(b) A reorganization in which the domestic mutual insurer is converted to a domestic stock insurer; and

(A) A mutual holding company is organized; or

(B) A stock holding company is organized.

(2) A mutual holding company may restructure into a stock holding company, as provided in ORS 732.622 and 732.624.

(3) A reorganization involving the organization of a mutual holding company also may include the organization of an intermediate stock holding company and any other corporation that is permitted to be organized under ORS 732.600 to 732.630. A reorganization involving the organization of a stock holding company also may include the organization of any other corporation that is permitted to be organized under ORS 732.600 to 732.630.

(4) The Director of the Department of Consumer and Business Services may adopt rules for any of the following purposes:

(a) Implementing ORS 732.600 to 732.630.

(b) Ensuring full and proper review of any action described in ORS 732.600 to 732.630.

(c) Protecting the rights of policyholders, members and the insurance-buying public with respect to a conversion, reorganization or restructuring. [1997 c.771 §3]

732.605 [1971 c.373 §2; 1993 c.447 §23; renumbered 732.548 in 1993]

732.606 Plan for conversion or reorganization; documents filed; approval by director and members. (1) In order for a domestic mutual insurer to engage in a conversion or reorganization as provided in ORS 732.604, the board of directors of the mutual insurer must adopt a plan that meets the requirements of ORS 732.610.

(2) After the board of directors of a mutual insurer has adopted a plan and before the board of directors seeks approval of the plan by the eligible members of the mutual insurer, the mutual insurer shall file the following documents with the Director of the Department of Consumer and Business Services:

(a) The plan of conversion or reorganization.

(b) The form of notice of the meeting at which the eligible members vote on the plan.

(c) The form of any proxies to be solicited from the eligible members. Proxies must offer the eligible members the option of voting in favor or voting against the plan or abstaining.

(d) Information required by ORS 732.523.

(e) Other information or documentation required by the director.

(3) The director shall approve, conditionally approve or disapprove a plan and other documents submitted under subsection (2) of this section, according to the standards established in ORS 732.626. The director must take such action not later than the 60th day after the director has received a completed filing of the plan and all information requested by the director or not later than the 30th day after the completion of a hearing on the plan, whichever date is later.

(4) At any time before approval of a plan by the director, the board of directors of the mutual insurer may amend or withdraw the plan.

(5) After approval by the director, the plan must be approved by the eligible members of the mutual insurer. Approval by the eligible members is subject to the following requirements:

(a) All eligible members must be given notice of the plan and of their opportunity to vote on the plan. A copy of the plan or a summary of the plan must accompany the notice. The notice shall be mailed to the last known address of

each eligible member, as shown on the records of the mutual insurer, not later than the 45th day after approval of the plan by the director. The meeting of the eligible members at which a vote on the plan will occur shall be set for a date that is not earlier than the 30th day after the date on which the mutual insurer mailed the notice of the meeting. If the mutual insurer complies substantially and in good faith with the notice requirements of this section, the mutual insurer's failure to give any member or members any required notice does not impair the validity of any action taken under this section.

(b) The vote required for approval must be conducted as provided in ORS 732.470 and 732.475, except as follows:

(A) Only eligible members may vote on the plan.

(B) An eligible member may vote in person or by proxy at the meeting at which the plan is voted upon.

(C) The plan is approved by the eligible members upon the affirmative vote of two-thirds or more of the eligible members voting on the plan, unless the articles of incorporation require a greater number of affirmative votes.

(6) The plan shall be carried out in accordance with its terms on the effective date of the conversion or reorganization. [1997 c.771 §4; 2001 c.352 §2]

732.608 Waiver of requirements of ORS 732.606. The Director of the Department of Consumer and Business Services may waive the requirements of ORS 732.606 if:

(1) The director determines that a domestic mutual insurer is in hazardous financial condition according to standards established under ORS 731.385 or if a rehabilitation or liquidation proceeding or an administrative supervision proceeding has been instituted against the insurer; and

(2) The director determines that the transfer of the policies is in the best interests of the policyholders. [1997 c.771 §16]

732.610 Contents of plan. A plan of conversion or reorganization of a domestic mutual insurer must include the following:

(1) A statement of the reasons for the proposed action.

(2) A description of how the plan will be carried out, including, but not limited to, any merger, transfer, assumption, exchange, acquisition, contribution or other transaction included within the plan and a description of any stock holding company, mutual holding company, intermediate stock holding company or other corporation organized pursuant to the plan.

(3) A description of all significant terms of the conversion or reorganization.

(4) A description of the overall effect of the plan on policies issued by the converting mutual insurer. The description must show that policyholder interests collectively are properly preserved and protected and that the plan is fair and equitable to the policyholders.

(5) A statement of the manner and method by which membership interests in the converting mutual insurer will be extinguished and consideration will be provided to the eligible members in accordance with ORS 732.612.

(6) The record date for determining whether a member of the converting mutual insurer is an eligible member.

(7) The proposed effective date of the conversion or reorganization or the manner in which the proposed effective date of the conversion or reorganization is established.

(8) The proposed amendments to or restatement of the articles of incorporation and bylaws of the converting mutual insurer and the proposed articles of incorporation and bylaws of any stock holding company, mutual holding company, intermediate stock holding company or other corporation organized pursuant to the plan.

(9) Except as otherwise provided in ORS 732.612, the valuation of the converting mutual insurer immediately before the effective date of the conversion.

(10) A description of the significant terms of any offering of shares of capital stock or other securities of an issuer.

(11) The intention, if any, that a director or officer of the converting mutual insurer or converted stock insurer or any stock holding company, mutual holding company, intermediate stock holding company or other corporation organized pursuant to the plan may, within the six-month period following the effective date of the conversion or reorganization, purchase or acquire shares of capital stock or other securities of an issuer to be issued pursuant to the plan.

(12) A provision that all policies in force on the effective date of the conversion or reorganization will remain in force under the terms of those policies. The plan also must provide that on the effective date of the conversion or reorganization, any voting rights of the members provided for under the policies or under the Insurance Code are extinguished. Except for individual policies of life insurance, guaranteed renewable health insurance and noncancelable health insurance issued by the converting mutual insurer, the plan may authorize the converted stock

insurer to issue nonparticipating policies as a substitute for participating policies upon the renewal dates of the participating policies.

(13) If applicable, a provision establishing a closed block of individual policies of life insurance, guaranteed renewable health insurance and noncancelable health insurance issued by the converting mutual insurer that are participating policies and in force on the effective date of the conversion or reorganization and for which the converting mutual insurer has an experience-based dividend scale payable in the year in which the plan is adopted by the board of directors of the converting mutual insurer. The plan may provide for conditions under which the converted stock insurer may cease to maintain the closed block and its allocated assets. Regardless of such a cessation, the obligations under the individual policies constituting the closed block business remain the obligations of the converted stock insurer. Dividends on those policies must be apportioned by the board of directors of the converted stock insurer in accordance with the terms of the policies. Assets of the insurer must be allocated to the closed block in an amount producing cash flows that, together with anticipated revenues from the closed block business, are expected to be sufficient to support the closed block business, including payment of claims and those expenses and taxes specified in the plan, and provide for continuation of dividend scales in effect on the effective date if the experience underlying the dividend scales continues. The provision establishing the closed block must provide for appropriate adjustments in the dividend scales if the experience changes. [1997 c.771 §5]

732.612 Consideration for membership interest in converting or reorganizing mutual insurer; kinds of consideration; allocation of consideration. (1) In the case of a conversion or in the case of a reorganization involving the organization of a stock holding company, consideration for the membership interests of the eligible members of a converting mutual insurer shall consist of one or any combination of the following:

(a) Nontransferable subscription rights to purchase shares of capital stock of the issuer as described in subsection (2) of this section;

(b) Shares of capital stock of the issuer as described in subsection (3) of this section;

(c) Cash;

(d) Premium credits;

(e) In the case of a converting mutual insurer transacting primarily property or casualty insurance, or both, certificates of contribution that bear interest as established in the plan, that are repayable within 10 years or, if approved by the Director of the Department of Consumer and Business Services, within a longer period and that are repayable on terms set forth in the plan;

(f) In the case of individual policies of life insurance, credits to policy account values or other enhancements in policy benefits; and

(g) Any other form of consideration described in the plan and approved by the director.

(2) A plan may provide for allocation to eligible members, without payment, of nontransferable subscription rights to purchase shares of capital stock of the issuer, and the plan shall contain the following provisions:

(a) The plan must allocate the subscription rights in whole shares among the eligible members. In the case of a converting mutual insurer transacting primarily life or health insurance, or both, the subscription rights shall be allocated in accordance with subsection (6) of this section. In the case of a converting mutual insurer transacting primarily property or casualty insurance, or both, the subscription rights shall be allocated in accordance with subsection (7) of this section.

(b) The plan must specify the expiration date of the subscription rights or authorize the board of directors of the converting mutual insurer to establish the expiration date. The subscription rights may be exercised, in whole or in part, by an eligible member in the manner described in the plan including, but not limited to, the payment of the subscription exercise price for the shares purchased. The plan may require an eligible member who exercises subscription rights to purchase a minimum number of shares unless the director determines that such minimum purchase requirement is unreasonable based on the interests of the eligible members, the converted stock insurer and the issuer. The proposed subscription exercise price per share shall be set forth in the plan and shall be less than the price at which shares of capital stock of the issuer will be first offered in accordance with paragraph (e) of this subsection. The proposed subscription exercise price per share shall be determined by the boards of directors of the converting mutual insurer and the issuer and shall be approved by the director based on the interests of the eligible members, the policyholders, the converted stock insurer and the issuer.

(c) The plan must provide that to the extent an eligible member does not exercise, in whole or in part, subscription rights allocated to the eligible member, the eligible member instead will receive one or more of the forms of consideration described in subsection (1) of this section that are specified in the plan.

(d) The plan must set the pro forma market value of the converted stock insurer, which is the value that is estimated to be necessary to attract full subscription for all shares offered by the issuer. The pro forma market value of the converted stock insurer shall be determined by an independent valuation by a qualified person. The price per share at which the shares of capital stock of the issuer are first offered in accordance with paragraph (e) of this subsection shall be equal to such pro forma market value of the converted stock insurer divided by the number of shares that would be issued if all subscription rights allocated to the eligible members are exercised.

(e) The plan must further provide that any shares of capital stock of the issuer for which subscription rights are allocated to the eligible members but which are not purchased by the eligible members pursuant to the exercise of such subscription rights must be sold in a public offering through an underwriter, unless the number of shares that are not purchased by the eligible members is so small in number so as not to warrant the expense of a public offering, in which case the plan may provide for the sale of such shares by private placement or through any other fair and equitable means approved by the director. If the director finds that market conditions or other circumstances may cause the interests of the eligible members to be adversely affected, the director may require such offering of shares to be postponed or the terms of such offering to be modified.

(3) A plan may provide for the allocation to the eligible members, without payment, of shares of capital stock of the issuer. The plan must allocate the shares of capital stock of the issuer in whole shares among the eligible members. In the case of a converting mutual insurer transacting primarily life or health insurance, or both, the shares shall be allocated in accordance with subsection (6) of this section. In the case of a converting mutual insurer transacting primarily property or casualty insurance, or both, the shares shall be allocated in accordance with subsection (7) of this section. If shares of capital stock of the issuer constitute the only consideration to be received by the eligible members and the plan does not provide for the sale of additional shares of capital stock or other securities of the issuer, the plan does not need to include the valuation of the converting mutual insurer. If the plan provides for the allocation to the eligible members, without payment, of shares of capital stock of the issuer, the plan may establish a reasonable period within which the eligible members to whom such shares are issued may not dispose of such shares.

(4) If shares of capital stock of the issuer are issued in accordance with subsection (2) or (3) of this section, the issuer must use its best efforts to encourage and assist in the establishment of a public market for such shares unless the director finds that such public market is not feasible or is not in the best interests of the eligible members, the converted stock insurer and the issuer. The director may provide that subscription rights or shares of capital stock of the issuer do not need to be allocated under subsection (2) or (3) of this section to eligible members residing in a foreign country or other jurisdiction if there is a small number of eligible members residing in such foreign country or other jurisdiction and any registration, qualification, filing or other compliance matters under the laws of such foreign country or other jurisdiction with respect to the shares of capital stock of the issuer would be impracticable or unduly burdensome upon the issuer.

(5) Regardless of the form of consideration for the membership interests of the eligible members of a converting mutual insurer, the plan may provide for the sale of additional shares of capital stock or other securities of the issuer to persons other than the eligible members. The issuer shall offer such additional shares or other securities at a price and on terms determined by the boards of directors of the converting mutual insurer and the issuer.

(6) For a converting mutual insurer transacting primarily life or health insurance, or both, the consideration specified in subsection (1) of this section must be allocated among the eligible members pursuant to a fair and equitable formula. The formula for allocating the consideration among the eligible members must either:

(a) Allocate a fixed component of consideration per capita among the eligible members and allocate a variable component of consideration among the eligible members in proportion to the cash value of policies held by them; or

(b) Allocate the consideration among the eligible members in any other manner approved by the director.

(7) For a converting mutual insurer transacting primarily property or casualty insurance, or both, the consideration specified in subsection (1) of this section must be allocated among the eligible members pursuant to a fair and equitable formula. The formula for allocating the consideration among the eligible members must do either of the following:

(a) Allocate the consideration among the eligible members in the proportion that the aggregate premiums earned by the converting mutual insurer on the policies in force of the eligible member during a specified period before the record date described in ORS 732.600 (7) bear to the aggregate premiums so earned by the converting mutual insurer during the same period on all policies in force of all eligible members. The specified period must be 36 months unless another period is specified in the plan.

(b) Allocate the consideration among the eligible members in any other manner approved by the director.

(8) The form of consideration to be given to a class or category of eligible members may differ from the form of

consideration to be given to another class or category of eligible members. The choice of the form of consideration to be given to a class or category of eligible members may take into account the type of policy, size of policy, tax status of the eligible member and other factors that the director determines are appropriate.

(9) In the case of a conversion or in the case of a reorganization involving the organization of a stock holding company, a member of the converting mutual insurer who is not an eligible member is not entitled to receive any consideration for the membership interest of such member.

(10) In the case of a reorganization involving the organization of a mutual holding company, the membership interests of the members of the converting mutual insurer, whether or not such members are eligible members, shall be merged into the mutual holding company, and consequently the membership interests of the members of the converting mutual insurer shall become membership interests in the mutual holding company. [1997 c.771 §6]

732.614 Effect of conversion. (1) Upon the effective date of a conversion, the membership interests of all members of the converting mutual insurer, whether or not eligible members, shall be extinguished, and the eligible members of the converting mutual insurer shall be entitled to receive the consideration described in ORS 732.612 in accordance with the plan.

(2) A converting mutual insurer becomes a stock insurer on the effective date of the conversion. The amended or restated articles of incorporation of the converting mutual insurer shall be filed with the Director of the Department of Consumer and Business Services and shall become effective on the effective date of the conversion. The certificate of authority of the converting mutual insurer shall be amended by the director on the effective date of the conversion.

(3) A converted stock insurer continues the corporate existence of the converting mutual insurer. Except as provided in the plan, the conversion does not annul, modify or change any existing license or other authority or any of the existing civil actions, rights, contracts or liabilities of the converting mutual insurer. All property, debts and choses in action and every other interest belonging to the converting mutual insurer before the conversion are retained by the converted stock insurer without further action needed. On and after the effective date of the conversion, the converted stock insurer shall exercise all rights and powers and perform all duties conferred or imposed by law upon insurers writing the classes of insurance written by the converted stock insurer, shall retain the rights and contracts of the converting mutual insurer existing immediately before the conversion and shall be subject to all obligations and liabilities of the converting mutual insurer existing immediately before the conversion, subject to the terms of the plan.

(4) Notwithstanding subsections (2) and (3) of this section, the conversion may be carried out through any other method described in the plan and approved by the director.

(5) Unless otherwise specified in the plan, the directors and officers of the converting mutual insurer shall serve as directors and officers of the converted stock insurer until new directors and officers are elected.

(6) The provisions of this section apply to the conversion of the converting mutual insurer whether or not the conversion is part of a reorganization. [1997 c.771 §7]

732.615 [1971 c.373 §3; 1981 c.247 §8; 1993 c.447 §37; renumbered 732.551 in 1993]

732.616 Reorganization involving organization of stock holding company; subsidiaries. (1) Upon the effective date of a reorganization involving the organization of a stock holding company, the membership interests of all members of the converting mutual insurer, whether or not eligible members, shall be extinguished, and the eligible members of the converting mutual insurer shall be entitled to receive the consideration described in ORS 732.612 in accordance with the plan.

(2) The stock holding company and any direct or indirect subsidiary of the stock holding company shall be organized at the time or times set forth in the plan.

(3) As part of the plan of reorganization or in a separate transaction after the effective date of the reorganization, a stock holding company may organize one or more direct or indirect subsidiaries to conduct noninsurance business or businesses. The subsidiaries may be affiliated with the converted stock insurer or any direct or indirect parent corporation of the converted stock insurer.

(4) Shares of capital stock or other securities of the converted stock insurer, the stock holding company or any direct or indirect subsidiary of the stock holding company may be issued or sold in accordance with the plan or after the effective date of the reorganization.

(5) Unless otherwise specified in the plan, the directors and officers of the converting mutual insurer shall serve as directors and officers of the stock holding company and any direct or indirect subsidiary of the stock holding company until new directors and officers are elected.

(6) The Director of the Department of Consumer and Business Services retains jurisdiction over the stock holding company and any direct or indirect subsidiary of the stock holding company as provided in this section and as provided in ORS 732.517 to 732.592. [1997 c.771 §8]

732.618 Reorganization involving organization of mutual holding company; subsidiaries. (1) Upon the effective date of a reorganization involving the organization of a mutual holding company, the membership interests of all members of the converting mutual insurer, whether or not such members are eligible members, shall be merged into the mutual holding company. Consequently, the members of the converting mutual insurer shall become members of the mutual holding company, and the membership interests of the members of the converting mutual insurer shall become membership interests in the mutual holding company. Upon the effective date of the reorganization, the membership interests of all members of the converting mutual insurer shall be extinguished. Any owner of one or more policies of insurance, other than a policy of reinsurance, issued by the converted stock insurer after the effective date of the conversion and, if set forth in an order of the Director of the Department of Consumer and Business Services, any owner of one or more policies of insurance, other than a policy of reinsurance, issued by any other insurer that is a direct or indirect subsidiary of the mutual holding company after the effective date of the reorganization becomes a member of the mutual holding company.

(2) The articles of incorporation of the mutual holding company shall be filed with the director and shall become effective at the time specified in the plan. Any intermediate stock holding company and any subsidiary of an intermediate stock holding company shall be organized at the time or times set forth in the plan.

(3) Upon the effective date of a reorganization involving the organization of a mutual holding company either:

(a) All outstanding shares of capital stock of the converted stock insurer must be issued to the mutual holding company; or

(b) All outstanding shares of capital stock of the intermediate stock holding company must be issued to the mutual holding company.

(4) If there is no intermediate stock holding company, the mutual holding company shall own at all times after the effective date of the reorganization a majority of the outstanding shares of voting capital stock of the converted stock insurer and a majority of the total value of all outstanding shares of capital stock of the converted stock insurer. Subject to such requirement of share ownership by the mutual holding company in this subsection, shares of capital stock of the converted stock insurer may be issued by the converted stock insurer or may be sold or otherwise transferred by the mutual holding company.

(5) If there is an intermediate stock holding company, the mutual holding company shall own at all times after the effective date of the reorganization a majority of the outstanding shares of voting capital stock of the intermediate stock holding company and a majority of the total value of all outstanding shares of capital stock of the intermediate stock holding company. At all times after the effective date of the reorganization, the intermediate stock holding company shall own, either directly or through a wholly owned subsidiary, all outstanding shares of capital stock of the converted stock insurer. Subject to such requirement of share ownership by the mutual holding company and any intermediate stock holding company in this subsection, shares of capital stock of the intermediate stock holding company may be issued by the intermediate stock holding company or may be sold or otherwise transferred by the mutual holding company.

(6) After the effective date of the reorganization, the mutual holding company must at all times have the direct or indirect power to cast at least a majority of the votes for the election of directors of:

(a) The converted stock insurer; and

(b) The intermediate stock holding company, if any.

(7) As part of the plan of reorganization or in a separate transaction after the effective date of the reorganization, a mutual holding company may organize or acquire one or more direct or indirect subsidiaries to conduct noninsurance business or businesses. The subsidiaries may be affiliated with the converted stock insurer or any intermediate stock holding company.

(8) Unless otherwise specified in the plan, the directors and officers of the converting mutual insurer shall serve as directors and officers of the mutual holding company, any intermediate stock holding company and any subsidiary of an intermediate stock holding company until new directors and officers are elected. [1997 c.771 §9]

732.620 Status of mutual holding company as corporation; status as insurer; rights and obligations of members; voting; articles of incorporation. (1) A mutual holding company is a corporation. To the extent not inconsistent with the provisions of the Insurance Code or ORS 732.600 to 732.630, ORS chapter 60 governs the

powers, duties and relationships of a mutual holding company. The following sections in ORS chapter 60 do not apply to a mutual holding company: ORS 60.004, 60.007 to 60.014, 60.016, 60.017 to 60.024, 60.027, 60.031, 60.051 to 60.057, 60.131 to 60.147, 60.154 to 60.177, 60.224, 60.227, 60.234, 60.241 to 60.265, 60.470 to 60.534, 60.551 to 60.594, 60.701 to 60.747, 60.787, 60.801 to 60.816 and 60.825 to 60.845. The enumeration in this subsection of inapplicable sections in ORS chapter 60 is not exclusive.

(2) In applying ORS chapter 60 as provided in this section, unless the context requires otherwise, references to:

(a) "Corporation" shall be deemed references to "mutual holding company."

(b) "Shareholders" shall be deemed references to "members."

(c) "Secretary of State" shall be deemed references to "Director of the Department of Consumer and Business Services."

(3) A mutual holding company is not an insurer for purposes of the Insurance Code. However, in the event a mutual holding company engages in an activity described in ORS 732.521, then ORS 732.517 to 732.546 shall apply to the mutual holding company and the effect of such activity shall be governed by ORS 732.517 to 732.546. A mutual holding company may merge with another corporation in accordance with a plan of restructuring described in ORS 732.622 and 732.624.

(4) A mutual holding company shall not dissolve or liquidate without approval by the director or unless required by judicial order. The director retains jurisdiction over a mutual holding company, any intermediate stock holding company and any subsidiary of an intermediate stock holding company as provided in this section and as provided in ORS 732.517 to 732.592.

(5) The members of a mutual holding company have the rights and obligations set forth in this section and in the articles of incorporation and bylaws of the mutual holding company. No member of a mutual holding company may transfer membership in the mutual holding company or any right arising from such membership. Such limitation on the transfer of membership or rights arising from membership shall not restrict the assignment of a policy that is otherwise permissible. A member of a mutual holding company is not personally liable for the acts, debts, liabilities or obligations of the mutual holding company merely by reason of being a member. No assessment of any kind may be imposed upon a member of a mutual holding company.

(6) A membership interest in a mutual holding company shall not constitute a security as defined in ORS 59.015.

(7) Each member of a mutual holding company 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. The voting rights of the members of a mutual holding company shall be determined in accordance with ORS 732.470.

(8) Meetings of the members of a mutual holding company shall be governed by ORS 732.475 in the same manner as if the mutual holding company were a domestic mutual insurer, except for provisions governing quorum requirements, the approval of matters by the members and the election of directors by the members. The members present in person or represented by proxy shall constitute a quorum at a duly called meeting of the members. If a quorum exists, action on a matter, other than the election of directors, is approved by the members if the votes cast in favor of the action exceed the votes cast opposing the action, unless the articles of incorporation require a greater number of affirmative votes. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum exists.

(9) The articles of incorporation of a mutual holding company must contain the following provisions:

(a) The name of the mutual holding company. The name must include the words "mutual holding company" or "mutual insurance holding company" or other words connoting the mutual character of the mutual holding company that are approved by the director.

(b) A provision specifying that the mutual holding company is not authorized to issue capital stock, whether voting or nonvoting.

(c) A provision setting forth any rights of the members of the mutual holding company upon dissolution or liquidation.

(10) A mutual holding company shall automatically be a party to any rehabilitation or liquidation proceeding involving the converted stock insurer that as a result of a reorganization is a direct or indirect subsidiary of the mutual holding company. In such a proceeding, the assets of the mutual holding company shall be counted as assets of the estate of the converted stock insurer for the purpose of satisfying the claims of the policyholders of the converted stock insurer. [1997 c.771 §10]

732.622 Restructuring of mutual holding company. (1) A mutual holding company may restructure to a stock

holding company in accordance with a plan of restructuring. The restructuring may include the continuation or organization of one or more corporations that become direct or indirect subsidiaries of the restructured stock holding company in accordance with the plan of restructuring.

(2) In order to restructure a mutual holding company, the board of directors of the mutual holding company must adopt a plan as provided in this section.

(3) A plan of restructuring must include the following:

(a) A statement of the reasons for the proposed action.

(b) The proposed articles of incorporation and bylaws of the restructured stock holding company, the proposed articles of incorporation and bylaws of any other corporation to be organized pursuant to the plan and the proposed amendments to or restatement of the articles of incorporation and bylaws of any other existing corporation included in the plan.

(c) A description of how the plan will be carried out, including, but not limited to, any merger, transfer, assumption, exchange, acquisition, contribution or other transaction included within the plan, and a description of the restructured stock holding company and any other corporation organized pursuant to the plan.

(d) A description of all significant terms of the restructuring.

(e) A description of the overall effect of the plan on policies issued by any insurer that is a direct or indirect subsidiary of the restructuring mutual holding company. The description must show that policyholder interests collectively are properly preserved and protected and that the plan is fair and equitable to the policyholders.

(f) A statement of the manner and method by which membership interests in the restructuring mutual holding company will be extinguished and consideration will be provided to the eligible members.

(g) The record date for determining whether a member of the restructuring mutual holding company is an eligible member.

(h) The proposed effective date of the restructuring or the manner in which the proposed effective date of the restructuring is established.

(i) Except as otherwise provided in ORS 732.624, the valuation of the restructuring mutual holding company immediately before the effective date of the restructuring.

(j) A description of the significant terms of any offering of shares of capital stock or other securities of an issuer.

(k) The intention, if any, that a director or officer of the restructuring mutual holding company, any direct or indirect subsidiary of the restructuring mutual holding company or any other corporation organized pursuant to the plan may, within the six-month period following the effective date of the restructuring, purchase or acquire shares of capital stock or other securities of an issuer to be issued pursuant to the plan.

(4) After the board of directors of a mutual holding company has adopted a plan and before the board of directors seeks approval of the plan by the eligible members of the mutual holding company, the mutual holding company shall file the following documents with the Director of the Department of Consumer and Business Services:

(a) The plan of restructuring.

(b) The form of notice of the meeting at which the eligible members vote on the plan.

(c) The form of any proxies to be solicited from the eligible members. Proxies must offer the eligible members the option of voting in favor or voting against the plan or abstaining.

(d) Information required by ORS 732.523.

(e) Other information or documentation required by the director. [1997 c.771 §11]

732.624 Approval by Director of Department of Consumer and Business Services of mutual holding company restructuring plan; approval by members; effect of restructuring. (1) The Director of the Department of Consumer and Business Services shall approve, conditionally approve or disapprove a plan of restructuring and other documents submitted under ORS 732.622 according to the standards established in ORS 732.626. The director must take such action not later than the 60th day after the director has received a completed filing of the plan and all information requested by the director or not later than the 30th day after the completion of a hearing on the plan, whichever date is later.

(2) At any time before approval of a plan by the director, the board of directors of the mutual holding company may amend or withdraw the plan.

(3) After approval by the director, the plan must be approved by the eligible members of the mutual holding company. Approval by the eligible members is subject to the following requirements:

(a) All eligible members must be given notice of the plan and of their opportunity to vote on the plan. A copy of the plan or a summary of the plan must accompany the notice. The notice shall be mailed to the last known address of

each eligible member, as shown on the records of the mutual holding company, not later than the 45th day after approval of the plan by the director. The meeting of the eligible members at which a vote on the plan will occur shall be set for a date that is not earlier than the 30th day after the date on which the mutual holding company mailed the notice of the meeting. If the mutual holding company complies substantially and in good faith with the notice requirements of this section, the mutual holding company's failure to give any member or members any required notice does not impair the validity of any action taken under this section.

(b) The vote required for approval must be conducted as provided in ORS 732.620, except as follows:

(A) Only eligible members may vote on the plan.

(B) An eligible member may vote in person or by proxy at the meeting at which the plan is voted upon.

(4) The plan shall be carried out in accordance with its terms on the effective date of the restructuring. A restructuring may be carried out through any method approved by the director, including, but not limited to, the organization of an interim subsidiary of the mutual holding company and the merger of the mutual holding company with and into such subsidiary.

(5) The restructured stock holding company and any other corporation included in the plan of restructuring shall be organized at the time or times set forth in the plan.

(6) Upon the effective date of the restructuring, the membership interests of all members of the restructuring mutual holding company, whether or not eligible members, shall be extinguished, and the eligible members of the restructuring mutual holding company shall be entitled to receive any form of consideration described in ORS 732.612 in accordance with the plan. In applying ORS 732.612 to the members of the restructuring mutual holding company, references in ORS 732.612 to the "converting mutual insurer" shall mean the restructuring mutual holding company, and references to the policies of the eligible members shall mean those policies of the eligible members that result in membership in the restructuring mutual holding company. For this purpose, ORS 732.612 shall be construed and applied so that the effect upon the eligible members of the restructuring mutual holding company is similar to the effect upon the eligible members of a converting mutual insurer. If the consideration for the membership interests of the eligible members is nontransferable subscription rights to purchase shares of capital stock of the issuer, the plan must set the pro forma market value of the restructured stock holding company in the same manner as the pro forma market value of the converted stock insurer is determined in accordance with ORS 732.612. If shares of capital stock of the issuer constitute the only consideration to be received by the eligible members of the restructuring mutual holding company and the plan does not provide for the sale of additional shares of capital stock or other securities of the issuer, the plan does not need to include the valuation of the restructuring mutual holding company.

(7) Unless otherwise specified in the plan, the directors and officers of the restructuring mutual holding company shall serve as directors and officers of the restructured stock holding company until new directors and officers are elected.

(8) The director retains jurisdiction over the restructured stock holding company and any direct or indirect subsidiary of the restructured stock holding company as provided in this section and as provided in ORS 732.517 to 732.592.

(9) A restructured stock holding company shall automatically be a party to any rehabilitation or liquidation proceeding involving a converted stock insurer if the restructuring mutual holding company would have been a party to such proceeding under ORS 732.620. [1997 c.771 §12]

732.625 [1971 c.373 §4; 1993 c.447 §38; renumbered 732.552 in 1993]

732.626 Plan review and approval; general provisions. (1) The Director of the Department of Consumer and Business Services shall review a plan of conversion, reorganization or restructuring that is submitted to the director. Upon review, the director shall approve or conditionally approve the plan if the director finds all of the following:

(a) The applicable provisions of ORS 732.600 to 732.630, and other applicable provisions of law, have been fully met.

(b) The plan protects the rights of policyholders.

(c) The plan will be fair and equitable to the members, and the plan will not prejudice the interests of the members.

(d) The allocation of consideration among the eligible members is fair and equitable.

(e) The converted stock insurer will have capital or surplus, or any combination thereof, that is required of a domestic stock insurer on initial authorization to transact like kinds of insurance, and otherwise will be able to satisfy the requirements of this state for transacting its insurance business.

(f) The plan will not substantially reduce the security of the policyholders and the service to be rendered to the

policyholders.

(g) If a stock holding company or mutual holding company is organized, the financial condition of the stock holding company, the mutual holding company or any subsidiary thereof will not jeopardize the financial stability of the converted stock insurer.

(h) The financial condition of the converting mutual insurer will not be jeopardized by the conversion or reorganization, and the conversion or reorganization will not jeopardize the financial stability of the stock holding company, the mutual holding company or any subsidiary thereof.

(i) The competence, experience and integrity of those persons who will control the operation of the converted stock insurer are not contrary to the interests of policyholders of the converted stock insurer and of the public in allowing the plan to proceed.

(j) Implementation of the plan will protect the interests of the insurance-buying public.

(k) The activity is not subject to other material and reasonable objections.

(L) All modifications required by the director have been made.

(2) An approval or conditional approval of a plan by the director expires if the plan is not carried out within one year after the date of the approval or conditional approval, unless the time period is extended by the director for good cause, upon written application for such extension.

(3) In connection with an approval or disapproval of a plan, when the plan must include a valuation, the director shall separately review and approve or disapprove the valuation stated in the plan, and shall make a specific finding thereon in the approval or disapproval.

(4) The director may retain, at the expense of the converting mutual insurer or restructuring mutual holding company, qualified experts not otherwise a part of the staff of the Department of Consumer and Business Services to assist in reviewing the plan and supplemental documents and valuations, and in making the finding in subsection (3) of this section.

(5) The director may hold a hearing for the purposes of receiving comment on whether a plan should be approved and on any other matter relating to the conversion, reorganization or restructuring. The hearing shall be held within 60 days after the director has received a completed filing of the plan and all information required by the director. [1997 c.771 §13]

732.628 Limitations on ownership of shares in companies resulting from conversion, reorganization or restructuring. (1) For a period of three years following the effective date of a conversion, reorganization or restructuring, unless authorized by the Director of the Department of Consumer and Business Services, the directors, officers and employees of the converted stock insurer, any stock holding company, any mutual holding company or any subsidiary of a stock holding company or mutual holding company collectively shall not own, whether directly or indirectly, more than 25 percent of all outstanding shares issued by the converted stock insurer, any stock holding company or any subsidiary of a stock holding company or mutual holding company.

(2) Except as otherwise provided in ORS 732.600 to 732.630, neither a person nor a group of persons acting in concert may acquire, through public offering, exchange or subscription rights or otherwise, more than five percent of the shares of capital stock of the converted stock insurer, any stock holding company or any subsidiary of a stock holding company or mutual holding company for a period of five years from the effective date of the conversion, reorganization or restructuring except with the approval of the director.

(3) If the plan so provides and not otherwise, directors and officers of the converting mutual insurer, the converted stock insurer, any stock holding company or any subsidiary of a stock holding company or mutual holding company may, within the six-month period following the effective date of the conversion, reorganization or restructuring, purchase or acquire shares of capital stock or other securities of an issuer offered pursuant to the plan. [1997 c.771 §14]

732.630 Dissenters' rights; action challenging validity of conversion, reorganization or restructuring. (1) Dissenters' rights provided in ORS 60.551 to 60.594 are not available to any member, whether or not eligible, of a converting mutual insurer or a restructuring mutual holding company.

(2) An action challenging the validity of or arising from the conversion, reorganization or restructuring or other acts taken or proposed to be taken under the plan or ORS 732.600 to 732.630 must be commenced not later than the 60th day after the effective date of the conversion, reorganization or restructuring or other acts so taken and may be pursued only if they are unlawful or fraudulent. There shall be a rebuttable presumption that any act set forth in an order of the Director of the Department of Consumer and Business Services is lawful. [1997 c.771 §15]

732.635 [1971 c.373 §5; 1993 c.447 §39; renumbered 732.553 in 1993]

732.645 [1971 c.373 §6; 1993 c.447 §40; renumbered 732.554 in 1993]

732.655 [1971 c.373 §7; renumbered 732.558 in 1993]

732.665 [1971 c.373 §8; 1993 c.447 §42; renumbered 732.562 in 1993]

732.675 [1971 c.373 §9; 1993 c.447 §43; renumbered 732.564 in 1993]

732.685 [1971 c.373 §10; 1993 c.447 §44; renumbered 732.566 in 1993]

732.695 [1971 c.373 §11; 1993 c.447 §45; renumbered 732.568 in 1993]

732.705 [1971 c.373 §12; 1993 c.447 §46; renumbered 732.572 in 1993]

PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURERS

732.810 Definitions for ORS 732.810 to 732.814. As used in ORS 732.810 to 732.814:
(1) “Control” and “controlled” have the meanings given those terms in ORS 732.548.
(2) “Controlled insurer” means an authorized insurer that is controlled directly or indirectly by a producer.
(3) “Controlling producer” means a producer who directly or indirectly controls an insurer.
(4) “Producer” means:
(a) An agent or any other person who in any manner solicits, negotiates or procures the making of an insurance contract for any compensation, commission or other thing of value, other than on behalf of the agent or other person.
(b) A person acting in another state as an insurance broker under the laws of the other state when, for any compensation, commission or other thing of value, the person solicits, negotiates or procures the making of an insurance contract on behalf of an insured other than the person. [1993 c.447 §58]

Note: 732.810 to 732.814 were added to and made a part of the Insurance Code by legislative action but were not added to ORS chapter 732 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

732.811 Application of ORS 732.810 to 732.814. (1) ORS 732.810 to 732.814 apply to an insurer who is authorized in this state to transact property insurance or casualty insurance, or both, and is:
(a) Domiciled in this state; or
(b) Domiciled in a state that is not accredited by the National Association of Insurance Commissioners and does not have in effect a law that the Director of the Department of Consumer and Business Services determines to be substantially similar to ORS 732.810 to 732.814. For purposes of this paragraph, a state is accredited if its insurance department or regulatory agency is determined by the National Association of Insurance Commissioners to meet the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners.
(2) ORS 732.517 to 732.592 apply to all parties within a holding company system that is subject to ORS 732.810 to 732.814, to the extent that ORS 732.517 to 732.592 are not inconsistent with ORS 732.810 to 732.814.
(3) ORS 732.810 to 732.814 do not apply to any of the following persons:
(a) A risk retention group as defined in the Superfund Amendments Reauthorization Act of 1986, P.L. 99-499, 100 Stat. 1613 (1986), the Liability Risk Retention Act, 15 U.S.C. § 3901 et seq. or ORS 735.305.
(b) A residual market pool or a joint underwriting authority or association.
(c) An insurer that is owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, an insurer that is owned by the insureds and whose exclusive purpose is to insure risks to member organizations or group members and their affiliates, or any combination thereof. [1993 c.447 §59]

Note: See note under 732.810.

732.812 Filing of financial statements; contract requirements; audit; reports to director. (1) A controlled insurer shall file quarterly financial statements with the Director of the Department of Consumer and Business Services.

(2) Subsections (4) to (7) of this section apply to a controlled insurer and a controlling producer if, in any calendar year, the aggregate amount of gross written premium on insurance placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the allowed assets of the controlled insurer, as reported in the quarterly financial statement of the controlled insurer filed as of September 30 of the prior year.

(3) Subsections (4) to (7) of this section do not apply to a controlled insurer and a controlling producer if:

(a) The controlling producer places insurance only with the controlled insurer or only with the controlled insurer and a member or members of the holding company system of the controlled insurer or the parent, affiliate or subsidiary of the controlled insurer, and receives no compensation based upon the amount of premiums written in connection with the insurance, and accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(b) The controlled insurer, except for insurance written through a residual market facility, accepts insurance placements only from a controlling producer, a producer controlled by the controlled insurer or a producer that is a subsidiary of the controlled insurer.

(4) A controlled insurer shall not accept insurance placements from a controlling producer, and a controlling producer shall not place insurance with a controlled insurer, unless there is a written contract between the controlling producer and the insurer that complies with the requirements of this subsection. The contract must be approved by the board of directors of the insurer before it becomes effective. The contract must specify the responsibilities of each party and contain the following minimum provisions:

(a) A provision authorizing the controlled insurer to terminate the contract for cause, upon written notice to the controlling producer, and requiring the controlled insurer to suspend the authority of the controlling producer to write insurance during the pendency of any dispute regarding the cause for the termination.

(b) A provision requiring the controlling producer to render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owing to the controlling producer.

(c) A provision requiring the controlling producer to remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date must be fixed so that premiums or installments thereof collected are remitted not later than the 90th day after the effective date of any policy placed with the controlled insurer under the contract.

(d) A provision requiring that all funds collected for the controlled insurer’s account be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified trust accounts in accordance with ORS 744.083. ORS 744.084 does not apply for purposes of this paragraph. If a controlling producer is not required to be licensed in this state, the contract must require that the funds of the controlling producer be maintained in compliance with the requirements of the domiciliary jurisdiction of the controlling producer.

(e) A provision requiring the controlling producer to maintain separately identifiable records of insurance written for the controlled insurer.

(f) A provision prohibiting the contract from being assigned in whole or in part by the controlling producer.

(g) A provision requiring the controlled insurer to provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risks. The provision under this paragraph must also require the controlling producer to adhere to the standards, rules, procedures, rates and conditions, and must require the standards, rules, procedures, rates and conditions to be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(h) A provision establishing the rates and terms of the controlling producer’s commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions, charges and other fees must not be greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph (g) of this subsection, examples of comparable business include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits and similar quality of business.

(i) If the contract provides that the controlling producer, on insurance placed with the insurer, is to be compensated

contingent upon the insurer's profits on that insurance, a provision that the compensation must not be determined and paid until at least five years after the premiums on casualty insurance are earned and at least one year after the premiums are earned on any other insurance. The provision under this paragraph must also require that the commissions not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (6) of this section.

(j) A provision establishing a limit on insurance written by the controlling producer in relation to the surplus and total insurance transacted by the controlled insurer. The insurer may establish a different limit for each line or subline of insurance. The provision under this paragraph:

(A) Must require the controlled insurer to notify the controlling producer when the applicable limit is approached and prohibit the controlled insurer from accepting insurance from the controlling producer if the limit is reached.

(B) Must prohibit the controlling producer from placing insurance with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(k) A provision that the controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on insurance the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for reinsurance assumed and for reinsurance ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

(5) A controlled insurer must have an audit committee of the board of directors composed of independent directors. The audit committee shall meet annually with management, the independent certified public accountants of the insurer and an independent casualty actuary or other independent loss reserve specialist acceptable to the director to review the adequacy of the loss reserves of the insurer.

(6) In addition to any other required loss reserve certification, on April 1 of each year, a controlled insurer shall file with the director an opinion of an independent casualty actuary, or an independent loss reserve specialist that is acceptable to the director, reporting loss ratios for each line of insurance written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year end, including losses incurred but not reported, on insurance placed by the producer.

(7) A controlled insurer shall annually report to the director the amount of commissions paid to the producer, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance. [1993 c.447 §60]

Note: See note under 732.810.

732.813 Notice to prospective insured. A controlling producer, prior to the effective date of a policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer. If the insurance is placed through a subproducer who is not a controlling producer, the controlling producer must retain in the records of the controlling producer a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has or will notify the insured of the relationship. [1993 c.447 §61]

Note: See note under 732.810.

732.814 Authority of director over controlling producer and controlled insurer. (1) If the Director of the Department of Consumer and Business Services believes that the controlling producer or any other person has not complied with ORS 732.810 to 732.814 or any rule adopted or order issued thereunder, the director may order the controlling producer to cease placing insurance with the controlled insurer.

(2) If the director finds that the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage because the controlling producer or any other person has not complied with ORS 732.810 to 732.814 or any rule adopted or issued thereunder, the director may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(3) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to ORS chapter 734 and the receiver appointed under that order believes that the controlling producer or any other person has not complied with ORS 732.810 to 732.814 or any rule adopted or order issued thereunder, and if the insurer suffered any

loss or damage because of the noncompliance, the receiver may maintain a cause of action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(4) This section does not affect the authority of the director to take any other administrative action under the Insurance Code.

(5) This section does not alter or affect the rights of policyholders, claimants, creditors or other third parties. [1993 c.447 §62]

Note: See note under 732.810.

732.990 [Repealed by 1967 c.359 §704]