

TITLE 56

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DEFINITIONS AND APPLICATION

736.005 Definitions. (1) Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event, whereby the insured or his beneficiary suffers loss or injury.

(2) "General Insurance Law" means all the provisions of ORS chapters 736, 738, 739, 744, 747 and 749 except ORS 736.215 in so far as it does not relate to fire insurance, ORS 736.320, 736.325, 736.480, 738.310, 739.205 to 739.245, 739.410, 739.415, 739.420, 739.530, 744.100, 744.130, 744.140, 747.190, 749.010 to 749.150, 749.990 and subsection (4) of ORS 736.990, and also means ORS 163.430.

(3) When used in the General Insurance Law, unless the context otherwise requires:

(a) "Company," "corporation," or "insurance company," or "insurance corporation," includes all corporations, associations, partnerships or individuals engaged as insurers in the business of insurance.

(b) "Domestic" applies to companies incorporated under the laws of this state. "Foreign" applies to companies incorporated by any state of the United States other than this state or by any territory or insular possession of the United States, or by the District of Columbia. "Alien" applies to companies organized under the laws of any country other than the United States or some state, territory or insular possession thereof or the District of Columbia.

(c) "Commissioner" or "Insurance Commissioner" means the State Insurance Commissioner.

(d) "Insurance agent" or "agent" means a person authorized in writing by any insurance company lawfully authorized to transact business in this state to act as its representative, with authority to solicit, negotiate and effect contracts of insurance in its behalf, or any member of a copartnership or association, or any stockholder, officer or agent of a corporation so authorized and permitted by law to solicit, negotiate and effect contracts of insurance.

(e) "Insurance solicitor" or "solicitor" means an individual authorized by a duly licensed insurance agent to solicit contracts of insurance solely on behalf of such agent.

736.010 Application of General Insurance Law. All insurance companies doing business in this state shall be subject to the General Insurance Law.

736.015 Exemptions from provisions of General Insurance Law. (1) The General Insurance Law shall not apply to:

(a) Any insurance written by any inter-insurance exchange or reciprocal insurance exchange authorized to transact insurance business of the class or kind it proposes to transact, and which has complied with the provisions of ORS 749.010 to 749.150.

(b) Those engaged in the furnishing of medicines, medical and surgical services, hospital services, ambulance services, nursing, dental services, burial services or any necessary services contingent upon sickness or personal injury.

(c) Organizations working under the lodge system and having ritualistic work in their lodges; nor associations of employees of any concern, municipality, or any bureau or department of any governmental organization, or members of charitable, fraternal or religious societies, where such persons are associated together under an agreement, articles of association or incorporation, for the purpose of providing benefits among themselves for accidents or illness or the payment of funeral or death benefits not in excess of \$300 to any one person, or to a physician or surgeon or physicians or surgeons contracting with such employees or persons to supply only such professional, medical or hospital service and supplies as accidents or illness sustained by them may require, no policy or certificate of insurance being issued to such persons.

(d) Patrons of husbandry or fraternal fire or life insurance associations.

(2) No organization or association which is exempt by the provisions of paragraph (c) of subsection (1) of this section shall give or allow or promise to give or allow to any person any compensation for procuring new members.

736.020 to 736.050 [Reserved for expansion]

INSURERS

736.055 Who deemed an insurance company. A company, association, partnership or individual engaged in the business of insurance, or suretyship, or of guaranteeing against liability, loss or damage, or of entering into contracts substantially amounting to insurance, shall be deemed an insurance company and shall not transact such business unless the business is authorized or per-

mitted by the laws of the State of Oregon, and all laws regulating the same and applicable thereto have been complied with.

736.060 Classification and separation of insurance for licensing. A company may be licensed to make any or all insurance and reinsurance comprised in any one of the following subsections:

(1) Fire and Marine Insurance.

(a) On property and rents and use and occupancy, against loss or damage by fire, lightning, tempest, flood, earthquake, hail, frost, snow, explosion (other than explosion of steam boilers or breakage of flywheels), leakage of sprinklers or other apparatus erected for extinguishing fires, and on such apparatus against accidental injury; on automobiles against loss or damage from collision or theft, and against liability of the owner or user for injury to property caused by his automobile.

(b) On vessels, cars and other vehicles, freight, goods, moneys, effects and money loaned on bottomry and respondentia against loss or damages from the perils of the sea and other perils insured against by marine insurance, including the risks of inland navigation and transportation.

(2) Life Insurance. On the lives of persons and every insurance appertaining thereto or connected therewith, including endowments, and to grant disability benefits and purchase or dispose of annuities.

(3) Disability Insurance. Against bodily injury or death by accident, and against disablement resulting from sickness, and every insurance appertaining thereto, including identification.

(4) Casualty Insurance. Against liability of the insured for the death or disability of another or for loss or damage suffered by the assured or another in his person or property, resulting from accidental causes other than fire, marine and inland navigation hazards, from explosion of steam boilers and engines, pipes and machinery connected therewith, and breakage of flywheels, machinery or plate glass, to make and certify inspections thereof, and against loss of use and occupancy occasioned by such accidental causes and against loss by burglary, theft and forgery.

(5) Surety Insurance. Guaranteeing the fidelity of persons holding places of trust, the performance of contracts and bonds and undertakings including the signing thereof as surety.

(6) Credit Insurance. Against loss or damage from failure of debtors to pay their obligations to the insured.

(7) Title Insurance. Against loss from defective titles.

(8) Live Stock Insurance. Against loss, damage or death of domestic animals.

736.065 Miscellaneous classes of insurance. Excepting companies engaged in the business of writing disability insurance as defined in subsection (3) of ORS 736.060, insurance companies may be organized in this state, and foreign and alien companies may be granted permission, to transact the business of liability, elevator, plate glass, steam boiler and flywheel, burglary and theft, sprinkler leakage, automobile and teams property damage, credit, title, fidelity and surety, livestock, workmen's collective insurance or insurance against any other loss or casualty which may lawfully be the subject of insurance and for which no other provision is made by the laws of this state.

736.070 Reinsurance companies. A company organized and conducted solely for the reinsurance of risks insured by other companies, in making such reinsurance, shall have all the authority conferred on it by the General Insurance Law, and such company, if it has a capital and surplus of \$1,000,000, or, if a foreign or alien company, a surplus, as defined in the General Insurance Law, of \$1,000,000, may be licensed to make reinsurance of all classes of insurance defined in ORS 736.060.

736.075 Classes of insurance a company may transact; fees. Except as provided in ORS 736.065:

(1) Any insurance company which has qualified to transact its appropriate business in this state may be licensed to transact any of the classes of insurance defined in ORS 736.060, 736.065 and 736.070 or permitted under the laws of this state and which it may transact under the provisions of its charter or articles of incorporation and the laws of the state in which it has its home office or United States department office.

(2) If a company elects to transact more than one of such classes of insurance, it shall be required to pay an additional fee of \$25 per annum for each additional class that it is authorized to transact.

736.080 No certificate of authority issued to other than a corporation. Unless otherwise expressly authorized by the Gen-

eral Insurance Law no certificate of authority shall be issued other than to a corporation organized under the laws of this state or the laws of a state, territory, province or country, or to companies organized under the laws of foreign governments by deeds of settlement or articles of association.

736.085 Certificate of authority of domestic companies. A domestic insurance company shall be granted a certificate of authority to transact any kind or class of insurance permitted by the provisions of the insurance laws of this state and provided for in its articles of incorporation upon its compliance with all the laws of this state and the regulations of the insurance department relating to such companies and upon the payment of the fees and charges imposed by law.

736.090 Filing and observance of rating schedules. (1) Every insurance company, excepting a marine insurance company, before it receives a license or a renewal of its license to transact the business of making insurance as an insurer in this state, shall file in the office of the commissioner its rating schedules and policy forms to be used in the transaction of its business in this state.

(2) Acceptance of the schedule of a licensed rating organization, which makes filings as provided elsewhere in the insurance laws, by a company which is a member of or subscriber to such licensed rating organization shall be deemed a compliance with the General Insurance Law as to the filing of rating schedules.

(3) A company and its agents shall observe its rating schedules and shall not deviate therefrom when making insurance until amended or corrected rating schedules have been filed in the office of the commissioner. No such company or its agents shall discriminate between risks of essentially the same hazard in its application of its rates for insurance.

(4) This section does not prevent any insurance company or any interinsurance or reciprocal insurance exchange from making return of unabsorbed premiums to policyholders or members at the end of the policy period.

736.095 Certificate of authority for miscellaneous classes; requirements; capital. (1) Any company applying for authority to transact any kind of business named in ORS

736.065 shall furnish evidence of its authority to make such insurance and shall show to the satisfaction of the commissioner, either:

(a) If a foreign company, that it is possessed of a paid-up capital or maintains a deposit capital in the United States over all liabilities therein for the benefit of all policyholders in the United States of not less than \$200,000 and a surplus of not less than \$100,000;

(b) If a domestic company, that it is possessed of a paid-up capital of not less than \$100,000 and a surplus of \$50,000 or more;

(c) That it is a company which has complied with the requirements of the law relating to title insurance, mutual fire insurance or fidelity and surety bonds;

(d) That it is a life insurance company doing business under ORS 739.105; or

(e) That it is a life insurance company transacting its business upon the mutual plan and possessing assets amounting to \$1,000,000 or more and a surplus over all liabilities of \$100,000 or more.

(2) A company complying with paragraphs (a) or (b) of subsection (1) of this section shall also show that it is in compliance with the requirements of the laws of this state relating to its paid-up capital and investments.

(3) If a company has complied with subsection (1) and subsection (2), if applicable, of this section and with all requirements of the law and of the insurance department, the commissioner may issue his certificate of authority to such company specifying the class or classes of insurance specified in ORS 736.065 which it may transact under such authorization. Such a certificate shall continue in full force and effect until suspended or revoked by the commissioner.

736.100 Annual expiration and renewal of licenses. (1) All licenses issued to insurance companies by the commissioner shall expire on April 1 of each year and may be issued pro rata for any period less than one year.

(2) Annually each company doing or proposing to do an insurance business in this state shall apply to the commissioner for a license, and, if he is satisfied that such company is qualified to do business under the provisions of the General Insurance Law, he shall issue the license on receipt of the

required fee provided in the General Insurance Law.

736.105 Revocation or suspension of certificate or license; effective date; court review. (1) The commissioner shall revoke or suspend all certificates of authority and licenses granted to any insurance company, its officers or agents, if:

(a) He finds upon examination or other evidence that the company is in an unsound condition; or that it has failed to comply with the law or with the provisions of its charter or articles of incorporation or association; or that its condition is such as to render its proceedings hazardous to the public or to its policyholders; or that its actual assets exclusive of its capital are less than its liabilities; or

(b) Its trustees, directors, officers or agents refuse to submit to examination or to produce at the office where the same are kept, its books, records, accounts and papers in its or their possession or control relating to its business or affairs, for examination and inspection of the commissioner, his deputy or examiner, when required, or refuse to perform any legal obligation relative to such examination.

(2) The commissioner shall cause notice of the revocation or suspension to be given to the company and to each agent of the company in this state, and no new business shall thereafter be done in this state by the company or for the company by its agents until its authority to do business is restored by the commissioner.

(3) Unless the ground for revocation or suspension relates to the financial condition and soundness of the company, or to the deficiencies in its assets, a suspension or revocation shall not become effective until the expiration of 20 days after it is made, and the commissioner shall take no action pursuant to such order of revocation or suspension, except that he shall forthwith notify the company of the making of the order. At any time within such 20 days, the company may petition the Circuit Court of the State of Oregon for Marion County to review the order of suspension or revocation, and that court shall summarily hear and determine the question whether the ground for the revocation or suspension existed, and the court upon such hearing and determination shall make and enter such decree as may be proper in the premises.

(4) If the company files such petition

within the 20 days, then the operation of the order of suspension or revocation shall be further suspended until the determination of the cause by the circuit court. If no petition is filed within the 20 days, then the order of the commissioner shall become effective immediately upon the expiration of the 20 days.

(5) The order or decree of the circuit court shall be appealable to the Supreme Court in the same manner as other judgments and decrees.

736.110 Revocation or suspension of certificates of domestic companies. A certificate of authority granted under ORS 736.085 may be revoked on 30 days' notice by the commissioner, or it may be suspended temporarily if he deems necessary or advisable. Cause for revocation or suspension shall exist if a company's capital is found to be impaired or the required surplus has not been maintained or if its transactions have been found to be in violation of the law.

736.115 Revocation or suspension of certificates of miscellaneous insurers. (1) A certificate of authority granted under ORS 736.095 may be suspended at any time by the commissioner on receipt of satisfactory evidence:

(a) That the company or its agents are transgressing the laws of the state;

(b) That the company is financially impaired; or

(c) That the acts of the company or its agents are contrary to the public good.

(2) Such certificate may also be revoked for the causes listed in subsection (1) of this section after due notice of complaint has been given and a hearing granted to the company on such complaint.

736.120 Annual financial statement; publication of synopsis. (1) Every insurance company doing business in the state shall file with the commissioner, on or before March 1 of each year, a financial statement for the year ending December 31 immediately preceding. This statement shall be on a form furnished by the commissioner, which shall conform as nearly as may be to the form of statement from time to time adopted by the National Convention of Insurance Commissioners. It shall contain such detailed exhibit of the condition and transactions of the company, in such form and otherwise, as the commissioner reason-

ably prescribes. The statement shall be verified by the oaths of the president and secretary of the company, or in their absence by two other principal officers. The statement of a company of a foreign country shall embrace only its condition and transactions in the United States and shall be verified by the oath of its resident manager or principal representative in the United States. In the discretion of the commissioner a penalty of \$10 per day shall attach for delinquency in filing such statement.

(2) Immediately upon filing its annual statement with the commissioner every insurance company doing business in the state shall publish in two newspapers of general circulation and published in the state west of the Cascade Range, and in two newspapers of general circulation and published in the state east of the Cascade Range, a full synopsis of its general annual financial statement showing the condition of its business, and setting forth its resources and liabilities and the address of its principal office in Oregon. This synopsis shall be first approved by the commissioner.

736.125 Companies to report premiums and losses in each class. Every insurance company authorized to transact business in this state shall report the premiums received and losses incurred and paid for each class and kind of insurance it is authorized to transact. These reports shall be in such manner and form as the commissioner may direct and shall furnish such other information concerning reinsurance and retrocessions relating to each kind of insurance as may be required by the commissioner for statistical purposes.

736.130 Fees and charges; no others to be imposed; no personal liability for paying invalid tax. (1) The commissioner shall, except as otherwise provided in the General Insurance Law, require and receive the following fees from all companies transacting or desiring to transact business in this state:

- (a) For issuing certificate of authority to companies, \$5.
- (b) For filing power of attorney, \$2.50.
- (c) For filing annual report of Oregon business, \$5.
- (d) For certificate of registering title of policy, \$5.
- (e) For annual license, fire insurance companies, \$150.

(f) For annual license, other insurance companies, \$100.

(g) For annual license, fraternal societies, \$25.

(h) For annual license, interinsurance exchanges, \$50.

(i) For annual license, foreign mutual fire associations, \$50.

(j) For annual license, domestic mutual fire associations, \$50.

(k) For annual license, adjusters, \$25.

(L) For annual license, insurance agents, \$2.

(m) For annual license, nonresident agents, per class, \$10.

(n) For certificate under seal of department, \$2.

(o) For copy of papers filed in department, per folio, 25 cents.

(2) Except for taxes on real and personal property located in this state, the taxes, fees and charges provided for in the insurance laws of this state shall be in lieu of all other taxes, licenses, fees and charges of every kind and character which may be required of companies or their agents transacting insurance business, by the state or any city, county or other political subdivision thereof.

(3) No personal liability shall arise against any director, trustee, officer or agent of any insurer on account of any taxes, licenses or fees paid pursuant to any statute, law or ordinance, even though such statute, law or ordinance is subsequently declared or held to be invalid.

736.135 to 736.200 [Reserved for expansion]

FOREIGN AND ALIEN INSURERS

736.205 Requirements before doing business in state; issuance and revocation of certificates. (1) A foreign or alien insurance company may be authorized or licensed to do business in this state when it has complied with the following requirements:

(a) It shall file with the commissioner a certified copy of its charter, articles of incorporation or deed of settlement and a statement of its financial condition and business in the United States in such form and detail as he may require, signed and sworn to by at least two of its executive officers or the United States manager.

(b) It shall satisfy the commissioner that it is fully and legally organized under

the laws of its state or government to do the business it proposes to transact.

(c) It shall satisfy the commissioner that it has a fully paid-up capital or maintains a deposit capital in the United States over all liabilities therein for the benefit of all policyholders in the United States equal to \$200,000, with a surplus of not less than \$100,000, except as otherwise provided in the General Insurance Law. However, no requirement of capital or surplus herein shall apply to life insurance companies possessing assets amounting to \$1,000,000 or more and a surplus over all liabilities of \$100,000 or more.

(d) When required by the provisions of the General Insurance Law, it shall deposit with the commissioner securities of the amount and character required of similar companies incorporated under the laws of this state. In lieu of such deposit, unless it is a special deposit required by the General Insurance Law to cover liabilities in this state only, it may furnish a certificate of deposit from the state official having custody of the securities showing to the satisfaction of the commissioner that it has securities to an amount not less than that required by this section deposited with the commissioner, State Treasurer or other proper official of some one of the states of the United States in which it is licensed to do business, and that the same are held for the benefit and security of the policyholders of such company in the United States. This certificate shall be renewed whenever required by the commissioner.

(2) Upon compliance with the requirements of this section and all other requirements imposed on such company by existing laws, and upon payment of the fees and charges imposed by law, the commissioner shall issue to it a certificate of authority to transact business in this state.

(3) The commissioner may, if he finds that an insurer has failed to include in the annual report and statement of gross premiums required by ORS 736.225, the amounts received by such insurer in the form of all premiums, assessments, dues and fees received or derived, or obligations taken therefor, by whatever term known, from business in this state, refuse to grant to such insurer a certificate of authority or a license or a renewal thereof until such amounts are reported.

(4) A certificate may be revoked on 30 days' notice if the commissioner finds that

a company's condition in the United States is unsound or its surplus of admitted assets in the United States over all its policy liabilities, pertaining to its United States business and as defined in the General Insurance Law, has not been maintained and is less than required in this section.

736.210 Companies to appoint attorney for legal service; verification of pleadings; service on companies not complying with section. (1) Every foreign or alien insurance company shall, before transacting business within this state, duly execute and acknowledge a power of attorney and cause the same to be filed in the office of the commissioner. This power of attorney shall appoint some person who is a citizen of the United States, and a citizen and resident of this state, as attorney in fact for such foreign or alien company and shall constitute him the authorized agent of the company upon whom service may be made, and who may accept service, of all writs, processes and summons necessary to the complete jurisdiction of the court in any case, suit or proceeding commenced by or against the company in any court of this state or of the United States in Oregon. This power of attorney shall be irrevocable except by the substitution of another qualified person for the one mentioned therein as attorney in fact.

(2) Any such company may at its option appoint the commissioner its attorney in fact, designating in the power of attorney an address to which the commissioner shall forthwith forward any writ, process, summons, complaint or other papers served upon him. This address may be changed by the company making the appointment by filing a new address with the commissioner.

(3) Any pleading on behalf of any company which has so appointed the commissioner its attorney in fact may be verified by any officer of such company or any of its agents within the state.

(4) It shall be the duty of every such foreign or alien company to maintain at all times within this state some qualified person as its attorney in fact as provided in this section. In default thereof it shall not be entitled to transact any business within this state, or maintain any suit, action or proceeding in any court within this state.

(5) If the attorney of any foreign or alien company appointed under the provi-

sions of this section removes from this state or becomes disqualified in any manner from receiving or accepting service of any writ, process or summons, or if any company shall at any time fail to maintain within this state an attorney in fact, valid service may be made on such company by service on the commissioner. In case of such service the commissioner shall immediately notify such company thereof, inclosing with the notice a copy of the writ, process, summons, complaint or other papers served on him. This notice shall be sent by registered mail and addressed to such company at its last authorized address, as disclosed in the declaration or authorization and appointment of attorney in fact filed by it with the commissioner. The registry receipt shall be prima facie evidence of the completion of the service. When service is made as provided in this subsection no proceedings shall be had, unless such corporation appears or consents thereto, until 40 days after service on the commissioner.

736.215 Deposit required of foreign and alien casualty and fire insurers. Every foreign or alien company, before engaging in the business of casualty insurance or fire insurance, directly or indirectly, or assuming any such casualty insurance risk or fire insurance risk within this state, shall deposit with the commissioner \$25,000 in approved securities to be held in trust, or in lieu of such securities, a corporate surety bond of the same amount payable to the State of Oregon. This deposit or bond shall be held and conditioned upon the faithful performance by the company of all contracts and other requirements within the state. The bond shall be executed by a duly licensed surety company and approved by the commissioner, and shall continue in full force and effect until the commissioner receives 60 days' written notice of its termination, which notice shall be given by the surety company that executed such bond.

736.220 Exemption from other laws of state. No foreign or alien insurance company which has complied with the requirements of the General Insurance Law shall be subject to any other provisions of the laws of this state relating to admission or licensing of foreign or alien corporations.

736.225 Gross premium tax; penalty for failure to make reports or pay tax. (1) Every foreign or alien insurance company,

in its annual statement to the commissioner shall set forth:

(a) The gross amount of all premiums received by it during the preceding calendar year from policies or contracts of insurance covering risks within this state.

(b) Return premiums paid.

(c) Payments made policyholders.

(d) Consideration paid other companies for reinsurance during such year.

(e) Premiums received for reinsurance of risk during the preceding calendar year.

The term "gross amount of premiums" for the purpose of taxation and reports means the consideration paid by the insured to the insurer for a policy or contract of insurance and includes all premiums, assessments, dues and fees received or derived, or obligations taken therefor, by whatever term known, from business in this state. This definition is for the purpose of clarity and is not intended to add to or detract from the meaning of the term "gross amount of premiums."

(2) If the commissioner finds such report as filed by an alien or foreign insurance company to be correct, he shall compute the amount of two percent of the balance of such gross amount of premiums after deducting:

(a) Return premiums.

(b) Payments to policyholders for dividends.

(c) Considerations received for reinsurances.

This amount shall be charged to such company as a tax determined by the amount of business done by it in the state for the period shown by such annual statement. He shall forthwith mail to the last known address of the principal office of such company a statement of the amount so charged against it, which amount the company shall pay to the commissioner on or before April 1.

(3) If a company ceases to do business or collect premiums on business done in the state, it thereupon shall make a report to the commissioner of its premiums subject to taxation and collected or due as of the date when it ceased to do business or collect premiums on business done in the state and not theretofore reported, and shall forthwith pay to the commissioner the tax thereon.

(4) If a company fails or refuses to make any report for taxation or pay the tax imposed upon it as required by law, it shall be liable to the state for the amount

thereof and a penalty of not more than \$200 per month for each month it has failed to report or to pay, after demand therefor. Service of process in any action to recover such tax or penalty shall be made according to the requirements of law relating to actions brought against insurance companies by policyholders thereof. If any company after final judgment requiring it to pay such tax or penalty shall not make such report or pay such tax or penalty within 10 days after entry of final judgment or decree requiring it so to do, the commissioner may refuse to grant to such insurer a certificate of authority or license or a renewal thereof until such tax or penalty or both have been paid and such report filed, as the case may be.

736.230 Equalizing obligations of domestic and foreign insurers; state of foreign insurer determined by site of deposit capital; remission of fees. (1) If, by the laws of any other state or country, any taxes, fines, penalties, licenses, fees, deposits or other obligations, or prohibitions, in the aggregate, additional to or in excess of those imposed by the laws of this state upon foreign or alien insurance companies and their agents and solicitors, are imposed on insurance companies of this state and their agents doing business in such state or country, like obligations and prohibitions, for the purpose of equalizing the aggregate of such impositions between this state and any other state or country, shall be imposed by the commissioner upon all insurance companies of such state or country and their agents doing business in this state, so long as such laws remain in force.

(2) Any alien or foreign insurance company, in the application of the provisions of this section, shall be held as of the state in which such company has made the deposit of securities which is held as its deposit capital in the United States.

(3) The commissioner may remit, for the purpose of equalizing fees between this state and any other state or country, any portion or all of the fees and charges which he is required to collect; but no discrimination shall be made in favor of one company over another from the same state or country.

736.235 Annual report to contain affidavit of nonviolation of resident agent law. Every foreign or alien insurance company whose policies are subject to the provisions

of ORS 736.475 shall, when filing its annual statement with the commissioner, attach thereto an affidavit of the president, manager or chief executive officer in the United States that ORS 736.475 has not been violated.

736.240 to 736.300 [Reserved for expansion]

POLICIES AND ATTORNEY'S FEES

736.305 Construction of insurance contracts; incorporation of application in policy.

(1) Every contract of insurance shall be construed according to the terms and conditions of the policy, except where the contract is made pursuant to a written application therefor, and such written application is intended to be made a part of the insurance contract. In that case, if the company delivers a copy of such application to the assured, thereupon such application shall become a part of the insurance contract. If the application is not so delivered to the assured, it shall not be made a part of the insurance contract.

(2) Matters stated in an application shall be deemed to be representations and not warranties.

(3) This section does not apply to fidelity and surety contracts.

736.310 Permissible combination of risks in one policy. (1) Except as provided in this section, when more than one class of insurance as enumerated and described in ORS 736.060 is effected by the same insurer each kind shall be written in a separate and distinct policy. Any such policy may be canceled, surrendered or otherwise terminated without affecting other premiums paid or policies held by the same assured.

(2) Except as provided in this section, the same policy shall not include risks upon which the liability of the insurer for unearned premiums or the reserve for unpaid, deferred or undetermined loss claims is estimated in a different manner.

(3) Insurance in one policy may be effected, by any company licensed to transact such business, upon automobiles and vehicles, and the accessories and other property transported upon and used in connection therewith, against loss or damage by fire, collision, explosion and against loss by legal liability for damage to persons or property, or both, resulting from the maintenance, use or operation of such automom-

biles or vehicles and against loss by burglary, embezzlement or theft, or any one or more of them. Such insurance shall be known as "automobile insurance" and premiums and losses are to be reported under such title. For this purpose a fire insurance company need not use the standard fire policy.

(4) Insurance in one policy may be effected by companies authorized to insure against loss or damage of property and against personal injury and death, and liability therefor, from explosion of steam boilers, tanks and engines, pipes and machinery connected therewith, and breakage of flywheels and machinery. Such insurance shall be known as "steam boiler insurance," and premiums and losses are to be reported under such title.

(5) Insurance in one policy may be effected, by any company authorized to transact such business in this state, upon the lives of persons and every insurance appertaining thereto or connected therewith, including endowments, disability benefits and annuities.

736.312 Certain vehicle and aircraft insurance policies not deemed accident insurance policies. Any policy insuring against liability resulting from or incident to the ownership, maintenance or use of vehicles or aircraft may contain a provision for payment on behalf of an injured party or for reimbursement of the insured for payment, irrespective of legal liability of the insured, of medical, hospital, surgical and disability benefits to persons injured and funeral and death benefits to dependents, beneficiaries or personal representatives of persons who are killed as the result of a vehicle or aircraft accident, and such provision shall not be deemed to be an accident insurance policy. [1953 c.663 §3]

736.315 Provision for construction according to foreign law prohibited. No domestic, foreign or alien insurance company transacting business in this state shall hereafter make, issue or deliver in this state any policy or contract of insurance, except policies or contracts of ocean marine insurance, containing any condition, stipulation or agreement, requiring such contract of insurance to be construed according to the laws of any other state or country. Any such condition, stipulation or agreement shall be void, and such policy shall be binding upon the company that issued it.

736.320 Bankruptcy clause required in certain liability policies. No policy of insurance against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or against loss or damage to property caused by horses or by any vehicle drawn, propelled or operated by any motive power, and for which loss or damage the person insured is liable, shall be issued or delivered to any person in this state by any corporation, authorized to do business in this state, unless there shall be contained within such policy a provision substantially as follows: Bankruptcy or insolvency of the assured shall not relieve the company of any of its obligations hereunder. If any person or his legal representative shall obtain final judgment against the assured because of any such injuries, and execution thereon is returned unsatisfied by reason of bankruptcy, insolvency or any other cause, or if such judgment is not satisfied within 30 days after it is rendered, then such person or his legal representatives may proceed against the company to recover the amount of such judgment, either at law or in equity, but not exceeding the limit of his policy applicable thereto.

736.325 Recovery of attorney's fees in action on policy. (1) If settlement is not made within six months from the date proof of loss is filed with an insurance company or fraternal benefit society and a suit or action is brought in any court of this state upon any policy of insurance of any kind or nature, including a policy or certificate issued by a fraternal benefit society as defined in ORS 740.010, and the plaintiff's recovery exceeds the amount of any tender made by the defendant in such suit or action, then the plaintiff, in addition to the amount that he may recover, shall be allowed and shall recover as part of his judgment such sum as the court or jury may adjudge to be reasonable as attorney's fees.

(2) If attorney fees are allowed as here-in provided and on appeal to the Supreme Court by the defendant the judgment is affirmed, the Supreme Court shall allow to the respondent such additional sum as the court shall adjudge reasonable as attorney fees of the respondent on such appeal.

736.330 to 736.400 [Reserved for expansion]

AGENTS, SOLICITORS AND ADJUSTERS**736.405 Certification of agents by companies; licensing by commissioner; fee.**

(1) Any company duly authorized and licensed to transact insurance business in this state, and lawfully doing such business herein, in respect thereof may contract with and appoint as its agent or agents in each city, town or village in this state any person or persons who hold or have qualified for an agent's license under the provisions of ORS 736.405 to 736.425. Appointment shall be made by filing with the commissioner a certificate showing the name and address of the agent and the classes of business he is authorized to transact for the company. The commissioner, if he finds the agent qualified, thereupon shall issue to such agent a license to act for the company appointing him for the balance of the current year ending March 31 following the date of such appointment. No such license shall be issued to a corporation unless it appears that it has an office in this state managed by a duly licensed insurance agent of this state. Such a corporation shall at all times maintain as the manager of such office a duly licensed agent of this state.

(2) In the event of the death, disability or refusal to act of an insurance agent holding a certificate of authority from any insurance company where no other insurance agent in the agency, copartnership, association or corporation is authorized to represent such insurance company, the company may appoint another person, and the commissioner may issue a license to such other person, enabling him to represent such insurance company, upon an application being made in conformity with ORS 736.415. Such license shall continue only until the licensee is afforded an opportunity of taking the examination provided for in ORS 736.420 but not to exceed a period of six months. Any person to whom is issued such license and who fails to pass the examination shall not be entitled to the return of any fees previously paid.

(3) Every license for each agent representing any company shall be renewed during the month of March in each year for the ensuing year upon proper application to the commissioner by the company appointing him. The fee fixed for issuing such license shall be \$2 and shall be paid to the commissioner.

(4) The license issued to an established agency of any company in any city, town or village may be transferred by the commissioner to another qualified agent or agency upon proper application by the company and without exacting further fees.

736.410 Certification and licensing of solicitors; fee. (1) Every person duly authorized and licensed as an insurance agent to represent any company or companies as provided in ORS 736.405, may employ as solicitors any persons who hold, or have qualified for, a solicitor's license under the provisions of ORS 736.410 to 736.425. A certificate showing the name and address of the solicitor employed and the classes of business he is authorized to solicit for such agent shall be filed with the commissioner by such agent at the time of each such employment. The commissioner, if he finds the solicitor qualified, thereupon shall issue to each such solicitor a license to solicit contracts of insurance, solely on behalf of the agent employing him, for the balance of the current year ending March 31, following the date of such employment.

(2) The commissioner shall not issue to the same individual a solicitor's license and an agent's license for the same kind of insurance to be concurrent.

(3) An individual may apply for and the commissioner may issue to the same individual more than one current solicitor's license to solicit any kind of insurance authorized under the laws of this state, but no solicitor shall be licensed to solicit for the same kind of insurance for more than one agent.

(4) Every such license for each such solicitor shall be renewed during the month of March in each year for the ensuing year upon proper application to the commissioner by the agent employing him. The fee fixed for issuing such license shall be \$2 and shall be paid to the commissioner.

(5) Nothing in ORS 736.410 to 736.425 authorizes any insurance agent to employ solicitors for life insurance.

736.415 Application for agent's or solicitor's license; examination fee. No license shall be issued to any applicant for an agent's or solicitor's license except as provided in ORS 736.405 to 736.425. Any person hereafter desiring to engage in the insurance business in this state as insurance agent or insurance solicitor shall first apply to the commissioner for a license authoriz-

ing him to engage in and transact such business. Such application shall be in writing on uniform forms and supplements to be prescribed and furnished by the commissioner, which must show the applicant's name, business and residence address, name of company or companies to be represented if the application is for an agent's license, or name of employing agent if the application is for a solicitor's license, present occupation, occupation for last 12 months, portion of time to be devoted to the work, previous insurance experience, the names of employers during the five years next preceding, and such other information as the commissioner may require. The applicant shall make sworn statements and answers to such interrogatories as the commissioner may require in such application, and the statements and answers so made shall have the same force and effect as if such statements and answers had been made by the applicant as a sworn witness testifying to matters material to the issue in an action duly pending in a court of competent jurisdiction in this state. Such application must be approved by the company to be represented if the application is for an agent's license, or by the employing agent if the application is for a solicitor's license, and by the commissioner. Each applicant shall be subjected to an examination as provided in ORS 736.420 and shall pay to the commissioner an examination fee of \$2. It shall be unlawful for any person other than the applicant, directly or indirectly, to pay the examination fee.

736.420 Examination for agent's or solicitor's license; when required; duties of commissioner. (1) Upon receipt of the application provided for in ORS 736.415, in due form, properly verified and certified, the commissioner, within a reasonable time and in a place reasonably accessible to the applicant, shall subject each first-time applicant to a personal written examination. When it is shown from such application and examination, or from any renewal application that the applicant:

(a) Is of good business reputation, and has had experience or training or is otherwise qualified in the line or lines of insurance for which he desires to be licensed;

(b) Is a resident of this state or has an office for the conduct of such business in this state; and

(c) Is reasonably familiar with the insurance laws of this state and with the provisions, terms and conditions of the policies or contracts he is proposing to solicit, negotiate or effect, and is qualified for a license;

the commissioner shall issue to the applicant a license to transact business in this state as an insurance agent or insurance solicitor.

(2) No examination shall be required as a prerequisite to the issuance of a license to:

(a) Any ticket-selling agent of a railroad company, steamship company, carrier by air, or public bus carrier who acts thereunder as insurance agent only in reference to the issuance of accident insurance tickets or baggage insurance.

(b) Any regular salaried officer or employe of any insurance company, provided such officer or salaried employe solicits business only from, for, or in conjunction with a licensed insurance agent compensated on a commission or salaried basis.

(c) Any corporation authorized by its articles of incorporation to engage in business as an insurance agent.

(d) Any first-time applicant who furnishes proof in his qualification report that he has had not less than three years' experience in the class or classes of insurance for which he has made application for license as agent or solicitor.

(3) The commissioner shall conduct all examinations for applicants for licenses, prepare the questions to be asked in such examinations, grade the papers of each applicant, determine the results and notify the company or companies or agent named in the application thereof. The commissioner shall hold examinations at such times and places as he may determine, and shall determine rules of procedure.

736.425 Who may be licensed; contents of license; power of licensed agent to bind company. (1) No license shall be issued by the commissioner to any person except an insurance agent or insurance solicitor as defined in ORS 736.005. A license shall bear upon its face the name of each and every individual member comprising a licensed firm and the names of the principal officers of a licensed corporation. It shall state whether the holder is an insurance agent or insurance solicitor and what company or companies the agent is authorized to represent and what agent the solicitor

is employed by. It shall designate the class or classes of insurance covered by the license.

(2) No agent shall have authority to represent or bind any insurance company except a company for which he holds an agency appointment and license duly issued as required by ORS 736.405 to 736.425.

736.430 Compensating unlicensed agent for soliciting forbidden. (1) No insurance company, or agent, or solicitor, shall pay any money or commission or give or allow any valuable consideration, except regular salaries to salaried employees, or compensation to supervising general agents, of any insurance company lawfully authorized to transact business in this state or except with respect to reinsurance, to any person not an agent duly licensed under ORS 736.405 to 736.425, for or because of soliciting insurance, receiving an application or order to write, renew or procure any policy or collect any premium or attempting as middleman to place any insurance or negotiating or effecting in this state a contract of insurance on any property or insurable business activities or interest located within or transacted within this state.

(2) Nothing in this section shall be deemed to prohibit the payment of any commission to any agent or solicitor duly licensed, as provided in ORS 736.405 to 736.425, for the class or classes of insurance on which such commission is payable.

736.435 Commissioner to compile list of agents and solicitors. The commissioner shall record the names and addresses of all agents and solicitors licensed by him in such manner that the list of duly authorized agents and solicitors and their respective companies or employers may conveniently be inspected. He shall certify and deliver to the company or agent, respectively, a list of the names of all agents or solicitors so recorded.

736.440 Acting as agent or solicitor without license a crime; exclusions. No agent or solicitor shall refuse or neglect to procure a license, as provided in ORS 736.405 to 736.425, before transacting business as an agent or solicitor. This section shall not apply to regularly employed office employees of companies or agents, receiving a salary only, as to business transacted at the office of such company or agent. Nor shall this

section be construed to prevent the licensing of nonresident life insurance agents.

736.445 Writing or soliciting insurance for unlicensed company or agent forbidden. No person, either directly or indirectly, shall represent himself to be the agent of any insurance company not licensed to transact such business, or the solicitor for any agent not having an unexpired, unrevoked license issued by the commissioner, or act as agent for any such company or as solicitor for any such agent, in soliciting, negotiating or effecting in this state any contract of insurance or renewal thereof, or aid in soliciting or placing any contract of insurance or renewal thereof.

736.450 Civil and criminal responsibility of agent not notifying insured that he has procured insurance in unauthorized company. An insurance agent who fails to notify the insured that any of his insurance has been placed in an unauthorized company shall be personally liable on any contract of insurance made, issued or accepted through his agency in any company not licensed by the commissioner to make the insurance provided in such contract, and any such agent who fails so to notify the insured shall be punished as provided in subsection (2) of ORS 736.990.

736.455 Agent to advertise location of company. Every agent of any insurance company doing business in this state shall, in all his advertisements of that company, give the location of the company, the name of the state and town in which it has its principal office, and the state or government under the laws of which it is organized.

736.460 Agent's or solicitor's false statement in application for insurance. No agent or solicitor shall make a false or fraudulent statement or representation, on or relative to an application for insurance, or make any such statement for the purpose of obtaining a fee, commission, money or benefit in a company or agency transacting such business under the provisions of the General Insurance Law. The license of an agent or solicitor so doing shall be revoked.

736.465 Revocation of licenses; grounds; notice to company or employing agent; reinstatement. (1) The commissioner, after notice, and for cause shown shall revoke the license of any agent or solicitor, or refuse to renew any agent's or solicitor's

license on application therefor, or refuse to issue any agent's or solicitor's license upon an original application therefor, if it is evident that:

(a) The license was obtained by fraud or misrepresentation;

(b) The application therefor contains false or fraudulent statements or answers;

(c) The agent has signed or countersigned any policy of insurance in blank;

(d) The agent or solicitor conducts his business in a dishonest manner, or misrepresents the policies or contracts he sells, or misrepresents the policies or contracts of other agents or companies; or

(e) The agent is conducting his business in such a manner as to cause injury to the public and those dealing with him, or has violated any provision of the insurance laws of this state.

(2) Upon revoking any license the commissioner shall notify the company or companies or the employing agent of such revocation. Thereafter, except as provided in subsections (3) and (5) of ORS 736.470, such agent or solicitor shall not act as an insurance agent or insurance solicitor or transact any insurance business for or on behalf of any company or any person until a new certificate or certificates of his authority are duly filed by the company or agent thereafter appointing or employing him and approved by the commissioner and a license issued.

736.470 Revocation of licenses; hearing by commissioner; appeal to circuit court; fine in lieu of revocation for first offense.

(1) Whenever the commissioner determines to revoke any agent's or solicitor's license, or refuses to renew any agent's or solicitor's license on proper application therefor, or refuses to issue any agent's or solicitor's license upon an original application therefor, he shall notify the holder of or applicant for such license of his intention and shall set a time, not less than 15 days from the date of such notice, and shall designate the place where the holder of or applicant for such license may be heard in his own behalf. The commissioner shall preside at such hearing and may subpoena, compel the attendance of, examine and swear witnesses with like effect as if examined and sworn by a clerk of the circuit court.

(2) If the commissioner decides after such hearing that the license under question shall be revoked, or if he determines to

withhold the renewal of any such license, or if he refuses to issue any license under an original application, he shall enter an order to that effect, setting forth his reasons in writing. He shall file a copy of this order in his office and mail a copy to the party holding said license, or to the party applying for the issuance of a license, at the address given in the application.

(3) Such an order shall not be operative for a period of 10 days from its date. If the agent or solicitor, or applicant for a license, feels aggrieved by the decision of the commissioner revoking or withholding the license, he may appeal to the circuit court within this 10-day period by giving notice of such appeal to the commissioner and filing a bond with the clerk of the circuit court in the sum of \$500. The bond shall be conditioned to pay all costs that may be awarded against such applicant in the event of an adverse decision and must be approved by the judge of the court appealed to. The filing of such notice and bond shall supersede the order of the commissioner until the final determination of such appeal.

(4) Upon the giving of such notice of appeal and the filing of said bond, the commissioner shall certify the reasons given by him for the revocation or withholding of such license to the circuit court. The judge of the court shall then proceed to a hearing and determine the law and the facts, and after such hearing may direct the continuance or issuance of a license, if satisfied that the provisions of the insurance laws of this state have not been violated or are not in danger of being violated, or the court may sustain the decision of the commissioner. Such appeals shall have precedence and shall be determined by the circuit court with the least possible delay. An appeal shall lie to the Supreme Court from the decision of the circuit court.

(5) Upon the hearing of an appeal from the order of the commissioner revoking a license, and if a violation of the law is determined, the court may, in its discretion, if the agent's or solicitor's license has not previously been revoked for a similar offense and if it believes an absolute revocation too severe a penalty for a first offense, impose a fine of not exceeding \$500. Payment of the fine by the holder of the license within 10 days from the finding of the court shall continue the license in full

force and effect, otherwise the license automatically shall be canceled.

736.475 Resident agent law. (1) No foreign or alien company authorized to transact insurance or offer indemnity contracts in this state shall make, write, place or cause to be made, written or placed, any policy or contract of insurance or indemnity of any kind or character, or a general or floating policy, covering risks on property located in this state, liability created by or accruing under the laws of this state, or undertakings to be performed in this state, except through its regularly commissioned and licensed resident insurance agents, who shall countersign all policies or indemnity contracts so issued and collect the premiums therefor, or see to their collection in due course, and keep a record of the same. This record shall contain the usual and customary information concerning the risk undertaken, including a statement as to the full premium paid or to be paid therefor, to the end that the state may receive the taxes required by law to be paid on premiums collected for insurance on property or undertakings located in this state.

(2) No person shall pay or forward any premium or application for insurance or in any manner secure, help or aid in the placing of any insurance, or effect any contract of insurance or indemnity upon property, liability or undertakings located in this state with any insurer which is not authorized to transact its business in this state.

(3) This section shall not apply to the following contracts:

(a) Policies issued directly from the home office of any company having its home office located in this state, or from the home offices of mutual companies and reciprocal or interinsurance exchanges.

(b) Policies covering property in transit while in the possession or custody of any common carrier, or the rolling stock or other property of any common carrier used and employed by it as a common carrier of freight and passengers.

(c) Contracts of reinsurance or retrocessions made by or for admitted companies.

(d) Contracts of life insurance.

(4) Nothing contained in the General Insurance Law shall be construed as impairing the free and unlimited right of non-resident agents and brokers to negotiate contracts of insurance wholly outside of this

state provided the policies, indorsements or evidence of such contracts covering properties or insurable interests in this state are countersigned by a resident agent of this state.

736.480 Provisions to prevent loss of revenue from insurance premiums not reported through licensed agents. (1) As the tax levied on premiums paid for insurance on property and undertakings located in Oregon is a source of revenue to this state and shall be equitably and impartially applied, then for that purpose and that the state may not be deprived of any such revenue from insurance premiums not reported through licensed agents of this state, the following provisions are made:

(a) It shall be unlawful for any person, whether responsible as owner or agent of owner, to write, place, procure or cause to be written, placed or procured any policy, renewal of policy, or contract for insurance or indemnity or surety bond, upon property or undertakings situated or located or to be performed in this state, except through and by a legally authorized and licensed resident agent in this state.

(b) The writing or placing, or causing to be written or placed, of any such policy or contract of insurance or surety bond in any other manner or form, or the placing or procuring of insurance in unauthorized companies by the owner of such property, or his agent, except as provided in the insurance law of this state, is a violation or evasion of the law providing for payment of taxes on such insurance premiums and a crime against the revenue of the state.

(2) The commissioner, his deputy or authorized representative, shall have the right at any time to call for and examine any and every policy of insurance or surety bond covering any risk in this state. Any property owner, or his agent who may be in charge of the property or undertaking, shall produce all such policies or bonds when requested for inspection. The commissioner or his deputy or authorized representative may call for and examine the books, accounts and records of any person who may be supposed to place or to hold policies covering property or undertakings in this state and may require such persons or their authorized representatives in charge of such business to certify under oath to the facts shown by such records and accounts and to such statements of facts as they may make

in answer to inquiries of the commissioner or his representatives.

(3) On receipt of evidence of violation of the provisions of this section by an owner of property or his agent, the commissioner shall bring action against such person or persons as are charged with such violations to recover the taxes due the state on such unreported premiums, together with costs of such proceedings. Upon conviction of such violation such person or persons shall pay, in addition to the judgment rendered, a fine of not less than \$100.

(4) If the person against whom evidence of violation of the provisions of this section has been found is nonresident and, if a corporation, has not filed with the Corporation Commissioner a power of attorney appointing some duly qualified person as attorney in fact for such nonresident to receive and accept service of all writs, processes and summonses requisite or necessary to give complete jurisdiction of any such person to any of the courts of this state or of the United States therein, then the person acting as agent of such nonresident in this state or in charge of the property or undertakings of such nonresident in this state shall be held as the legal representative of such nonresident for the purpose of carrying out the enforcement of the provisions of this section and upon whom service may be obtained. If service cannot be secured upon the owner of such property or his agent, or if no person is found in charge of such property or undertakings of nonresidents in this state, then service may be secured by publication in the manner provided in ORS 15.140.

(5) Any policies or contracts of insurance which are held, procured or placed by the assured in violation of this section shall be deemed evidence of a violation of the law and shall be held to be void. No action to recover any claim under such policies or contracts shall be maintained in any court of this state.

(6) Nothing in this section makes it unlawful for any person to procure any insurance from a licensed reciprocal or inter-insurance exchange which pays no commissions except to an office manager or attorney in fact and which has its principal office in another state from which contracts of indemnity are issued directly to the insured, or through the office manager or attorney in fact or the nonresident salaried representatives of such an exchange, or from a

licensed mutual fire insurance company authorized to transact business in this state which issues its insurance contracts directly from its home office and transacts its business direct with the assured. Nor is it unlawful for the office manager, attorney in fact or nonresident salaried representative of such exchanges or mutual fire companies to effect, receive or solicit such insurance when the exchanges or companies which they represent are licensed for the transaction of business in this state and pay their taxes due the state.

736.485 Adjusters to be licensed; right of agent to act as adjuster; adjustment of losses under policies in unauthorized companies. (1) Except as provided in subsection (3), any person acting in this state as an adjuster of losses claimed under insurance policies or contracts of insurance or indemnity of any kind or character, whether acting for the insurer or the insured, shall annually, on or before April 1, procure a license from the commissioner permitting him to adjust such claims for or against companies authorized to transact business in this state.

(2) All licenses issued under this section shall expire on March 31.

(3) A licensed agent or special agent or other salaried employe or officer of an authorized company may adjust and settle losses for the company which he represents without procuring an adjuster's license.

(4) An adjuster's license shall be revoked by the commissioner, if after due investigation and hearing had either before himself or a salaried employe of the insurance department designated by him, whose report he may adopt, he determines that the holder of such license has violated any provision of the law relating to insurance. No person whose license is so revoked shall be granted another license under this section for a period of one year thereafter, nor shall he until again licensed act as employe or participate in the profits of any fire insurance adjuster.

(5) A person shall not be held to violate this section by making one adjustment during a license year prior to obtaining a license if he makes, within two days after entering upon such adjustment, application therefor, and in all other respects complies with this section.

(6) There shall also be procured a separate license for each loss adjusted under a

policy issued by a company not authorized to transact business in this state. The fee for such separate license shall be not less than \$100 if the loss to be adjusted is \$1,000 or more, or 10 percent of the amount adjusted, at the discretion of the commissioner, if the loss is less than \$1,000. No such loss shall be adjusted without paying the fee and notifying the insurance department prior to entering upon adjustment of the loss.

736.490 to 736.500 [Reserved for expansion]

INSURANCE DEPARTMENT

736.505 Insurance department, location, expenses; Insurance Commissioner, appointment, salary, bond, assistants, seal, certificate as evidence. (1) There is in this state a department charged with the execution of the laws relating to insurance called the Department of Insurance of the State of Oregon. The head of the department is the State Insurance Commissioner. The Governor shall appoint a man experienced in insurance matters to hold this office for a term ending June 30, 1949, at the end of which term and every four years thereafter the Governor shall appoint a man experienced in insurance matters as commissioner. Unless appointed to fill a vacancy, he shall hold his office for a term ending four years from June 30 of the year of his appointment or until his successor is appointed and qualified. A vacancy in the office shall be filled only for the balance of the unexpired term. The Governor may at any time remove the commissioner from office for inefficiency or malfeasance in office, or when in his judgment the good of the service requires it.

(2) The commissioner shall receive in full compensation for his services an annual salary, 28 percent of which shall be paid from the State Fire Marshal Fund.

(3) The commissioner, during his term of office, shall not be interested in the business of any insurance company, except as a policyholder.

(4) He shall take and subscribe an oath of office which shall be filed with the Secretary of State, and shall give a bond to the state in the penal sum of \$25,000, with good sureties, approved by the Governor, conditioned for the faithful performance of his duties. The premium on the bond shall be paid in the same manner as other expenses of the insurance department.

(5) Subject to any applicable provisions of the State Civil Service Law, he may appoint a deputy commissioner to assist him in his duties and an actuary and such clerks and assistants as the public duties of his office may require.

(6) The seal adopted by the first commissioner appointed under this section is the official seal of the department. Any certificate or other document or paper executed by the commissioner in pursuance of any authority conferred upon him by law and sealed with the seal of the department, and all copies of papers certified by him and authenticated by the seal, shall in all cases be evidence equally and in like manner as the original thereof and shall have the same force and effect as would the original in any suit or proceedings in any court in this state.

(7) Offices for the insurance department shall be provided at Salem by the Secretary of State.

(8) The expenses of the department authorized by the commissioner shall be paid in the same manner that other state salaries and expenses are paid when audited by the Secretary of State upon claims certified and approved by the insurance commissioner from the funds provided therefor. The department shall be examined and audited as other state offices are audited.

736.510 General powers and duties of commissioner. (1) The commissioner has the power to enforce all the laws of the state relating to insurance, and it shall be his duty to enforce all the provisions of such laws for the public good. He shall issue such department rulings, instructions and orders as he may deem necessary to secure the enforcement of the provisions of the General Insurance Law, but nothing contained in the General Insurance Law shall be construed to prevent any company or persons affected by any order or action of the insurance commissioner from testing the validity of same in any court of competent jurisdiction.

(2) He shall issue under the seal of his office all certificates and licenses provided for in the General Insurance Law. Before granting certificates of authority to any insurance company to issue policies or make contracts of insurance in this state, the commissioner shall be satisfied by such examination as he may make, or such evidence as he may require, that such company is duly qualified under the laws of this state to transact business herein.

(3) The commissioner shall compile, and have printed for general distribution, all books, blanks, insurance laws in pamphlet form and other matters necessary for the information of the public and for the proper administration of the department.

(4) The commissioner shall preserve in a permanent form a record of his proceedings, including a concise statement of the result of all investigations or examinations of insurance companies, and shall have copies printed for general distribution if he deems it advisable for the public good.

736.515 Commissioner to furnish companies forms for annual statements. The commissioner shall annually in November or December furnish to each insurance company authorized to transact business in this state two or more blank forms for its annual statement, conforming to the class or classes of insurance which it is authorized to write. For this purpose he shall use what are commonly known as "convention form blanks," and which have been approved by the National Convention of Insurance Commissioners. For the purpose of carrying out the provisions of this section the commissioner is authorized to purchase blanks from any publishing house which makes a specialty of printing "convention form blanks" for the different states.

736.520 Commissioner's annual reports. The commissioner shall transmit to the Governor annually, as soon after March 1 as is consistent with full and accurate preparation, a report of his official transactions and a report containing in condensed form statements made to the commissioner by every insurance company authorized to do business in this state. Such statements and reports shall be audited and corrected by him and arranged in tabular form or in abstracts. His report also shall contain:

(1) A statement of all insurance companies currently authorized to do business in this state during the year ending December 31 next preceding, with their names, locations, amounts of capital, dates of incorporation and of the commencement of business and kinds of insurance in which they are engaged respectively.

(2) A statement of the insurance companies whose business has been closed since making his last report and the reasons for closing the same, with the amount of their assets and liabilities so far as the same are known or can be ascertained by him.

(3) Any recommendations for amendments to the insurance laws of the state which in his judgment may be desirable.

736.525 Collection and disposition of fees, taxes and penalties. All fees, taxes, fines and penalties paid by companies or by any other persons to whom the provisions of the General Insurance Law apply, shall be paid to the commissioner and by him to the State Treasurer at the end of every calendar month or oftener in his discretion. Such funds shall be placed by the State Treasurer in the General Fund. All such funds, or so much thereof as may be necessary, shall be available and constitute an appropriation from the General Fund for the payment of the expenses of the insurance department, as provided in the General Insurance Law.

736.530 Deposits of securities. (1) A domestic insurance company may deposit with the State Treasurer securities in such sum as it may desire to be held for the benefit and security of all persons, within or without the state, transacting business with the company. The state shall be held responsible for the safety of any such deposit.

(2) When any company is required by the laws of this state or by other competent authority, to make deposit with an insurance supervising official or other financial officer, or the company desires to make such deposit in this state, the commissioner shall accept such deposit, if made in securities recognized by Oregon law as lawful investments of the company.

(3) The commissioner shall hold any deposited securities as trustee upon such trust as shall be designated by the company and approved by the commissioner pursuant to the provisions of any law governing the deposit of such securities. The commissioner shall deliver such securities to the State Treasurer who shall receive and hold the same subject to the lawful orders of the commissioner, and the treasurer and his sureties shall be liable on his official bond for their safekeeping.

(4) Bonds may be accepted in registered form in the name of "Treasurer of the State of Oregon in trust for the holders of the obligations of the _____ company, pursuant to Oregon Laws," or in similar form specifying also the sections of the Oregon Revised Statutes under requirement of which the deposit is made.

(5) So long as the company continues solvent and complies with the laws of this

state, it shall have the right to receive the income from such securities. In the event of insolvency of the company, such income, accrued and unpaid or thereafter accruing, shall be collected and retained by the State Treasurer in trust for the same purpose for which the securities are held.

(6) If the value of securities deposited by any company declines below the amount so required, the company, upon demand of the commissioner, shall make a further deposit and maintain a deposit in the amount and value so required.

736.535 Withdrawal of deposited securities by company. (1) A company may withdraw any part of its deposit by substituting therefor other securities of the amount, value and kind required by the law or agreement under which the deposit was made.

(2) When a company determines to discontinue its business or to cease doing business in the state, and desires to withdraw a deposit made under ORS 736.530, the commissioner shall, on the application of the company, and at its expense, give notice of such intention in a newspaper of general circulation in the state once a week for eight weeks. After such publication he shall deliver to such company, or its assigns, the securities so deposited, when he is satisfied, upon examination and investigation made by him or under his authority, and upon the oaths of the president and secretary or other chief officers of the company, that all debts and liabilities of every kind, due and to become due, which the deposit was made to secure, are paid and extinguished, or that the payment of all such debts and liabilities has been assumed by some responsible company or otherwise provided for to the satisfaction of the commissioner.

(3) The commissioner may also, from time to time, upon like notice and proof, deliver to a company, or its assigns, any portion of securities so deposited, when satisfied that all debts and liabilities of the company due or to become due, which the deposit was made to secure, are less than the amount and value of the securities to be retained by the commissioner.

(4) Upon a company's being reinsured, the commissioner may deliver to it, or its assigns, the securities deposited by it, upon compliance with the following conditions:

(a) The reinsuring company shall assume and agree to discharge all the liabilities of every kind, due and to become due, which the

deposit of the reinsured company was made to secure.

(b) The reinsuring company shall have a deposit in this state or with some state official in the United States, in securities recognized by Oregon law as lawful investments of the company, in amount and value not less than the deposit required of the reinsured company.

(c) The deposit of the reinsuring company shall be such that it will subsist for the security of the obligations of the reinsured company so reinsured and assumed by the reinsuring company.

(d) The commissioner shall give notice of such reinsurance agreement and of the application for the deposit once a week for eight weeks, in a newspaper of general circulation in the state.

736.540 Proceedings with respect to deposit of insolvent company. (1) Whenever a company which has deposited money, securities, or surety bonds with the commissioner or State Treasurer has become insolvent, the commissioner shall file a suit in the Circuit Court of the State of Oregon for Marion County for the benefit of the State of Oregon and of all claimants having valid claims against such deposits. The State Treasurer shall be a party to the suit. The court shall decree the distribution of the deposit and direct the commissioner to apportion the deposit and pay it ratably in settlement of claims, originating in Oregon and for the payment of which such deposits were made, and which are proved to the satisfaction of the commissioner and approved by the court.

(2) Claims shall be filed in such form as the court shall require. Notice of the time, place and manner of the filing thereof shall be given by the commissioner by publication, in a newspaper printed and published in the most populous county in the state, at least once each two months for a period of one year from the date of the filing of the suit.

(3) All claimants having claims payable from such deposits shall file them with the commissioner within the one-year period.

(4) The expense of publishing the notice, together with any unpaid fees and taxes due from such company to the state and the costs and expenses of the commissioner and of the State Treasurer in connection with the settlement of such claims, shall be preferred claims payable from such deposits.

(5) The residue, if any, of any such deposits shall be disposed of by the commis-

sioner as the court may direct, and the commissioner and the State Treasurer thereupon shall be discharged from any further duties or responsibilities with respect to such deposits.

736.545 Examination of companies; when required. (1) The commissioner shall examine every domestic insurance company at least once each three years.

(2) The commissioner shall, whenever he deems it advisable in the interest of policyholders or for the public good, examine into the affairs of any insurance company, agency, corporation, partnership, person or persons engaged in or proposing to engage in the insurance business in this state, and into the affairs of any company organized under any law of this state or having an office or representative in this state, which company is engaged in, or is claiming or advertising that it is engaged in, organizing or receiving subscriptions for or disposing of stock of, or in any manner aiding or taking part in the formation or business of an insurance company or companies, or which is holding capital stock of one or more insurance companies for the purpose of controlling the management thereof as voting trustee or otherwise.

736.550 Examiners. To make the examinations directed in ORS 736.545, the commissioner may appoint as examiners one or more fair, impartial and competent persons, not officers of, nor connected with nor interested in any insurance company or other company referred to in ORS 736.545, except as a policyholder.

736.555 Procedure at examination; production of books. (1) Upon an examination the commissioner, his deputy or any examiner authorized by him may examine under oath the officers and agents of the company or agency being investigated and all persons deemed to have material information regarding the property or business of the company or agency.

(2) Every such company or agency, its officers and agents, shall produce at the office of the company or agency where kept, its books and all papers in its or their possession relating to its business or affairs. Any other person may be required to produce any book or paper in his custody relevant to the examination for the inspection of the commissioner, his deputies or examiners, whenever required. The officers and agents of the company or agency shall facilitate the examination and

aid the examiners in making the same so far as it is in their power to do so.

736.560 Report of examination; use as evidence; publication. (1) Every examiner shall make a full and true report of each examination made by him, verified by his oath. This report shall comprise only facts appearing upon the books, papers, records or documents of such company or agency or ascertained from the sworn testimony of persons examined concerning its affairs. Such a verified report shall be presumptive evidence of the facts stated therein in any action or proceeding in the name of the state against the company or agency, its officers or agents.

(2) The commissioner may withhold any report from public inspection for such time as he deems proper and shall grant a hearing to the company or agency examined before filing any report or making public the report or any matters relating thereto. If the company or agency offers no objection at such a hearing, it will be an admission of acceptance. The commissioner may, after filing any report, if he deems it for the interest of the public to do so, publish any report or the result of any examination as contained therein in one or more newspapers of the state without expense to the company or agency.

736.565 Expenses of examination; penalty for refusal to furnish information. Any company or association doing business in Oregon and examined under ORS 736.545 to 736.560 shall pay to the examiner his just and legitimate expenses approved by the commissioner, including railroad fare and traveling expenses. The commissioner shall revoke or refuse his certificate of authority to any company neglecting or refusing to pay such expenses, or neglecting or refusing to furnish any information to the commissioner.

736.570 Determination of company's financial status; commissioner may adopt rules. (1) In ascertaining the condition of an insurance company for the purposes of the General Insurance Law, or in any examination made by the commissioner, he shall allow as assets such investments, cash and accounts as are authorized by the laws of this state at the date of the examination. He may in his discretion allow investments made under the existing laws of the state or country under which a foreign or alien company is organized. Unpaid premiums on policies written within three months shall be admitted as

available resources. No other assets shall be considered.

(2) In ascertaining a company's liabilities, unless otherwise provided in the General Insurance Law, there shall be charged the capital stock, all outstanding claims, a sum equal to the total unearned premiums on the policies in force computed on a pro rata basis, and such an amount as may be found necessary as a reserve to provide for the future payment of deferred and undetermined claims for losses and promised benefits.

(3) In determining the amount of such reserve or unearned premium liability, the commissioner, his deputy or examiner, may formulate such rules as he may deem proper and consistent with law or he may adopt such rules as are used in other states or approved by the National Convention of Insurance Commissioners.

736.575 to 736.600 [Reserved for expansion]

MISCELLANEOUS OFFENSES

736.605 Misrepresenting assets of company. No insurance company, or agent thereof, doing business in this state, shall anywhere publish, represent or advertise assets except those actually owned and possessed by the company in its own exclusive right, available for the payment of losses and claims and held for the protection of its policyholders and creditors.

736.610 Company, agent or attorney soliciting or issuing policy without complying with law. No insurance company or its agents or attorney shall solicit insurance in this state or issue a policy herein without having complied with the laws of this state.

736.615 Practices injurious to free competition; order to discontinue; revocation of license; renewal. (1) Except as provided elsewhere in the insurance laws of this state, it is unlawful for any insurance company authorized to transact business in this state, or any manager, agent or representative thereof, either within or outside of this state, directly or indirectly, to enter into any contract, understanding or combination, with any other insurance company, manager, agent or representative thereof, or jointly or severally to do any act or engage in any practice or practices:

(a) For the purpose of controlling the rate to be charged, or commissions or other

compensations to be paid, for insuring any risk or class or classes of risks, in this state;

(b) For the purpose of discriminating against or differentiating from any company, manager or agent, by reason of its or his plan or method of transacting business or its or his affiliation or nonaffiliation with any board or association of insurance companies, managers, agents or representatives; or

(c) For any purpose, if such purpose is detrimental to free competition in the business or injurious to the insuring public.

(2) Whenever the commissioner has knowledge of any violation of this section, he forthwith shall order such offending company, manager, agent or representative to discontinue immediately such practice or show cause to the satisfaction of the commissioner why such order should not be complied with.

(3) If such order is not complied with within 30 days of its receipt, the commissioner shall revoke forthwith the license of such offending company or agent, and no renewal of a license so revoked shall be granted within three years from the date of the revocation.

736.620 Rebating; revocation of licenses. (1) Every insurance policy issued in this state shall bear on its face a true statement of the premium paid or to be paid. No insurance company or officer thereof, and no insurance agent or solicitor, shall personally or otherwise offer, promise, allow, give, set off or pay, directly or indirectly, any rebate of, or part of, the premium payable on any policy, or agent's or solicitor's commission thereon, or earnings, profit, dividends or other benefit founded, arising, accruing or to accrue thereon or therefrom, or any other valuable consideration or inducement to or for insurance, on any risk written in this state which is not specified in the policy.

(2) No company, agent or solicitor, personally or otherwise, shall offer, promise, give, sell or purchase any stocks, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever, as inducement to insurance or in connection therewith which is not specified in the policy.

(3) Upon satisfactory evidence of the violation of the provisions of this section by any insurance company, agent or solicitor,

the commissioner forthwith shall revoke the certificate of authority of such company or the license of such agent or solicitor, and no certificate of authority or license shall be issued to such company, agent or solicitor within one year from the date of such revocation of license.

736.625 Accepting rebate; proportionate reduction of insurance. (1) No insured person or party shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or any of the agent's or solicitor's commission thereon, payable on any policy of insurance, or any favor or advantage or share of the dividend or other benefit to accrue on any policy, or any other valuable consideration or inducement not specified in the policy of insurance.

(2) The amount of the insurance whereon an insured has received or accepted, either directly or indirectly, any such rebate, favor, advantage, benefit or consideration, shall be reduced in such proportion as the value of such rebate, favor, advantage or benefit or other consideration so received by the insured bears to the total premium on such policy.

736.630 Employee, officer or director profiting from sale of insurance to employer or corporation. (1) No employee of any person, firm, or corporation, and no officer or director of any corporation, shall receive, directly or indirectly, any rebate of premium or part thereof payable on a policy of insurance issued to the person, firm or corporation by which he is employed, or of which he is an officer or director, or shall receive, except as provided in ORS 736.635, any part of any agent's or solicitor's commission payable on a policy issued to such person, firm or corporation.

(2) Upon a violation of this section by a licensed insurance agent or solicitor his license shall be revoked.

736.635 Exceptions to ORS 736.620 to 736.640. (1) Nothing in ORS 736.620 to 736.630 shall be considered as prohibiting a duly licensed insurance agent from signing, countersigning or issuing contracts of insurance upon his own property, or the property of his relatives, or the property of his employer, firm or corporation, and receiving for his own use the regular agent's commission thereon if the agent first has signed, countersigned or issued in good faith contracts of insurance upon other property, the

premiums upon which shall be at least equal in amount to the aggregate of the premiums upon insurance signed, countersigned or issued by him on his own property and on that of his relatives and on the property of his employer, firm or corporation.

(2) For the purposes of ORS 736.620 to 736.635, a seller of personal property who writes, issues or solicits insurance covering the personal property sold by him on an installment contract wherein the title to said property is reserved by the seller shall not be deemed to be writing, issuing or soliciting insurance upon his own property or on that of his relatives, employer, firm or corporation.

(3) The provisions of ORS 736.620 to 736.640 do not apply to the business of life insurance.

736.640 Self-incrimination; immunity. No person shall be excused from testifying or from producing any books, papers, contracts, agreements or documents at the trial of any other person charged with violation of ORS 736.620 to 736.630, on the ground that such testimony or evidence would tend to incriminate the person so testifying. No person shall be prosecuted for any act concerning which he is compelled so to testify, or produce evidence, documentary or otherwise, except for perjury in so testifying.

736.645 Transacting business in foreign state where not licensed. (1) No insurer organized under the laws of this state, whether on the stock, mutual, reciprocal, fraternal or other plan, or any of the representatives of such insurer wilfully, shall transact or attempt to transact or solicit business in any manner or accept risks in any jurisdiction in which such insurer is not licensed in accordance with the laws of such jurisdiction.

(2) The term "transacting business," as used in subsection (1), includes advertising locally in any foreign jurisdiction in which an insurer is not licensed or circularizing in any such jurisdiction, without regard for the source of such circularization, whenever such advertising or circularization is for the purpose of solicitation of insurance business.

(3) Upon determining that this section has been violated, the commissioner shall revoke the certificate of authority of the offending insurer. Such determination shall be made only after a hearing. The insurer

shall be given 10 days' notice of the time, place and purpose of such hearing.

(4) No violation of this section shall be found if the major portion of the risks insured in jurisdictions in which the insurer was not licensed originated in jurisdictions in which the insurer was licensed to make insurance of the class to which such risks belong and were procured by other means than circularizing or advertising locally in jurisdictions where the insurer was not licensed.

736.650 to 736.985 [Reserved for expansion]

PENALTIES

736.990 Penalties. (1) Violation of ORS 736.440 is punishable, upon conviction, by a fine of not more than \$50 for each offense, or in default of payment of the fine by imprisonment in the county jail not more than 15 days.

(2) Violation of ORS 736.450 is punishable, upon conviction, by a fine of not more

than \$500 or by imprisonment in the county jail not to exceed 30 days, or both.

(3) Violation of ORS 736.460 is a felony.

(4) Any person failing to comply with the requirements of ORS 736.480 shall, upon conviction, be fined not less than \$25 and not more than \$100.

(5) For a violation of ORS 736.605 by a company it shall forfeit \$250 for the first offense and \$500 for every subsequent offense. These sums may be recovered by an action prosecuted by the commissioner and when recovered shall be paid to the commissioner.

(6) Violation of ORS 736.610 is punishable, upon conviction, by a fine of not more than \$100.

(7) Violation of ORS 736.620, 736.625 or 736.630 is punishable, upon conviction, by a fine of not more than \$100 for each violation.

(8) Violation of any of the provisions of, or failure to comply with any duty imposed by, the General Insurance Law, for which no penalty is otherwise provided, is punishable by a fine of not more than \$100.