

# Chapter 732

2013 EDITION

## Organization and Corporate Procedures of Domestic Insurers; Regulation of Insurers Generally

<b>GENERAL PROVISIONS</b>		<b>DIRECTORS, OFFICERS AND EMPLOYEES</b>	
732.005	Application of private corporation law; definitions	732.305	Board of directors; qualifications
<b>ORGANIZATION</b>		732.320	Supporting documents for expenditures
732.015	Permit to organize insurer required	732.325	Certain transactions and compensation between insurers and directors, trustees, officers, agents or employees prohibited; other prohibited conduct
732.025	Application for permit to organize stock insurer; rules	<b>SHARES, SHAREHOLDERS AND MEMBERS</b>	
732.035	Application for permit to organize insurer without capital stock	<b>(General Provisions)</b>	
732.045	Investigation of applications to organize insurers	732.405	Authorized shares
732.055	Approval or disapproval of application for permit	732.410	Right to acquire own shares
732.065	Reporting of changes in information in application	732.415	Stock insurer's proxies; regulation by director; rules
732.075	Revoking or suspending permit to organize insurer	<b>(Insider Trading)</b>	
732.085	Incorporators	732.420	"Equity security" defined; rules
732.095	Articles of incorporation	732.425	Application of insider trading regulation
732.105	Filing articles of incorporation and surety bond, letter of credit or deposit	732.430	Filing statement of security ownership with director; rules
732.115	Approval of articles, documents and bond, letter of credit or deposit; certificate of incorporation	732.435	Suit to recover insider profits; exempted transactions; rules
732.125	Registration of securities subsequent to issuance of organization permit and certificate of incorporation	732.440	Prohibited sales of securities
732.135	Soliciting subscriptions and applications	732.445	Establishing or maintaining primary or secondary market in securities; rules
732.145	Stipulations required in subscriptions and applications; disposition of subscribed funds	732.450	Arbitrage transactions exempt; rules
732.155	Organization to be completed within two years; policies to be issued within one year of certification	732.455	Rules
732.165	Liability of directors and incorporators	<b>(Shareholders and Members)</b>	
732.175	Liability for acting as corporate insurer without authority	732.460	Annual report to shareholders or members; rules
<b>CORPORATE PROCEDURES GENERALLY</b>		732.465	Members of domestic mutual insurers
732.205	General powers of insurers	732.470	Voting rights of members of mutual insurer
732.210	Assertion of lack of capacity or power	732.475	Members' meetings and procedures of domestic mutual and reciprocal insurers
732.215	Management contracts prohibited	732.480	Copy of bylaws of domestic mutual insurer to be provided to director; provisions of bylaws
732.220	Exclusive agency contracts	<b>ACQUISITIONS AND MERGERS</b>	
732.225	Impairment of required capitalization prohibited; rules	732.517	Purpose of ORS 732.517 to 732.546
732.230	Order to cure impairment; confidentiality of order	732.518	Definitions for ORS 732.517 to 732.546
732.235	Voluntary dissolution of insurer	732.521	Activities that are prohibited unless specified procedures followed; exceptions; notice of divestiture
732.240	Trusts of life insurance proceeds	732.523	Procedure for acquiring controlling interest of capital stock; filing of statement; contents; request for hearing
732.245	Home office; records, assets; unlawful removal; rules	732.526	Hearing on proposed activity; notice
732.250	Continuity of management in event of national emergency	732.527	Approval of acquisition by chief insurance regulatory officials of two or more jurisdictions; hearing
		732.528	Approval of proposed activity; grounds for refusing approval

## INSURANCE

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732.529	Procedures following approval by director of proposed activity	732.578	Liability of officers and directors of insurer that is subject to registration; allowance for common management; qualifications of directors; exemptions; waiver
732.531	Acquisition of assets or insurance of mutual or reciprocal insurers		
732.533	Statement of acquisition		
732.536	Compliance with foreign or alien laws	732.582	Determination of reasonableness and adequacy of capital and surplus
732.537	Application of ORS 732.527, 732.539, 732.542 and 732.544 to change of control of insurer; exemptions		
732.538	Effect of merger or consolidation		
732.539	Notification of acquisition; confidentiality; order; rules; required information; waiting period	EXAMINATIONS, CONFIDENTIALITY, REGULATORY POWERS	
732.541	Jurisdiction over person obtaining or attempting to obtain control	732.584	Examinations; penalty; costs
732.542	Monopoly or substantial diminishment of competition; director's order; prima facie and substantial evidence; determination of scope and extent of market	732.586	Confidentiality of information; permitted disclosures
732.544	Director's order; effect; requirements for issuing; penalties	732.588	Supervision, rehabilitation or liquidation
732.546	Severability	732.592	Recovery from parent corporation or holding company if domestic insurer ordered into liquidation or rehabilitation
732.547	Remedies for violation of ORS 732.517 to 732.546		
	INSURANCE HOLDING COMPANY REGISTRATION		CONVERSION OR REORGANIZATION OF DOMESTIC MUTUAL INSURER
732.548	Definitions for ORS 732.517 to 732.592	732.600	Definitions for ORS 732.600 to 732.630
732.549	Subsidiaries	732.602	Intent of ORS 732.600 to 732.630
732.551	Registration of insurer members of holding company systems	732.604	Permissible actions of domestic mutual insurer; rules
732.552	Registration statement; form; contents	732.606	Plan for conversion or reorganization; documents filed; approval by director and members
732.553	Certain information not required to be disclosed	732.608	Waiver of requirements of ORS 732.606
732.554	Changes in registration information; reports of distributions to shareholders	732.610	Contents of plan
732.556	Requirement that certain persons provide information to insurers	732.611	Eligible member of domestic mutual insurer or mutual holding company; record date
732.558	Termination of registration by director	732.612	Consideration for membership interest in converting or reorganizing mutual insurer; kinds of consideration; allocation of consideration
732.562	Consolidated registration	732.614	Effect of conversion
732.564	Registration for affiliated insurers	732.616	Reorganization involving organization of stock holding company; subsidiaries
732.566	Exemption from ORS 732.517 to 732.592 by director	732.618	Reorganization involving organization of mutual holding company; subsidiaries
732.567	Presumption of control; rebuttal; hearing	732.620	Status of mutual holding company as corporation; status as insurer; rights and obligations of members; voting; articles of incorporation
732.568	Disclaimer of affiliation; contents; subsequent duty to register; disallowance of disclaimers by director	732.622	Restructuring of mutual holding company
732.569	Annual enterprise risk report; contents; rules	732.624	Approval by Director of Department of Consumer and Business Services of mutual holding company restructuring plan; approval by members; effect of restructuring
732.571	Supervisory college for domestic insurer; purpose; director's powers; payment of expenses		
732.572	Rulemaking authority for ORS 732.517 to 732.592	732.626	Plan review and approval; general provisions
	STANDARDS AND MANAGEMENT OF INSURER WITHIN AN INSURANCE HOLDING COMPANY SYSTEM	732.628	Limitations on ownership of shares in companies resulting from conversion, reorganization or restructuring
732.574	Standards for transactions within holding company; notice	732.630	Dissenters' rights; action challenging validity of conversion, reorganization or restructuring
732.576	Dividends and distributions		

## **DOMESTIC INSURERS**

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<b>PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURERS</b>		<b>732.814</b>	<b>Authority of director over controlling producer and controlled insurer</b>
<b>732.810</b>	<b>Definitions for ORS 732.810 to 732.814</b>	<b>INTERSTATE INSURANCE PRODUCT REGULATION COMPACT</b>	
<b>732.811</b>	<b>Application of ORS 732.810 to 732.814</b>	<b>732.820</b>	<b>Interstate Insurance Product Regulation Compact</b>
<b>732.812</b>	<b>Filing of financial statements; contract requirements; audit; reports to director</b>	<b>732.825</b>	<b>State member of Interstate Insurance Product Regulation Commission</b>
<b>732.813</b>	<b>Notice to prospective insured</b>		

**INSURANCE**

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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 do 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) do 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 is not 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; 2003 c.14 §446]

**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 re-

sources 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; rules.** 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 busi-

ness 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 Reporting of changes in information in application.** 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, 59.710 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) A subscription to the capital stock of an insurer in the process of

organization must 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 may not exceed 15 percent.

(2) Sums paid by subscribers and applicants must 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 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 the insurer's receipt of a certificate of authority must contain a stipulation that the money, securities or evidences of debt advanced by the subscriber or applicant must be returned to the subscriber or applicant without deduction in case the insurer fails to complete the insurer's organization or procure the insurer's certificate of authority or issue the policy applied for. [1967 c.359 §160; 2009 c.541 §48]

**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 lack of capacity or power.** 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; rules.** 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; rules.** (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; qualifications.** A domestic insurer may not have fewer than five directors. A director need not be a shareholder or member of the insurer unless the articles of incorporation so require, but a director must be 21 years of age or older. At least five or one-quarter of the directors, whichever is fewer, must be residents of this state. A majority of directors must be persons who are not salaried officers of the insurer. [1967 c.359 §174; 1997 c.771 §18; 2007 c.433 §1]

**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.** (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.** 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; rules.** 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 the insurer, shall file with the Director of the Department of Consumer and Business Services within 10 days after the person becomes a beneficial owner, director or officer, a statement, on a form prescribed by the director, of the amount of all equity securities of the insurer of which the person is the beneficial owner. If there is a change in the ownership by a person to whom this section applies, the person shall file with the director a statement, on a form prescribed by the director, indicating the person’s ownership and the changes in the person’s owner-

ship. The person shall file the statement of change in ownership before the end of the second business day following the day on which the transaction was executed. If it is not feasible for the person to file the statement by the end of the second business day, the person shall file the statement according to rules adopted by the director. [Formerly 738.730; 2005 c.185 §9]

**732.435 Suit to recover insider profits; exempted transactions; rules.** (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.** (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; rules.** 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.** 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; rules.** 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) When a member is a minor, the vote shall be vested in the parent or legal guardian of the 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; 2003 c.14 §447]

**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 man-

aging 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 a person that acquires or attempts to acquire control of a domestic insurer as described in ORS 732.521 (1)(a), that enters into an agreement to merge with or otherwise acquire control of a domestic insurer as described in ORS 732.521 (1)(b) or that engages in an activity described in ORS 732.521 (1)(c), or an intermediary or subsidiary corporation that holds, directly or indirectly, the assets or voting

securities or assumes the liabilities of an insurer or other corporation.

(2) "Acquisition" means an agreement, arrangement or activity that results in a person acquiring control of another person, directly or indirectly, including but not limited to an acquisition of voting securities, a merger, an acquisition of assets or bulk reinsurance.

(3) "Domestic insurer" means an insurer formed under the laws of this state or a person that controls an insurer formed under the laws of this state.

(4) "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:

(a) The assets of the insurer; or

(b) The insurer's insurance or major class of insurance in force. [1993 c.447 §26; 2013 c.370 §17]

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

**732.521 Activities that are prohibited unless specified procedures followed; exceptions; notice of divestiture.** (1) Unless a person first satisfies the provisions of ORS 732.517 to 732.546, the person may not engage in any of the following activities:

(a) A person other than the person that issues voting securities of a domestic insurer may 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 if, as a result of engaging in and completing any of the following actions, in the open market or otherwise, the person would directly or indirectly control the domestic insurer, or would control the domestic insurer by exercising a right to acquire or by conversion:

(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 may not enter into an agreement to merge with or otherwise acquire control of a domestic insurer.

(c) A person may 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 that provides an option to purchase, or a purchase of or offer to purchase securities that are convertible into voting securities.

(B) Bulk reinsurance by one insurer of all or a significant portion of the insurance, or a major class of the 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 the Director of the Department of Consumer and Business Services exempts 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.

(4)(a) A person that seeks in any manner to give up a controlling interest in a domestic insurer shall file a confidential notice of the person's proposed divestiture with the director and send a copy of the notice to the domestic insurer at least 30 days before the person ceases to own or hold a controlling interest in the domestic insurer. The notice is confidential until the transaction that transfers control of the domestic insurer concludes, unless the director determines, at the director's sole discretion, that keeping the notice confidential will interfere with the enforcement of this subsection.

(b) The director shall determine in which instances an acquisition or divestiture of control will require a person to file for and obtain approval of the transaction.

(c) This subsection does not apply if a person files a statement under ORS 732.523.

(5) If an acquisition is otherwise subject to this section, the acquiring party shall file a notice with the director in accordance with ORS 732.539. An acquiring party that does not file the notice may be subject to the penalty specified in ORS 731.988 (5). [1993 c.447 §§27,28; 1997 c.771 §19; 1999 c.362 §65; 2013 c.370 §18]

**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; contents; request for hearing.**

(1) An acquiring party shall:

(a) File a statement of acquisition that has the information specified in this section with the Director of the Department of Consumer and Business Services for approval. If more than one acquiring party must file a statement under this paragraph, any or all acquiring parties that are acting in concert may file a joint statement.

(b) 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 that has the information specified in this section. A statement mailed under this paragraph must be sent by certified mail, return receipt requested. If a joint statement is filed under paragraph (a) of this subsection, the joint statement must be the statement mailed or delivered under this paragraph.

(2) The statement an acquiring party files with the director under this section must be made under oath or affirmation and must have the following information:

(a) The name and address of the domestic insurer that is subject to the acquisition and of each acquiring party that must file the statement, additional biographical and business information about each acquiring party that must file the statement, and business plans and information regarding persons who will serve as or perform functions of directors or officers, as required by the Director of the Department of Consumer and Business Services.

(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 that provide the consideration. If a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential as provided in ORS 705.137, if the acquiring party filing the statement requests confidentiality.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the acquiring party's preceding five fiscal years, or for as

long as the acquiring party and any predecessors of the acquiring party have existed, if the acquiring party and the acquiring party's predecessors have existed for a shorter period of time, and similar unaudited information as of a date not earlier than 90 days before the statement was filed.

(d) Any plan or proposals that each acquiring party that must file a statement has to liquidate the insurer, to sell the insurer's assets or to merge or consolidate the insurer with any person or to make any other material change in the insurer's business, corporate structure or management.

(e) The number of shares of any security of a type described in ORS 732.521 that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement or acquisition of any security of a type described in ORS 732.521 and a statement as to the method by which the acquiring party determined the fairness of the proposal.

(f) The amount of each class of any security of a type described in ORS 732.521 that each acquiring party owns beneficially or concerning which each acquiring party has a right to acquire beneficial ownership.

(g) A full description of any contracts, agreements or understandings with respect to any security of a type described in ORS 732.521 in which any acquiring party is involved, including but not limited to contracts, agreements or understandings that govern a transfer of any of the securities or that relate to joint ventures, loan or option arrangements, puts or calls, loan guarantees, guarantees against loss or guarantees of profits, division of losses or profits, or giving or withholding proxies. The description must identify the persons with which each acquiring party has entered into the contract, agreement or understanding.

(h) The names of persons who have purchased any securities of a type described in ORS 732.521 during the 12 months before the date on which the acquiring party files the statement under this section, together with the dates of purchase and the amount and type of consideration the persons paid or agreed to pay.

(i) A description of any recommendations to purchase any securities of a type described in ORS 732.521 that an acquiring party made during the 12 months before the date on which the acquiring party files the statement under this section, or of any recommendations that another person made as a result of interviewing an acquiring party or at an acquiring party's suggestion.

(j) Copies of all tender offers, requests, exchange offers, invitations to tender or agreements to acquire securities of a type

described in ORS 732.521, along with any additional material used to solicit the tender offers, requests, exchange offers, invitations to tender or agreements, if any additional material was distributed.

(k) The term of any contract, agreement or understanding for soliciting securities of a type described in ORS 732.521 for tender that is made with or proposed to be made with a broker-dealer, together with the fees, commissions or other compensation the broker-dealer will receive in connection with the solicitation.

(L) An agreement to submit an enterprise risk report under ORS 732.569 each year during which the acquiring party controls the domestic insurer and an acknowledgment that the acquiring party and all subsidiaries in the insurance holding company system that are within the acquiring party's control will provide, at the director's request, information the director needs to evaluate enterprise risk to the insurer.

(m) Any additional information the director may require.

(3) All requests or invitations for tenders or advertisements that make a tender offer or request or invite 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 must have the information specified in subsection (2) of this section. Copies of the materials must be filed with the director at least 10 days before the time the materials are first published or sent or given to security holders. Any additional materials that solicit or request the tenders after the initial solicitation or request must have the information specified in subsection (2) of this section. Copies of the additional materials must 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 specified in 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 that controls the partner or member. If any partner, member or person is a corporation or if the acquiring party is a corporation, the director may require that the information described in subsection (2) of this section be given with respect to the corporation and each officer and director of the corporation and each person that 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 that filed the statement shall file with the director and send to the insurer, within two business days after the party learns of the change, an amendment that sets 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 described 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 that require disclosing similar information under the Securities Exchange Act of 1934, or under a state law that requires a similar registration or disclosure, the party or parties may use the registration statement or disclosure to provide the information the party or parties must provide in the statement required under subsection (1) of this section.

(7) Any acquiring party may file with the completed statement or within 10 days after the date on which the acquiring party filed the statement a written request for a hearing on the acquisition. The insurer that is subject to the acquisition may file with the director a written request for a hearing on the acquisition within 10 days after the acquiring party filed the completed statement. [1983 c.498 §9; 1993 c.447 §29; 1995 c.79 §359; 2001 c.377 §10; 2013 c.370 §19]

**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 person has duly filed a written request for a hearing or if, within 10 days after an acquiring party has filed a completed statement under ORS 732.523, the Director of the Department of Consumer and Business Services finds that holding a hearing is necessary or advisable, the director shall cause a hearing to be held.

(2) The hearing must be held at a time and place the director designates within 30 days after the written request for a hearing was filed or within 30 days after the date of the director's order for a hearing to be held. In addition to any other notice required under ORS chapter 183, at least 20 days before the hearing the director shall notify the person that filed the written request and the acquiring party of the hearing. At least seven days before the hearing, one or more of the insurers or other parties to the proposed activity shall give notice as the director requires to parties the director designates. 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.

(3) The hearing must be conducted in accordance with the provisions for a contested case proceeding under ORS chapter 183. [Formerly 732.535; 2013 c.370 §20]

**732.527 Approval of acquisition by chief insurance regulatory officials of two or more jurisdictions; hearing.** (1) If the chief insurance regulatory officials of two or more jurisdictions must approve a proposal to acquire control of an insurer, a person that files a statement with the Director of the Department of Consumer and Business Services under ORS 732.523 may request a hearing on the acquisition in a single proceeding before all of the chief insurance regulatory officials who must approve the acquisition. The person that files the statement under ORS 732.523 shall file a copy of the statement with the National Association of Insurance Commissioners within five days after filing the statement with the director.

(2) A chief insurance regulatory official of another state may decline to attend the hearing on the acquisition. If the regulatory official declines to attend, the official shall notify the person that filed the statement under ORS 732.523 within 10 days after the date on which the official receives a copy of the statement.

(3) The proceeding described in subsection (1) of this section must be:

(a) Conducted as a public hearing before the chief insurance regulatory officials of the states in which the acquiring party and the insurer subject to the acquisition are domiciled; and

(b) Held in one of the states in which the acquiring party and the insurer subject to the acquisition are domiciled.

(4) A chief insurance regulatory official may attend the proceeding described in subsection (1) of this section in person or by telecommunication. [2013 c.370 §4]

**732.528 Approval of proposed activity; grounds for refusing approval.** (1) The Director of the Department of Consumer and Business Services shall make a determination concerning the proposed activity described in ORS 732.521 (1) not later than the 60th day before the effective date of the activity. The director may refuse, after a public hearing, to approve a proposed activity if:

(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 in, or to any other person affected by, the proposed activity. However,

in connection with an acquisition of the insurer's voting securities from the insurer's shareholders, the director shall evaluate whether the proposed acquisition is fair to the shareholders of the insurer to be acquired only with respect to any shareholders that are unaffiliated with the acquiring party or parties and that would remain after the acquisition is completed.

(c) The activity would substantially reduce the security of and service to be rendered to policyholders of any domestic insurer involved in the proposed activity, 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 the completion of the activity would substantially diminish competition in insurance in this state or tend to create a monopoly. In determining whether the activity would substantially diminish competition in insurance in this state or tend to create a monopoly, the director:

(A) Shall require the information described in ORS 732.539 and apply the standards set forth in ORS 732.542.

(B) May not disapprove the activity if the director finds that the activity would yield substantial economies of scale or increase the availability of insurance as provided in ORS 732.542 (9).

(C) May condition the director's approval of the activity on a party's removing the basis for the director's disapproval within a specific period of time.

(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 receiving a certificate of authority to transact the line or lines of insurance for which the domestic insurer 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 the insurer's assets or consolidate or merge the insurer with any person, or to make any other material change in the insurer's business or corporate structure or management, are unfair and unreasonable to the insurer's policyholders and not in the public interest.

(i) The competence, experience and integrity of the persons that would control the operation of the insurer are such that permitting the activity or permitting completion of the activity would not be in the interest of the insurer's policyholders and the public.

(j) The activity or completing the activity 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 disapproves the proposed activity, the director shall promptly notify, in writing, each insurer and each acquiring party involved in the proposed activity, specifying the bases, factors and reasons for the disapproval and giving each insurer and each acquiring party that filed the statement relating to the proposed activity an opportunity to amend the statement, if possible, to obviate the director's objections.

(3) If the director determines that a party that acquires control of a domestic insurer must maintain or restore the domestic insurer's capital to a level required under the laws and rules of this state, the director shall make and communicate the determination to the acquiring party not later than 60 days after the acquiring party files the statement required under ORS 732.523.

(4) The acquiring party or parties that filed a statement of acquisition under ORS 732.523 shall file any amendment to the statement that responds to the director's objection and, if a hearing was held on the proposed activity, shall resubmit the amendment at a hearing held under this section unless the director finds that a hearing is not necessary to protect the policyholders, shareholders or any other person the proposed activity affects.

(5) The director may retain at the acquiring party's expense any actuaries, accountants and other experts not otherwise a part of the director's staff as the director may reasonably need to assist the director in reviewing the proposed activity.

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

(7) Within 60 days after receiving a notice of approval or disapproval, any insurer or other party to a proposed activity, including the insurer subject to the acquisition, may appeal the director's final order as provided in ORS chapter 183. For purposes of the judicial review, the specifications the director must set forth in the director's written notice are the findings of fact and conclusions of law of the Department of Consumer and Business Services.

(8) On petition to the court, the court's power extends 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; 2003 c.802 §169; 2013 c.370 §21]

**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 judgment, 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; 2003 c.576 §554]

**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]

**732.537 Application of ORS 732.527, 732.539, 732.542 and 732.544 to change of control of insurer; exemptions.** (1) As used in subsection (3)(d) of this section, "market" means the direct written insurance premium for a line of business in this state that an insurer authorized to transact insurance in this state claims in the annual financial statement the insurer files under ORS 731.574.

(2) Except as provided in subsection (3) of this section, ORS 732.527, 732.539, 732.542 and 732.544 apply to an acquisition in which a change of control occurs in an insurer that is authorized to transact insurance in this state.

(3) ORS 732.527, 732.539, 732.542 and 732.544 do not apply to:

(a) A person's purchase of an insurer's securities solely for investment purposes, provided that the person does not use the person's ownership of the securities to cause or attempt to cause an action, or to vote to take an action, that would cause a substantial decrease in competition in an insurance market in this state. If a presumption arises that a person controls the insurer by reason of the person's purchase of securities, the person's purchase of the securities is not solely for investment purposes unless the chief insurance regulatory official in the state in which the person is domiciled accepts a disclaimer of control from the person or the regulatory official affirmatively finds that the person does not control the insurer. The person or the regulatory official must communicate the disclaimer or the finding to the Director of the Department of Consumer and Business Services.

(b) A person's acquisition of another person, if both the person that is acquiring the other person and the person that is subject to the acquisition are not engaged primarily in transacting insurance, either directly or through an affiliate. An exemption under this subsection from the application of ORS 732.527, 732.539, 732.542 and 732.544 is effective only if the person that is acquiring the other person notifies the director in accordance with ORS 732.539 not less than 30 days before the date on which the acquisition would be completed. The requirement to notify the director does not apply if an exclusion set forth in paragraph (a), (c), (d), (e) or (f) of this subsection applies to the acquisition.

(c) An acquisition in which a person acquires another person with which the person is already affiliated.

(d) An acquisition that, immediately after completion, would meet any of these conditions:

(A) The combined market share held by an insurer that is acquiring another insurer and the insurer that is subject to the acquisition does not exceed five percent of the total market share in any market;

(B) The market share in any market does not increase for either an insurer that is acquiring another insurer or the insurer that is subject to the acquisition; or

(C) The combined market share held by an insurer that is acquiring another insurer and the insurer that is subject to the acquisition does not:

(i) Exceed 12 percent of the total market share in any market; or

(ii) Increase by more than two percent of the total market share in any market.

(e) An acquisition for which an insurer that is acquiring another insurer must notify the director in accordance with ORS 732.539 solely because of the effect the acquisition would have on the ocean marine line of business.

(f)(A) An acquisition of an insurer for which the chief insurance regulatory officer of the state in which the insurer is domiciled finds that:

- (i) The insurer is in failing condition;
- (ii) No feasible alternative exists for improving the insurer's condition; and
- (iii) The public benefit that would arise from improving the insurer's condition by means of the acquisition outweigh the detriment that may result from diminishing competition among insurers; and

(B) For an exemption under this paragraph to apply, the chief insurance regulatory officer of the state in which the insurer is domiciled must communicate the regulatory officer's findings to the director. [2013 c.370 §5]

**732.538 Effect of merger or consolidation.** (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 corpo-

rations. 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]

**732.539 Notification of acquisition; confidentiality; order; rules; required information; waiting period.** (1)(a) A person that proposes to acquire another person, or the person that would be subject to the acquisition, must notify the Director of the Department of Consumer and Business Services and wait for the period of time specified in subsection (3) of this section before completing the acquisition. The director shall treat a notice and information that a person submits in accordance with this section as confidential and as exempt from disclosure under ORS 192.410 to 192.505.

(b) A person that completes an acquisition without notifying the director as provided in this subsection may be subject to an order from the director under ORS 732.544.

(2) The director by rule shall prescribe the form and content of the notice that a person must submit under subsection (1) of this section and, in prescribing the form and content of the notice, shall consider the form and content of the notice that the National Association of Insurance Commissioners prescribes for markets in which, under ORS 732.537 (2), completing an acquisition requires submitting a notice under this section. The director may require any additional information the director deems necessary to determine under ORS 732.542 whether the acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly. The additional information may include an opinion from an economist that assesses what competitive impact the acquisition may have in this state. A person that submits an economist's opinion under this subsection shall also submit a summary of the economist's education and experience that reflect the economist's ability to render an informed opinion.

(3)(a) A person may not proceed with an acquisition until 30 days after the director receives the notice under subsection (1) of this section, unless the director permits the acquisition to proceed earlier.

(b) During the period of time described in paragraph (a) of this subsection, the director may, only once, require the person to submit additional information related to the acquisition. If the director requires additional information, the person may not proceed with the acquisition until 30 days after the director receives the additional information, unless the director permits the acquisition to proceed earlier. [2013 c.370 §6]

**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]

**732.542 Monopoly or substantial diminishment of competition; director's order; prima facie and substantial evidence; determination of scope and extent of market.** (1) As used in this section:

(a) "Highly concentrated market" means a market in which the share that the four largest insurers hold is 75 percent or more of the market.

(b) "Insurer" means a company that transacts insurance or a group of companies that transact insurance and are under common management, ownership or control.

(c) "Market" means the relevant product or geographical market the Director of the Department of Consumer and Business Services determines under subsection (7) of this section.

(2) The director may issue an order under ORS 732.544 if an insurer fails to submit adequate information in accordance with ORS 732.539 or if prima facie or substantial evidence of the type described in subsection (3)(a) or (b) of this section exists to support the director's determination that an acquisition may:

(a) Substantially diminish competition in a line of insurance in this state; or

(b) Tend to create a monopoly.

(3)(a) Prima facie evidence exists to support the director's determination that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly if the acquisition:

(A) Is subject to ORS 732.537;

(B) Involves two or more insurers that compete in the same market;

(C) Will take place in a market that has a significant trend toward increased concentration, as provided in subsection (4) of this section; and

(D) Involves at least one insurer within a group of up to eight of the largest insurers in a market that has a significant trend toward increased concentration, as provided in subsection (4) of this section, and another



insurer that is either within the same group or has a market share of two percent or more.

(b) Substantial evidence exists to support the director's determination that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly if:

(A) In a highly concentrated market the insurers involved in the acquisition hold the following shares:

Insurer A	Insurer B
Four percent	Four percent or more
10 percent	Two percent or more
15 percent	One percent or more

(B) In a market that is not highly concentrated, the insurers involved in the acquisition hold the following shares:

Insurer A	Insurer B
Five percent	Five percent or more
10 percent	Four percent or more
15 percent	Three percent or more
19 percent	One percent or more

(4) Evidence of a significant trend toward increased concentration in the market exists if the aggregate market share of any grouping of as many as eight of the largest insurers in the market has increased by seven percent or more over a period of time that begins at least five years and not more than 10 years before the date of the notice described in ORS 732.539 and that ends on the date of the notice described in ORS 732.539.

(5) Notwithstanding the requirement in subsection (2) of this section to find prima facie or substantial evidence before issuing an order under ORS 732.544, the director may issue the order if the director determines, on the basis of other substantial evidence, that the acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly. In making a determination under this subsection, the director may consider:

(a) The market shares of the insurers involved in the acquisition;

(b) Volatility in the relative market shares among the largest insurers in the market;

(c) The number of competitors in the market;

(d) The concentration of the market and any trend toward increased concentration; and

(e) The ease with which an insurer may enter or exit the market.

(6) The director has the burden of showing prima facie evidence for the director's determination that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly. A person may rebut the director's showing or determination under subsection (2), (3) or (5) of this section by providing substantial evidence to the contrary.

(7) In determining the scope and extent of the market for the purpose of determining whether an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly, the director at a minimum shall consider definitions and guidelines that the National Association of Insurance Commissioners promulgates and information that the parties to the acquisition submit. Unless the director determines otherwise:

(a) The product market is the direct written insurance premium for the line of business in this state that an insurer authorized to transact insurance in this state claims in the annual financial statement the insurer files under ORS 731.574; and

(b) The geographical market is this state.

(8) In the tables shown in subsection (3)(b) of this section:

(a) Percentages that do not appear in the tables may be interpolated using the percentages that appear in the tables.

(b) Prima facie evidence exists for the director to determine that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly if more than two insurers are involved in the acquisition and the total market share among the insurers exceeds the aggregated market share of "Insurer A" and "Insurer B" in any row shown in the tables.

(c) "Insurer A" is the insurer with the largest share of the market.

(9) The director may not issue an order under ORS 732.544 if:

(a) The acquisition will yield substantial economies of scale or substantial economies in resource use that cannot feasibly be achieved in any other way and the economies would provide a public benefit that outweighs the public benefit of maintaining competition in the market; or

(b) The acquisition would substantially increase the availability of insurance and the public benefit from increased insurance

availability outweighs the public benefit of maintaining competition in the market. [2013 c.370 §7]

**732.543** [Formerly 732.590; renumbered 732.547 in 2013]

**732.544 Director's order; effect; requirements for issuing; penalties.** (1)(a) The Director of the Department of Consumer and Business Services may issue an order with the effect described in paragraph (b) of this subsection if the director determines that an acquisition may substantially diminish competition in a line of insurance in this state or may tend to create a monopoly or if the director determines that a party to an acquisition has violated a provision of ORS 732.539. The director shall issue the order together with findings of fact and conclusions of law that support the order.

(b) An order issued under paragraph (a) of this subsection may:

(A) Require an insurer to cease and desist from transacting insurance in this state in the line of insurance the director identifies in the director's determination under paragraph (a) of this subsection; or

(B) Deny an application from an insurer for a certificate of authority to transact insurance in this state.

(2) The director may not issue an order under subsection (1) of this section unless the director:

(a) Provides a hearing to the person that will be subject to the order;

(b) Notifies the person of the impending order and the hearing within 30 days after the date on which the person submitted the notice described in ORS 732.539 and not less than 15 days before the date of the hearing; and

(c) Completes the hearing and issues the order not later than 60 days after the date on which the person submitted the notice described in ORS 732.539.

(3) An order issued under subsection (1) of this section does not apply if an acquisition that is the subject of the order does not proceed.

(4) A person that violates an order issued under subsection (1) of this section may be subject to:

(a) A civil penalty under ORS 731.988; or

(b) A suspension or revocation of the person's certificate of authority.

(5) Notwithstanding ORS 732.547 (4), ORS 732.547 (2) and (3) and 732.588 do not apply to an acquisition concerning which the director has issued an order under subsection (1) of this section. [2013 c.370 §8]

**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]

**732.547 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 732.543]

#### 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” means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

(2) “Control” means possessing the direct or indirect power to manage a person or set the person’s policies, whether by owning 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 or corporate office the person holds.

(3) “Enterprise risk” means an activity, circumstance, event or series of events that involve one or more of an insurer’s affiliates and that, if not remedied promptly, are likely to have an adverse material effect on the insurer’s or the insurance holding company system’s financial condition or liquidity, including but not limited to an activity, circumstance, event or series of events that would cause the insurer’s risk-based capital to fall into company action level or cause the Director of the Department of Consumer and Business Services to determine under ORS 731.385 that the insurer is in hazardous financial condition.

(4) “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 described in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

(5) “Insurer” has the meaning given that term in ORS 731.106 but does not include an agency, authority or instrumentality of the United States, the Commonwealth of Puerto Rico, another state or a political subdivision of another state.

(6)(a) “Person” means an individual, corporation, limited liability company, partnership, association, joint stock company, trust, unincorporated organization or a similar entity or combination of entities that are described in this subsection.

(b) “Person” does not include:

(A) A joint venture partnership that is engaged exclusively in owning, managing, leasing or developing real or tangible personal property; or

(B) For the purposes of ORS 732.518, 732.521, 732.523, 732.526 and 732.528, a securities broker that holds, 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.

(7) “Security holder” means a person that owns a security of another person, including a security denominated as common stock, preferred stock or a debt obligation and any instrument that is convertible into or that is evidence of the right to acquire the security of another person.

(8) “Subsidiary” means an affiliate that a person controls directly or indirectly through one or more intermediaries.

(9) “Voting security” means a security that entitles the owner or holder of the security to vote at a meeting of shareholders, including a security that is convertible into a voting security or that is evidence of a right to acquire a voting security. [Formerly 732.605; 2001 c.377 §38; 2013 c.370 §22]

**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 that is 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. The director shall consider and may prescribe as the registration statement form for this section the form that the National Association of Insurance Commissioners prescribes. The registration statement must list, describe, summarize or include, as appropriate and as the director specifies by rule:

(a) The capital structure, general financial condition, ownership and management of the insurer and any person that controls 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 the insurer and the insurer's affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by the insurer's 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 the insurer enters 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 insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(e)(A) Financial statements of or within an insurance holding company system, including financial statements of affiliates, if the director requests the financial statements.

(B) Financial statements that are subject to this paragraph include, but are not limited to, annual audited financial statements that the insurer or the insurance holding company system files with the United States Securities and Exchange Commission under the Securities Act of 1933 or the Securities Exchange Act of 1934.

(C) An insurer that must file financial statements under this paragraph may satisfy the requirement by providing the director with the parent corporation financial statements that have been filed most recently with the United States Securities and Exchange Commission.

(f) 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.

(g) Affidavits that state that:

(A) The insurer's board of directors is responsible for and oversees corporate governance and internal controls; and

(B) The insurer's officers or senior management have approved and implemented, and continue to maintain and monitor, cor-

porate governance and internal control procedures.

(h) Any other information the director requires by rule.

(2) Each registration statement filed under this section must have a summary that outlines all items in the current registration statement that have changed from the prior registration statement. [Formerly 732.625; 2013 c.370 §23]

**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.** (1) The registration requirements of ORS 732.517 to 732.592 do not apply to any insurer, information or transaction the Director of the Department of Consumer and Business Services exempts by rule or order.

(2) ORS 732.521, 732.523, 732.526 and 732.528 do not apply to a transaction that is subject to the provisions of ORS 732.517 to 732.546 that relate to a merger or consolidation between or among two or more insurers. [Formerly 732.685; 2013 c.370 §24]

**732.567 Presumption of control; rebuttal; hearing.** The Director of the Department of Consumer and Business Services shall presume that a person controls another person if the 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 the other person. A person may rebut this presumption with a showing in the manner provided under ORS 732.568 that control does not exist in fact. The director may determine, after giving persons that have an interest in the director's determination notice and opportunity to be heard and after making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption that control exists in fact. [2013 c.370 §12]

**732.568 Disclaimer of affiliation; contents; subsequent duty to register; disallowance of disclaimers by director.** (1) Any person, insurer or member of an insurance holding company system may file with the Director of the Department of Consumer and Business Services a disclaimer of affiliation with any authorized insurer. The disclaimer must fully disclose all material

relationships and bases for affiliation between the person, insurer or member and the insurer to which the disclaimer of affiliation applies, as well as the basis for disclaiming the affiliation.

(2) After the person, insurer or member files a disclaimer, the person, insurer or member and the insurer to which the disclaimer applies are 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 the person, insurer or member of the insurance holding company system that filed the disclaimer unless the director disallows the disclaimer.

(3) A disclaimer that the person, insurer or member of the insurance holding company system files under this section is effective unless within 30 days after the director receives the disclaimer the director notifies the person, the insurer or the member of the insurance holding company system that director has disallowed the disclaimer.

(4) The director shall grant a hearing if the person, insurer or member of an insurance holding company system that filed the disclaimer requests a hearing. [Formerly 732.695; 2013 c.370 §25]

**732.569 Annual enterprise risk report; contents; rules.** Every insurer that must register with the Director of the Department of Consumer and Business Services under ORS 732.551 shall file an enterprise risk report each year. The enterprise risk report must identify, to the best of the insurer's knowledge and belief, the material risks within the insurance holding company system of which the insurer is a part that could pose enterprise risk to the insurer. The insurer shall file the enterprise risk report with the chief insurance regulatory official in the state that the director determines is the lead state for the insurance holding company system of which the insurer is a part. The director shall make the determination in accordance with procedures the director adopts by rule after considering procedures set forth in a Financial Analysis Handbook that the National Association of Insurance Commissioners has adopted. [2013 c.370 §10]

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

**732.571 Supervisory college for domestic insurer; purpose; director's powers; payment of expenses.** (1)(a) The Director of the Department of Consumer and Business Services may establish or participate in a temporary or a permanent supervisory college for any domestic insurer that is:

(A) Registered under ORS 732.551; and

(B) Part of an insurance holding company system that has international operations.

(b) The director may establish or participate in a supervisory college in order to:

(A) Ensure that the insurer complies with the Insurance Code;

(B) Assess the insurer's:

(i) Financial, legal and regulatory position;

(ii) Risk exposure and risk management; or

(iii) Governance processes; or

(C) Examine an individual insurer under ORS 732.584.

(c) The director may participate in a supervisory college with state, federal, international or other regulatory agencies that supervise the insurer or the insurer's affiliates.

(2)(a) As part of the director's establishment of or participation in a supervisory college, the director may:

(A) Specify criteria under which other regulatory agencies may become members of and participate in the supervisory college;

(B) Specify the functions of the supervisory college and the roles that other regulatory agencies will undertake in the supervisory college;

(C) Establish a leader among the regulatory agencies that participate in the supervisory college;

(D) Plan meetings and supervisory actions, specify processes for sharing information and otherwise coordinate the activities of the supervisory college;

(E) Draft a crisis management plan;

(F) Determine how long the director will participate in any supervisory college; and

(G) Take other actions that are necessary to participate in or facilitate a supervisory college's operations.

(b) The director may enter into agreements with other regulatory agencies under ORS 705.137 for any of the purposes identified in paragraph (a) of this subsection.

(3) An insurer that is registered under ORS 732.517 to 732.592 is liable to and shall pay to the director a reasonable amount that is equal to the expenses, including reasonable travel expenses, that the director incurs as a result of the director's participation in a supervisory college under this section. The director may assess the insurer regularly in order to pay the expenses.

(4) This section does not delegate to a supervisory college the director's authority within this state to regulate or supervise an

insurer or the insurer's affiliates. [2013 c.370 §11]

**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 that are consistently applied.

(d) The books, accounts and records of each party to the transaction must be maintained so as to disclose clearly and accurately the nature and details of the transaction, including accounting information that is 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 the insurer's financial needs.

(f) Agreements for cost-sharing services and management must include provisions that the Director of the Department of Consumer and Business Services requires by rule.

(2)(a) A domestic insurer and any person in the domestic insurer's insurance holding company system may enter into a transaction described in this subsection, including an amendment to or modification of an affiliate agreement that is subject to standards set forth in this section, only if:

(A) The domestic insurer has notified the director of the domestic insurer's intention to enter into the transaction in writing and not later than the 30th day before the transaction, or within a shorter period the director allows; and

(B) The director does not disapprove the transaction within the period.

(b) A notice for a transaction that is an amendment to or modification of an affiliate agreement that was previously filed must include a statement of reasons for the change and an estimate of the financial impact the change would have on the domestic insurer. An insurer shall notify the director informally within 30 days after a previously filed agreement has terminated, and the director, after receiving the notice, shall determine the type of filing the insurer must submit, if any.

(c) This subsection does not authorize or permit any transaction that, in the case of an insurer that is not a member of the same insurance holding company system, would be otherwise contrary to law.

(d) This subsection applies to the following transactions:

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

(i) With respect to insurers that are 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.

(ii) With respect to insurers that are 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 that is not an affiliate, if 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 that is making the loans or extending the credit. This subparagraph applies to transactions that equal or exceed the following:

(i) With respect to insurers that are 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.

(ii) With respect to insurers that are 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 to reinsurance agreements, reinsurance pooling agreements and agreements in which the reinsurance premium or a change in the insurer's liabilities, the projected reinsurance

premium or a projected change in the insurer's liabilities in any of the next three years equals or exceeds five percent of the insurer's combined capital and surplus, as of the 31st day of December immediately preceding, including 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 the assets will be transferred to one or more affiliates of the insurer.

(D) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements.

(E) A guarantee that a domestic insurer makes if the guarantee is not quantifiable as to amount. If the guarantee is quantifiable as to amount, the domestic insurer is not required to notify the director under this section unless the guarantee exceeds the lesser of one-half of one percent of the insurer's admitted assets or 10 percent of surplus with respect to policyholders as of the 31st day of December immediately preceding.

(F) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer, the amount of which, together with the insurer's existing acquisitions or investments in the person or affiliate, exceeds two and one-half percent of the insurer's surplus to policyholders. An insurer that acquires or invests directly or indirectly in a subsidiary, or in an insurance affiliate that is not a subsidiary, is not required to notify the director under this section if the insurer makes the acquisition or the investment otherwise in accordance with ORS 732.517 to 732.592.

(G) Any material transactions specified by rule that the director determines may adversely affect the interests of the insurer's policyholders.

(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 that are within the insurance holding company system if the purpose of the separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

(4) In reviewing a transaction in accordance with subsection (2) of this section, the director shall 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 the domestic insurer makes in

any one corporation if the total investment the insurance holding company system makes in the corporation exceeds 10 percent of the corporation's voting securities. [1993 c.447 §47; 2013 c.370 §26]

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

**732.576 Dividends and distributions.** (1)

This section applies to dividends and other distributions within an insurance holding company system.

(2)(a) A domestic insurer subject to registration may not pay or make any extraordinary dividend or distribution to the domestic insurer's shareholders either until 30 days after the Director of the Department of Consumer and Business Services has received notice of the declaration of the dividend or distribution, 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.

(b) For purposes of this section:

(A) "Extraordinary dividend or distribution" includes any dividend or distribution of cash or other property the fair market value of which, 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:

(i) Ten percent of the combined capital and surplus of the insurer as of the 31st day of December immediately preceding; or

(ii) 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.

(B) "Extraordinary dividend or distribution" does not include pro rata distributions of any class of the insurer's own securities.

(3)(a) 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.

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

(4) An insurer may declare an extraordinary dividend or distribution that is conditional upon the director's approval of the



dividend or distribution. The declaration confers no rights upon shareholders until the date on which the director approves the payment of the dividend or distribution, or until 30 days after the director received notice of the declaration of the dividend or distribution under subsection (2) of this section if the director does not disapprove the payment within the 30-day period.

(5) An insurer other than a life insurer, in determining whether a dividend or distribution is an extraordinary dividend or distribution, may carry forward net income from the previous two calendar years that the insurer has not already paid out as dividends. The insurer shall calculate the amount of the net income the insurer may carry forward by taking the insurer's net income from the second and third preceding calendar years, not including realized capital gains, less dividends the insurer paid in the second and immediately preceding calendar years. [1993 c.447 §48; 2013 c.370 §27]

**732.578 Liability of officers and directors of insurer that is subject to registration; allowance for common management; qualifications of directors; exemptions; waiver.** (1) A person's control of a domestic insurer that is subject to registration does not relieve the officers and directors of the insurer of any obligation or liability to which the officers and directors would otherwise be subject by law. The domestic insurer must be managed so as to assure the insurer's separate operating identity in accordance with the Insurance Code.

(2) This section does not preclude a domestic insurer from having or sharing a common management, or from using personnel, property or services jointly or cooperatively, with another person under an arrangement that meets the standards set forth in ORS 732.574.

(3)(a) At least one-third of a domestic insurer's directors and at least one-third of the members of each committee of the insurer's board of directors must be persons who are not:

(A) Officers or employees of the insurer or of any entity that controls, is controlled by or is under common control with the insurer; or

(B) Beneficial owners of a controlling interest in the voting securities of the insurer or of an entity that controls, is controlled by or is under common control with the insurer.

(b) A quorum for transacting business at a meeting of the insurer's board of directors or any committee of the board of directors must include at least one person with the qualifications described in paragraph (a) of this subsection.

(4) A domestic insurer's board of directors shall establish at least one committee of which the entire membership consists of persons who have the qualifications described in subsection (3)(a) of this section. The board of directors shall give the committee the board establishes under this subsection responsibility for:

(a) Recommending independent certified public accountants for the board to select;

(b) Reviewing the insurer's financial condition and the scope and results of any independent or internal audit;

(c) Nominating candidates for election to the board of directors;

(d) Recommending principal officers for selection and the compensation for the principal officers; and

(e) Evaluating the principal officers' performance.

(5) Subsections (3) and (4) of this section do not apply to a domestic insurer if the person that controls the domestic insurer has a board of directors, and committees of the person's board of directors, that meet the requirements set forth in subsections (3) and (4) of this section.

(6)(a) The Director of the Department of Consumer and Business Services may waive the requirements set forth in subsections (3) and (4) of this section if an insurer applies for a waiver and:

(A) The insurer has less than \$300 million in annual direct written and assumed premium, excluding premium reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program; or

(B) Unique circumstances justify the director's waiver.

(b) In determining whether to grant the waiver, the director may consider what type of business entity the insurer is, the volume of insurance the insurer transacts, whether the insurer has qualified board members, the insurer's ownership or organizational structure and any other factor the director deems relevant. [1993 c.447 §49; 2013 c.370 §28]

**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; penalty; costs.

(1)(a) In addition to other powers that the Director of the Department of Consumer and Business Services has under the Insurance Code to examine and investigate insurers, the director may also order any insurer registered under ORS 732.517 to 732.592 to produce books, records, accounts, papers, documents and computer and other recordings the insurer or the insurer's affiliates have that are necessary for the director to ascertain the insurer's financial condition or to determine the insurer's compliance with the Insurance Code. If the insurer fails to comply with the director's order, the director may examine the affiliates to obtain the information the director requires.

(b) In examining the insurer's financial condition, the director may determine the extent to which the person that controls the insurer, the insurance holding company system or an entity within the insurance holding company system may cause enterprise risk to the insurer.

(c) In determining compliance with the Insurance Code, the director may order an insurer that is registered under ORS 732.517 to 732.592 to produce information the insurer does not possess but to which the insurer might have access by reason of a contractual relationship or a statutory obligation or by other means. If the insurer cannot obtain the information the director requires, the insurer shall provide the director with a detailed explanation of the reason the insurer cannot obtain the information and shall identify the person that possesses the information. If the director finds that the insurer's explanation is without merit, the director may impose a civil penalty on the insurer under ORS 731.988 or may suspend or revoke the insurer's certificate of authority.

(2) ORS 731.302 (2) applies to an examination the director conducts under subsection (1) of this section, and an insurer shall otherwise pay the costs of an examination of the insurer under this section as provided in ORS 731.316. [1993 c.447 §51; 2013 c.370 §29]

**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 of information or documents 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 under ORS 732.584 are subject to the provisions of ORS 731.312.

(2) All information reported in accordance with 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 or only if:

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

(b) The director, after giving the insurer and the insurer's affiliates that would be affected by the disclosure notice and opportunity to be heard, determines that disclosing the information will serve the interest of policyholders, shareholders or the public. If the director determines that disclosing the information will serve one or more of such interests, the director may publish all or any part of the information in any manner that the director determines is appropriate.

(3) The director's sharing of information under ORS 732.517 to 732.592 does not delegate regulatory or rulemaking authority. The director is solely responsible for administering, executing and enforcing ORS 732.517 to 732.592. [1993 c.447 §52; 2001 c.377 §11; 2013 c.370 §30]

**732.588 Supervision, rehabilitation or liquidation.** (1) If the Director of the Department of Consumer and Business Services determines that a person's violation of any provision of ORS 732.517 to 732.592 so impairs the financial condition of a domestic insurer as to threaten insolvency or makes the insurer's further transaction of business hazardous to the insurer's 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.

(2) If the director determines that a person's violation of ORS 732.521, 732.523, 732.526, 732.541 or 732.566 prevents the director from fully understanding the enterprise risk that an insurance holding company system or an affiliate of an insurer presents to the insurer, the director may, on the basis of the violation, disapprove a dividend or distribution and may place the insurer under supervision as provided in subsection (1) of this section. [1993 c.447 §53; 2013 c.370 §31]

**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 hold-

ing 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 a 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 a domestic stock insurer into which a domestic mutual insurer is converted in accordance with ORS 732.600 to 732.630.

(3) "Converting mutual insurer" means a 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 or dates on which the plan or a part of the plan becomes effective as set forth in an order of the Director of the Department of Consumer and Business Services.

(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 a converted stock insurer and:

(a) A majority of the outstanding shares of voting capital stock of which a mutual holding company owns; and

(b) A majority in total value of the outstanding shares of capital stock of which a mutual holding company owns.

(6) "Issuer" means a corporation the director approves and any of the following:

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

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

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

(7) "Member" means:

(a) With respect to a domestic mutual insurer, any owner, as defined in ORS 732.465 (3), of one or more policies of insurance, other than a policy of reinsurance, issued by the mutual insurer.

(b) With respect to a mutual holding company, any owner, as defined in ORS 732.465 (3), of one or more policies of insurance, other than a policy of reinsurance, is-

sued 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.

(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 a 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 a stock holding company that results from restructuring a mutual holding company.

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

(14) “Restructuring mutual holding company” means a 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 a 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, unless the person’s control is set forth in the plan and approved by the director. As used in this paragraph, “control” has the meaning given that term in ORS 732.548.

(16)(a) “Voting capital stock” means capital stock the holder of which has the right to vote in the election of directors.

(b) “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; 2013 c.370 §32]

**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.** (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]

**732.611 Eligible member of domestic mutual insurer or mutual holding company; record date.** (1)(a) A member is an eligible member of a domestic mutual insurer for purposes of ORS 732.600 to 732.630 if the member's policy is in force as of the record date for a plan of conversion or reorganization.

(b) For purposes of this subsection, the record date is the date on which the mutual insurer's board of directors adopts the plan of conversion or reorganization or on some other date that the plan specifies as the record date and that the Director of the Department of Consumer and Business Services approves.

(2)(a) A member is an eligible member of a mutual holding company for purposes of ORS 732.622 and 732.624 if the member's policy is in force as of the record date for a plan of restructuring.

(b) For purposes of this subsection, the record date is the date on which the mutual holding company's board of directors adopts the plan of restructuring or on another date that the plan specifies as the record date and that the director approves. [2013 c.370 §14]

**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 that involves the organization of a stock holding company, consideration for the membership interests of the eligible members of a converting mutual insurer consists 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 allocating to eligible members, without payment, nontransferable subscription rights to purchase shares of capital stock of the issuer. In addition, the plan must:

(a) 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 must 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 must be allocated in accordance with subsection (7) of this section.

(b) Specify the expiration date of the subscription rights or authorize the board of directors of the converting mutual insurer to establish the expiration date. An eligible member may exercise the subscription rights, in whole or in part, in the manner described in the plan including, but not limited to, paying 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 a 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 must be set forth in the plan and must 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 boards of directors of the converting mutual insurer and the issuer shall determine the proposed subscription exercise price per share and the director must approve the proposed price based on the interests of the eligible members, the policyholders, the converted stock insurer and the issuer.

(c) 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) 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 must 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 must 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) Further provide that any shares of capital stock of the issuer for which subscription rights are allocated to the eligible members but that the eligible members do not purchase by exercising the members' subscription rights must be sold in a public offering through an underwriter, unless the number of shares that the eligible members do not purchase is so small in number that the expense of a public offering is not warranted, in which case the plan may provide for the sale of the 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 the offering of shares to be postponed or the terms of the offering to be modified.

(3) A plan may provide for allocating to the eligible members, without payment, 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 must 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 must be allocated in accordance with subsection (7) of this section. If shares of capital stock of the issuer constitute the only consideration the eligible members will receive and the plan does not provide for selling 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 allocating to the eligible members, without payment, 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 the issuer's best efforts to encourage and assist in establishing a public market for the shares unless the director finds that a 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 who reside in a foreign country or other jurisdiction if a small number of eligible members reside in the foreign country or other jurisdiction and any registration, qualification, filing or other compliance matters under the laws of the 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 selling 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 that transacts primarily life or health insurance, or both, the consideration specified in subsection (1) of this section must be allocated among the eligible members in accordance with a fair and equitable formula. The for-

mula 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 the eligible members hold; 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 in accordance with a fair and equitable formula. The formula for allocating the consideration among the eligible members must either:

(a) Allocate the consideration among the eligible members in the proportion that the aggregate premiums the converting mutual insurer earns on the eligible member's policies in force during a specified period before the record date described in ORS 732.611 (1) bear to the aggregate premiums that the converting mutual insurer earns during the same period on all eligible members' policies in force. The specified period must be 36 months unless the plan specifies another period.

(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 members and other factors that the director determines are appropriate.

(9) In the case of a conversion or in the case of a reorganization that involves 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 member's membership interest.

(10) In the case of a reorganization that involves the organization of a mutual holding company, the membership interests of the members of the converting mutual insurer, whether or not the members are eligible members, must be merged into the mutual holding company, and consequently the membership interests of the members of the converting mutual insurer must become



membership interests in the mutual holding company. [1997 c.771 §6; 2013 c.370 §33]

**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 con-

verting 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 consti-

tute 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 non-voting.

(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" has the meaning given that term in ORS 732.548.

(2) "Controlled insurer" means an authorized insurer that an insurance producer controls directly or indirectly.

(3) "Controlling producer" means an insurance producer who directly or indirectly controls an insurer.

(4)(a) "Insurance producer" has the meaning given that term in ORS 731.104.

(b) "Insurance producer" does not include a person who sells, solicits or negotiates an insurance contract on the insurance producer's behalf. [1993 c.447 §58; 2003 c.364 §82; 2013 c.370 §34]

**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 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, an insurance producer controlled by the controlled insurer or an insurance 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 pro-

ducer, 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 an insurance 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 com-

parable business placed with the controlled insurer by insurance 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 insurance producer.

(7) A controlled insurer shall annually report to the director the amount of commissions paid to the insurance 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; 2003 c.364 §83]

**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.

**INTERSTATE INSURANCE PRODUCT REGULATION COMPACT**

**732.820 Interstate Insurance Product Regulation Compact.** The Interstate Insurance Product Regulation Compact is enacted into law and entered into on behalf of this state with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I  
PURPOSE

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

(1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

(2) To develop uniform standards for insurance products covered under the compact;

(3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related to these products, submitted by insurers authorized to do business in one or more compacting states;

(4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

(5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of

uniform standards and review of insurance products covered under the compact;

(6) To create the Interstate Insurance Product Regulation Commission; and

(7) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

## ARTICLE II DEFINITIONS

As used in this compact:

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

(2) "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.

(3) "Commission" means the Interstate Insurance Product Regulation Commission established by this compact.

(4) "Commissioner" means the chief insurance regulatory official of a state, including, but not limited to, a commissioner, superintendent, director or administrator.

(5) "Compacting state" means any state that has enacted this compact legislation and that has not withdrawn pursuant to subsection (1), Article XIV, of this compact, or been terminated pursuant to subsection (2), Article XIV, of this compact.

(6) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact.

(7) "Member" means the person chosen by a compacting state as its representative to the commission, or the person's designee.

(8) "Noncompacting state" means any state that is not at the time a compacting state.

(9) "Operating procedures" means procedures adopted by the commission implementing a rule, uniform standard or a provision of this compact.

(10) "Product" means the form of a policy or contract, including any application, endorsement or related form that is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an insurer is authorized to issue.

(11) "Rule" means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed pursuant to Article VII of this compact, designed to implement, interpret or prescribe law or policy or describing the organization, procedure or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(12) "State" means any state, district or territory of the United States of America.

(13) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(14) "Uniform standard" means a standard adopted by the commission for a product line, pursuant to Article VII of this compact, and shall include all of the product requirements in aggregate. However, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable or against public policy as determined by the commission.

## ARTICLE III ESTABLISHMENT OF THE COMMISSION AND VENUE

(1) The compacting states hereby create and establish a joint public agency known as the Interstate Insurance Product Regulation Commission. Pursuant to Article IV of this compact, the commission shall have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith and give approval to those product filings satisfying applicable uniform standards. However, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. This subsection does not prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

ARTICLE IV  
POWERS OF THE COMMISSION

The commission shall have all of the following powers:

(1) To adopt rules under Article VII of this compact, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(2) To exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission. However, a compacting state shall have the right to opt out of such uniform standard pursuant to Article VII of this compact, to the extent and in the manner provided in this compact. Any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

(3) To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact.

(4) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior

to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact.

(5) To exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

(6) To adopt operating procedures, pursuant to Article VII of this compact, that shall be binding in the compacting states to the extent and in the manner provided in this compact.

(7) To bring and prosecute legal proceedings or actions in its name as the commission. However, the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(9) To establish and maintain offices.

(10) To purchase and maintain insurance and bonds.

(11) To borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state.

(12) To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications, and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel.

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same. However, at all times the commission shall strive to avoid any appearance of impropriety.

(14) To lease, purchase, accept appropriate gifts or donations of or otherwise own, hold, improve or use any property, real, personal or mixed. However, at all times the commission shall strive to avoid any appearance of impropriety.

(15) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed.

(16) To remit filing fees to compacting states as may be set forth in the bylaws, rules or operating procedures.

(17) To enforce compliance by compacting states with rules, uniform standards, operating procedures and bylaws.

(18) To provide for dispute resolution among compacting states.

(19) To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting states, consistent with the purposes of this compact.

(20) To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments.

(21) To establish a budget and make expenditures.

(22) To borrow money.

(23) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

(24) To provide and receive information from, and to cooperate with, law enforcement agencies.

(25) To adopt and use a corporate seal.

(26) To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

## ARTICLE V

### ORGANIZATION OF THE COMMISSION

(1)(a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in this compact to the contrary, no action of the commission with respect to the adoption of a uniform standard

shall be effective unless two-thirds of the members vote in favor thereof.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including but not limited to:

(A) Establishing the fiscal year of the commission.

(B) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee.

(C) Providing reasonable standards and procedures for:

(i) The establishment and meetings of other committees; and

(ii) Governing any general or specific delegation of any authority or function of the commission.

(D) Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of residents to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting. As soon as practicable, the commission must make public:

(i) A copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed; and

(ii) Votes taken during the meeting.

(E) Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission.

(F) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

(G) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees.

(H) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

(2)(a) A management committee comprising no more than 14 members shall be established as follows:

(A) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the National Association of Insurance Commissioners for the prior year;

(B) Four members from those compacting states with at least two percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(C) Four members from those compacting states with less than two percent of the market based on the premium volume described above, with one selected from each of the four zone regions of the National Association of Insurance Commissioners as provided in the bylaws.

(b) The management committee shall have authority and duties as may be set forth in the bylaws, including but not limited to:

(A) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(B) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard. However, a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(C) Overseeing the offices of the commission; and

(D) Planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for any period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

(3)(a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee. However, the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(4) The commission shall maintain its corporate books and records in accordance with the bylaws.

(5)(a) The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. However, this paragraph does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for be-

lieving occurred within the scope of commission employment, duties or responsibilities. However, this paragraph does not prohibit that person from retaining the person's own counsel. Also, the actual or alleged act, error or omission must not have resulted from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. However, the actual or alleged act, error or omission must not have resulted from the intentional or willful and wanton misconduct of that person.

#### ARTICLE VI MEETINGS AND ACTS OF THE COMMISSION

(1) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

#### ARTICLE VII RULES AND OPERATING PROCEDURES: RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

(1) The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. In the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, then such an action by the

commission shall be invalid and have no force and effect.

(2) Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) A uniform standard shall become effective 90 days after its adoption by the commission or on such later date as the commission may determine. However, a compacting state may opt out of a uniform standard as provided in this Article. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure or amendment.

(4)(a) A compacting state may opt out of a uniform standard either by legislation or regulation adopted by the insurance department under the compacting state's Administrative Procedure Act. If a compacting state elects to opt out of a uniform standard by regulation, the compacting state must:

(A) Give written notice to the commission no later than 10 business days after the uniform standard is adopted, or at the time the state becomes a compacting state; and

(B) Find that the uniform standard does not provide reasonable protections to the residents of the state, given the conditions in the state.

(b) The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the residents of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the residents of the state outweigh:

(A) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact; and

(B) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

(c) A compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently adopted.

(5) If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under Article XIV of this compact for withdrawals.

(6) If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to 90 days, unless affirmatively extended by the commission. However, a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances that warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge that prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

(7) Not later than 30 days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure. However, the

filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

(8) As used in this article, "opt out" means any action by a compacting state to decline to adopt or participate in an adopted uniform standard.

#### ARTICLE VIII COMMISSION RECORDS AND ENFORCEMENT

(1) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(2) Except as to privileged records, data and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state of the duty to disclose any relevant records, data or information to the commission. However, disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement. Except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the no-

tice of noncompliance, the compacting state shall be deemed to be in default as set forth in Article XIV of this compact.

(4) Any commissioner of a compacting state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise the state's authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commissioner officer or employee, must authorize the action. However, authorization under this paragraph does not require notice to the insurer, opportunity for hearing or disclosure of requests for authorization or records of the commission's action on such requests.

#### ARTICLE IX DISPUTE RESOLUTION

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise among two or more compacting states, or between compacting states and noncompacting states. The commission shall adopt an operating procedure providing for resolution of such disputes.

#### ARTICLE X PRODUCT FILING AND APPROVAL

(1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insur-

ance, and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. The commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

#### ARTICLE XI REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

(1) Not later than 30 days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously or in a manner that is an abuse of discretion or otherwise not in accordance with the law is subject to judicial review in accordance with subsection (4) of Article III of this compact.

(2) The commission shall have authority to monitor, review and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (1) of this Article.

#### ARTICLE XII FINANCE

(1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the National



Association of Insurance Commissioners, compacting states and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties is not compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year may not be approved until it has been subject to notice and comment as set forth in Article VII of this compact.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission may not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request. However, any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) A compacting state does not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held under the provisions of this compact.

### ARTICLE XIII COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

(1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states. However, the commission shall become effective for purposes of adopting uniform standards for, reviewing and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after 26 states are compacting states or, alternatively, states representing greater than 40 percent of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the National Association of Insurance Commissioners for the prior year, are compacting states. Thereafter, the compact becomes effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

### ARTICLE XIV WITHDRAWAL, DEFAULT AND TERMINATION

(1)(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state. However, a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in paragraph (e) of this subsection.

(c) The commissioner of a withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within 10 days after its receipt of notice thereof.

(e) The withdrawing state is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2)(a) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or adopted rules or operating procedures, then the commission may suspend, after notice and hearing as set forth in the bylaws, all rights, privileges and benefits conferred by this compact on the defaulting state from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (1) of this Article.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3)(a) Dissolution of the compact is effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

#### ARTICLE XV

##### SEVERABILITY AND CONSTRUCTION

(1) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed.

#### ARTICLE XVI

##### BINDING EFFECT OF COMPACT AND OTHER LAWS

(1)(a) This compact does not prevent the enforcement of any other law of a compacting state, except as provided in paragraph (b) of this subsection.

(b) For any product approved or certified to the commission, the rules, uniform standards and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard or other requirement of the commission that governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. However, no action taken by the commission shall abrogate or restrict:

(A) The access of any person to state courts;

(B) Remedies available under state law related to breach of contract, tort or other laws not specifically directed to the content of the product;

(C) State law relating to the construction of insurance contracts; or

(D) The authority of the attorney general of the state, including but not limited to

maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

(2)(a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those

obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

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[2011 c.520 §2]

**Note:** 732.820 and 732.825 were added to and made a part of the Insurance Code by legislative action but were not added to ORS chapter 732 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

**732.825 State member of Interstate Insurance Product Regulation Commission.** The Director of the Department of Consumer and Business Services or a designee of the director shall serve as this state's member of the Interstate Insurance Product Regulation Commission established under the Interstate Insurance Product Regulation Compact set forth in ORS 732.820. [2011 c.520 §3]

**Note:** See note under 732.820.

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

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**INSURANCE**

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