Chapter 750

1957 REPLACEMENT PART

Surplus Line Agents and Nonresident Brokers

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LICENSING AND REGULATION OF SURPLUS LINE INSURANCE AGENTS

750.010 Surplus line licenses; examination; issuance; fee; expiration; what business authorized. (1) The State Insurance Commissioner, upon receipt of an application in proper form and a license fee of $25, and upon the first-time applicant's having passed a written examination as prescribed by the insurance commissioner, may issue a surplus line license to any duly qualified and licensed insurance agent of this state.

(2) Except as provided in subsection (3) of this section, such license shall permit the agent named therein to act as agent in this state for any foreign or alien company or insurer not authorized to transact business in this state in securing, issuing or placing policies of insurance, contracts of indemnity or surety bonds, or both, on property located in, or undertakings to be carried out in, this state for such companies, and to transact business for any such companies or insurers as provided in ORS 750.010 to 750.110.

(3) Such license shall not permit the agent named therein to insure with any insurer known to have a combined capital and surplus as to policyholders of less than $500,000 unless there is on file with the commissioner a copy of a trust agreement certified by the trustee evidencing a subsisting trust deposit of not less than $350,000 by such insurer with a bank or trust company in the United States and which deposit is held for the protection of the United States policyholders. The commissioner may by rule and regulation prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(4) The license of a surplus line agent who knowingly places surplus line insurance with insurers unsound financially or with insurers known not to comply with the financial requirements as set forth in this section shall be revoked; and the agent may not again be so licensed within a two-year period thereafter.

(5) The license expires on April 1 following its date of issue. [Amended by 1957 c.301 §1]

750.020 Agent's bond required. Before receiving a surplus line license, the surplus line agent shall execute and deliver to the commissioner a bond in the penal sum of $2,000 in such form and with such sureties as the commissioner approves, conditioned that he will fully comply with all requirements of ORS 750.010 to 750.110.

750.030 Validity of surplus line insurance. For the purpose of complying with the insurance law of this state, insurance written under ORS 750.010 to 750.110 is not considered unauthorized insurance.

750.040 Conditions prerequisite to issuance of policy or contract. Before the person named in the surplus line license procures, effects or issues any insurance policy, indemnity contract or surety bond mentioned in subsection (2) of ORS 750.010, he shall in every case execute and file with the commissioner his affidavit in acceptable form that the insured is unable to procure in a majority of the companies or insurers admitted to do business in this state writing the class of insurance involved, the amount or kind of insurance necessary to protect the property or undertakings of the insured described in such affidavit at rates not less than the minimum rates for such insurance promulgated by an authorized rating organization whose rates have been accepted by the commissioner and filed in the insurance department as the fair and equitable rate.

750.050 Before issuing policies agent to indorse policies, and to be designated attorney in fact for service of process. (1) Every policy issued under this section shall be indorsed "Issued in an unauthorized company, under agent's license No. ———." The indorsement shall be properly filled in and signed by the agent.

(2) Before registering and delivering any such policy for an unauthorized insurance company or insurer, the surplus line agent shall procure from such company or insurer a power of attorney which empowers him as its attorney in fact to receive and accept on its behalf service of any and all writs, processes and summonses requisite or necessary to give complete jurisdiction of any such company or insurer to any courts of this state or of the United States in this state. The power of attorney is deemed to constitute such attorney the authorized agent of such company or insurer upon whom lawful service may be made of all writs, processes and summonses in any case, suit or proceeding in any court mentioned

in this section. Such power of attorney shall be valid so long as such company or insurer has any liability existing in this state on account of any outstanding policies or unpaid claims pending against it. The surplus line agent shall file such power of attorney with the commissioner promptly on receipt of same.

750.060 Agent's annual statement of business; taxes payable. Every surplus line agent shall:

(1) Keep a separate account of the business done under his surplus line license.

(2) On or before April 1 annually, file with the commissioner on forms required by him a statement for the calendar year preceding, giving:

(a) The name of the insured to whom such policy or indemnity contract granting such unauthorized insurance has been issued.

(b) The name and home office of each company issuing any such policy or contract, the amount of such insurance and the gross premiums charged therein or therefor.

(c) The date and term of the policy and the amount of premium returned on each policy canceled or not taken.

(d) Any other information required by the commissioner.

(3) Pay the commissioner an amount equal to the taxes imposed by law on the premiums of like authorized insurance companies.

750.070 Agent's acceptance of business from authorized agent; compensation. An agent duly licensed under ORS 750.010 may accept business from any duly licensed agent for an admitted company and may compensate him therefor, if such insurance is written in conformity with the insurance laws of this state.

750.080 Process, venue and jurisdiction in case of suit against insurers issuing surplus line policy. (1) Every company or insurer making insurance under the provisions of ORS 750.010 to 750.110 is deemed to be doing business in this state as an unlicensed concern and may be sued upon any cause of action arising under any policy of insurance so issued and delivered by it in the courts of the county where the agent who registered or delivered such policy resides or transacts business by the service of summons and complaint made upon such agent for such company.

(2) Any such agent being served with summons and complaint in any such cause shall forthwith mail the summons and complaint, or true and complete copies thereof, by registered letter with proper postage affixed and properly addressed, to the company sued.

(3) Such company shall have 40 days from the date of the service of the summons and complaint upon said agent in which to plead, answer or defend any such cause.

(4) Upon service of summons and complaint being had upon such agent for such company, the court in which the action is begun is deemed to have duly acquired jurisdiction in personam of the defendant company so served.

750.090 Revocation of agent's license; conditions precedent to reissuance. (1) The license of any surplus line agent shall be immediately revoked by the commissioner if such agent:

(a) Fails to make and file the annual statement and to pay the taxes required; or

(b) Refuses to allow the commissioner to inspect and examine his records of the business transacted by him pursuant to ORS 750.010 to 750.110; or fails to keep such records in the manner required by the commissioner; or

(c) Neglects to notify immediately the insurance company for whom he has placed, registered or delivered a policy, of the commencement of any action or proceeding in any court in this state against such company.

(2) No license shall be issued to such agent within one year from the date of revocation, nor until all taxes and fines under ORS 750.100 are paid and the commissioner is satisfied that full compliance with ORS 750.010 to 750.110 will be had.

750.100 Action against delinquent agents for recovery of fine and taxes. Every surplus line agent who fails to make and file the annual statement required by ORS 750.060 and to pay the taxes required to be paid thereon prior to April 1 after such tax is due, shall be liable for a fine of $25 for each day of delinquency. Such tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the Attorney General representing him, in any court of competent jurisdiction. The fine, when so collected, shall be paid to the State Treasurer and placed to the credit of the General Fund.

750.110 Rules and regulations of commissioner. The commissioner may make and publish reasonable rules and regulations, consistent with ORS 750.010 to 750.110, in respect to transactions governed by those sections and the basis for his determination.

750.120 to 750.200 [Reserved for expansion]

LICENSING OF NONRESIDENT INSURANCE BROKERS

750.210 Definition of nonresident insurance broker. As used in ORS 750.210 to 750.270, a nonresident insurance broker is any person not a resident of this state, other than an insurance or surety company or society, or officer of such company or society, or employe compensated by salary only and acting on behalf of such company or society, or a medical examiner for a life insurance company or society, who, for compensation, acts or aids in any manner in negotiating contracts of insurance or indemnity or surety bonds or reinsurance or placing risks, or effecting insurance or reinsurance for a party other than himself.

750.220 Insurance broker's license required. No person shall in this state act as an insurance broker, unless such person is a regularly qualified and licensed broker or agent of another state, and until such person has first obtained a license from the State Insurance Commissioner authorizing him so to act.

750.230 Who may be licensed; fee. The commissioner may, upon the payment of a license fee of $100, issue to any qualified person resident in any other state, who is a licensed broker or agent of such state, a license to act as an insurance broker to negotiate contracts of insurance or reinsurance or place risks or surety bonds or effect insurance or reinsurance with any qualified domestic insurance company or its agent or with the authorized agent in this state of any foreign insurance company duly admitted to do business in this state and which has complied with all requirements of the insurance department, and not otherwise, upon the conditions provided in ORS 750.240 to 750.260.

750.240 Application for license; issuance; expiration. (1) The applicant for a nonresident broker's license shall file with the commissioner an application which shall be in writing upon a form to be provided by the commissioner and which shall be executed by the applicant under oath and kept on file by the commissioner. The application shall state the name, business address, residence and occupation of the applicant at the time of making application, his occupation for the five years next preceding the date of filing the application, and shall state that the applicant intends to hold himself out and carry on business in good faith as an insurance broker, and shall give such other information as the commissioner may require. The application shall be accompanied by a statement upon a blank furnished by the commissioner as to the trustworthiness and competency of the applicant signed by at least three reputable citizens of this state.

(2) If the commissioner is satisfied that the applicant is trustworthy and competent and intends to hold himself out and carry on business in good faith as an insurance broker, he may issue to him the license applied for.

(3) The broker's license shall expire on March 31 following its issue unless sooner revoked by the commissioner for cause.

750.250 Renewal of license. Nonresident brokers' licenses issued under ORS 750.240 may, in the discretion of the commissioner, be renewed upon payment of the proper fees without his requiring anew the details required in the original application.

750.260 Licensees subject to insurance laws. Nonresident insurance brokers are subject to the insurance law and regulations of the insurance department applying to licensed agents of this state engaged in the transaction of the same kind of class of insurance.

750.270 Grounds for denial or revocation of license; notice to public. (1) The commissioner may at any time after the granting of a broker's license, for cause shown, and after a hearing, determine that the licensee has not complied with the insurance laws or is not trustworthy or competent, or is not holding himself out and actually carrying on business as an insurance broker, or is not a suitable person to act as such broker, or has placed insurance on risks in this state in companies or other insurers not authorized to transact business in this state. The commissioner shall thereupon revoke the license of such broker and notify him that the license has been revoked.

(2) The commissioner shall withhold any license applied for, or revoke any license to any broker, when he is satisfied that the principal use of such license is to effect insurance upon the property of such broker or to evade or violate the insurance law.

(3) The commissioner shall publish a notice of the revocation of a broker's license in such manner as he deems proper for the protection of the public.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel