TITLE 56

INSURANCE AND INSURANCE COMPANIES

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PURPOSE; DEFINITIONS; APPLICATION

736.003 Purpose and construction of insurance laws. The Legislative Assembly hereby declares that the insurance laws of this state are for the protection of the insurance-buying public. Such laws shall be liberally construed and shall be administered and enforced by the Insurance Commissioner to give effect to this policy.
[1965 c.324 §2]

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 736.250 to 736.260, 736.317, 736.320, 736.325, 738.105, 739.075 to 739.085, 739.205 to 739.240, 739.410, 739.415, 739.420, 739.530, 739.625, 744.100, 744.125, 744.130, 744.140, 747.082, 747.084, 747.086, 747.190, 749.010 to 749.150, 749.990, subsection (4) of ORS 736.990 and subsection (5) of ORS 739.990, and also means ORS 163.430.

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

(a) "Commissioner" means the Insurance Commissioner, who is the administrator of the Insurance Division.

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

(c) "Division" means the Insurance Division of the Department of Commerce.

(d) "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.

(e) "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.

(f) "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.
[Amended by 1959 c.323 §8; 1963 c.580 §91]

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. The General Insurance Law, except ORS 736.020, shall not apply to:

(1) 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.

(2) A health care service contractor doing business in compliance with ORS chapter 742.

(3) A fraternal benefit society governed by ORS chapter 740.

(4) An association of employes which provides benefits to the members of such association for accidents, illness or death not in excess of $500 on behalf of any one person, if:

(a) No policy or certificate of insurance is issued to such members; and

(b) The association does not give or allow or promise to give or allow to any person any compensation for procuring members.

(5) Patrons of husbandry or fraternal fire or life insurance associations, or any religious organization engaged in the business of writing fire insurance for its members or its churches, which have been doing so continuously in this state for a period of 15 years prior to and including December 31, 1956.
[Amended by 1957 c.100 §1; 1959 c.281 §2; 1961 c.562 §1; 1965 c.611 §15]

736.020 Exempted persons or organizations required to obtain certificate of authority; application of certain provisions of General Insurance Law to exempt insurer. (1) No person or organization exempted by any provision of ORS chapters 736 to 751, and not required to comply with any of such chapters, may engage in any form of insurance for

profit or otherwise until a certificate of authority therefor has been received by such person or organization from the insurance commissioner; provided, this section shall not apply to fraternal benefit societies which are exempted by ORS 740.060 and have maintained lodges in Oregon and other states for 50 years prior to January 1, 1961.

(2) No certificate of authority shall be issued to any such exempt insurer by the insurance commissioner, or renewed by him, except upon receipt of an application to act as an exempt insurer. Such application shall set forth the details of the insurance to be provided, the names and addresses of the responsible parties, officers and agents, and proof of solvency of the insurer.

(3) Upon receipt of a satisfactory application and payment of the fees required by this section, the Insurance Commissioner shall issue a certificate authorizing the applicant to act as an exempt insurer until the succeeding April 1. Each exempt insurer shall pay a fee of $10 for each certificate of authority, and $5 annually for renewing it.

(4) The Insurance Commissioner may revoke the certificate of authority of an exempt insurer if the insurer fails to pay any legally required fee or charge, refuses to permit an inspection of books and accounts, becomes insolvent or violates any legal restriction or limitation on insurers in its exempt classification.

(5) An exempt insurer shall be subject in the same manner as an insurance company to subsection (2) of ORS 736.545, and to ORS 736.550, 736.555, 736.560, 736.565, 736.570, 736.605, 736.608 and 736.990.

[1961 c.562 §3]

736.030 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 permitted 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; and insurance of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement or occupational diseases of employes including issuing guaranty contracts in connection therewith.

(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, and insuring the performance of

obligations of employers under workmen's compensation laws by surety bond.

(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.
[Amended by 1965 c.285 §94]

736.065 [Repealed by 1963 c.424 §2]

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. 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 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.
[Amended by 1963 c.424 §1; 1965 c.610 §3]

Note: The 1965 amendment to ORS 736.075 takes effect April 1, 1966. Until then, ORS 736.075 (1963 Replacement Part) remains in effect.

736.080 No certificate of authority issued to other than a corporation. Unless otherwise expressly authorized by the General Insurance Law no certificate of authority shall be issued other than to a private 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. No certificate of authority may be issued to any state, province or foreign government nor to any instrumentality, political subdivision or agency thereof.
[Amended by 1955 c.222 §1]

736.082 Name of insurance company. (1) The corporate name of any insurer organized or licensed to do business in this state shall not be the same as, or deceptively similar to, the name of any domestic insurance company, or any foreign or alien insurance company authorized to transact business in this state.

(2) The provisions of subsection (1) shall not apply to the corporate name existing on August 9, 1961, of an insurer organized or licensed to do business in this state prior to August 9, 1961.
[1961 c.466 §1]

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 division 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 [Amended by 1955 c.409 §1; 1959 c.338 §6; 1963 c.397 §1; repealed by 1963 c.424 §2]

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 [Repealed by 1963 c.424 §2]

736.120 Annual financial statement. 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 Association 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 reasonably 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 an alien company shall embrace only its condition and transactions in the United States and shall be verified by the oath of its resident manager or principal representatives in the United States. If a company fails to file its annual statement by March 1, or within a reasonable extension of time thereafter granted, for good cause by the commissioner, its certificate of authority shall terminate.

[Amended by 1955 c.188 §1; 1961 c.466 §3]

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:

(a) For issuing certificate of authority to companies, $10.

(b) For filing power of attorney, $5.

(c) For filing annual report of Oregon business, $5.

(d) For certificate of registering title of policy, $10.

(e) For annual license, all insurance companies, fraternal societies, reciprocal or interinsurance exchanges, mutual associations and Lloyd's organizations, $150.

(f) For annual license, adjusters, $25.

(g) For annual license, insurance agents:

(A) Individual licenses, $2;

(B) Firm or corporate licenses, $2 for each individual exercising the powers conferred by such licenses.

(h) For annual license, solicitors, $2.

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

(j) For certificate under seal of department, $10.

(k) For copy of papers filed in department, per folio, $1.

(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.

[Amended by 1965 c.610 §4]

Note: The 1965 amendment to ORS 736.130 takes effect April 1, 1966. Until then, ORS 736.130 (1963 Replacement Part) remains in effect.

736.135 to 736.150 [Reserved for expansion]

INSURING EMPLOYERS UNDER WORKMEN'S COMPENSATION LAW

736.155 Qualification of insurers maintaining security for payment of compensation. Any company desiring admission to be permitted to issue guaranty contracts to direct responsibility employers under ORS 656.001 to 656.794 shall, as a prerequisite to such admission, qualify with the Insurance Commissioner under the general provisions of this chapter or ORS 749.010 to 749.150. After admission, such company shall, in addition, maintain on file in the office of the Insurance Commissioner security of the kind described in ORS 736.215 in an amount provided in ORS 736.160, in favor of the Workmen's Compensation Board as trustee for the payment of compensation benefits to workmen employed by such direct responsibility employers.

[1965 c.285 §94c]

736.160 Determining amount of security. The security required by ORS 736.155 shall be in an amount:

(1) Not less than the sum of the following amounts computed, less credits and deductions allowable with respect to reinsurance in admitted insurers, as of the close of the last preceding December 31 in respect to guaranty contracts issued under ORS 736.155 and written subject to ORS 656.001 to 656.794.

(a) The aggregate of the present values of four percent interest, of the determined and estimated future payments upon claims under such guaranty contracts written more than three years prior to such date.

(b) The aggregate of the amounts computed as follows: For each of the preceding three years take 65 percent of the earned premiums for that year and deduct all loss and loss-expense payments made upon claims under such contracts written in the corresponding year from such 65 percent; except that the amount of each year shall not be less than the present value at four percent interest of the determined and estimated unpaid claims under contracts written in that year.

(2) Not less than $100,000.

(3) If the aggregate amount computed under subsection (1) exceeds $50,000, not more than double such aggregate amount.
[1965 c.285 §94d]

736.165 Rate regulation; rating organizations. The provisions of ORS chapter 737 relating to rate making and rating organizations shall apply to insurers qualifying under ORS 736.155; however, all such insurers must be members of a workmen's compensation rating organization. The State Compensation Department may become a member of a workmen's compensation rating organization. If the State Compensation Department becomes a member of such an organization, it is entitled without election to membership on any committee thereof established in connection with the operation of the rating organization in this state.
[1965 c.285 §94e]

736.170 Insuring groups of employers. (1) Notwithstanding ORS 737.512, an insurer qualifying under ORS 736.155 may issue a guaranty contract insuring subject employers as a group provided the following conditions are met:

(a) All the employers in the group are members of an organization that has been in existence for at least two years.

(b) The organization was formed for a purpose other than that of obtaining workmen's compensation coverage.

(c) The occupations of the employers in the organization are substantially similar, taking into consideration the nature of the services being performed by workmen of such employers.

(d) The employers in the group constitute at least 50 percent of the total employers in such organization, unless the total number of workmen to be covered in the group exceeds 500, in which event the employers in the group must constitute at least 25 percent of all employers in the organization.

(e) The formation and operation of a group program in the organization will substantially improve accident prevention and claims handling for the employers in the group.

(2) Insurers insuring such groups shall be subject to the provisions of ORS chapter 737 relating to rate making and rating organizations. The Workmen's Compensation Board shall certify such employers as a single direct responsibility employer group.
[1965 c.285 §94f]

736.175 Offset against premium tax. Assessments paid by insurers on behalf of their insureds to the Administrative Fund established under ORS 656.612 may be offset each year against taxes charged under ORS 736.225 on premiums for insuring obligations of employers under ORS 656.001 to 656.794.
[1965 c.285 §94g]

736.180 to 736.200 [Reserved for expansion]

FOREIGN AND ALIEN INSURERS

736.205 Requirements before doing business in state; issuance and revocation of certificates. (1) After September 2, 1963, 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 is possessed of and will maintain at all times a combined paid-up capital and surplus in the United States of not less than $500,000, or if a mutual corporation or company that it will maintain at all times a combined deposit capital and surplus in the United States over all liabilities therein for the benefit of all policyholders in the United States of not less than $500,000, except as otherwise provided in the General Insurance Law and as otherwise provided in this paragraph. In the case of a disability insurance company, such capital and surplus requirements shall be not less than $300,000. 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 $500,000 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.

(5) Certificates of authority and licenses issued prior to September 2, 1963, are not affected by amendments to this section which were effective subsequent to such issuance. [Amended by 1955 c.409 §2; 1959 c.338 §1; 1963 c.397 §2]

736.207 Capital and surplus requirements. (1) No foreign or alien capital stock corporation is authorized to transact any insurance business unless it maintains at all times:

(a) A paid-up capital of not less than $200,000 and a surplus of not less than $100,000 if the corporation has an unrevoked certificate of authority received before May 2, 1955.

(b) Except as provided in paragraphs (c) and (d) of this subsection, a combined paid-up capital and surplus in the United States of not less than $500,000 if the corporation has received a certificate of authority after May 2, 1955.

(c) In the case of a life insurance company, a combined paid-up capital and surplus in the United States of not less than $300,000 if the company has received a certificate of authority after May 2, 1955, but before September 2, 1963.

(d) In the case of a disability insurance company, a combined paid-up capital and surplus in the United States of not less than $300,000 if the company has received a certificate of authority after May 2, 1955.

(2) No foreign or alien mutual corporation or company is authorized to transact any insurance business unless it maintains at all times:

(a) 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 if the corporation or company has an unrevoked certificate of authority received before May 2, 1955.

(b) Except as provided in paragraphs (c) and (d) of this subsection, a combined deposit capital and surplus in the United States over all liabilities therein for the benefit of all policyholders in the United States of not less than $500,000 if the corporation or company has received a certificate of authority after May 2, 1955.

(c) In the case of a life insurance company, a combined deposit capital and surplus in the United States over all liabilities therein for the benefit of all policyholders in the United States of not less than $300,000 if the company has received a certificate of authority after May 2, 1955, but before September 2, 1963.

(d) In the case of a disability insurance company, a combined deposit capital and surplus in the United States over all liabilities therein for the benefit of all policyholders in the United States of not less than $300,000 if the company has received a certificate of authority after May 2, 1955.

(3) Notwithstanding subsections (1) and (2) of this section, no foreign or alien insurance company is authorized to transact any workmen's compensation insurance business unless it maintains at all times a combined paid-up capital and surplus in the United States of not less than $1,500,000.

[1955 c.409 §7; 1959 c.338 §2; 1963 c.397 §3]

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 provisions 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. (1) Every foreign or alien company, before engaging in the business of casualty insurance, directly

or indirectly, or assuming any such casualty 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.

(2) Every foreign or alien company, before engaging in the business of fire insurance, directly or indirectly, or assuming any such 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.

(3) Each deposit, whether of securities or bond, shall be held and conditioned upon the faithful performance by the company of all contracts and other requirements within the state pertaining to the particular class of insurance for which the deposit was made; however, if at any time such deposit by a particular company is insufficient to perform the contracts and other requirements, the faithful performance of which the deposit was conditioned upon, then any other deposit required under this section and made by that company shall be so used to the extent that such deposit is not used to perform the contracts and other requirements, the faithful performance of which such deposit was conditioned upon.

(4) Each 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. [Amended by 1955 c.40 §1; 1965 c.65 §1]

Note: The 1965 amendment to ORS 736.215 takes effect on April 1, 1966. Until then, ORS 736.215 (1963 Replacement Part) remains in effect.

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 deduct from the gross amount of premiums:

(a) Return premiums.

(b) Payments to policyholders for dividends.

(c) Considerations received for reinsurances.

(3) The commissioner shall compute the amount of two and one-quarter percent of the balance determined under subsection (2) of this section.

(4) The amount computed under subsection (3) of this section 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. The commissioner 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.

(5) 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.

(6) 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.

(7) The tax payable under this section is in addition to any amounts payable under ORS 476.055.

[Amended by 1955 c.728 §1]

736.230 [Repealed by 1961 c.472 §7]

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.

736.237 Equalizing obligations of domestic and foreign insurers. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Oregon insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the commissioner upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Oregon. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Oregon insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this subsection.

(2) The General Insurance Law shall not apply as to personal income taxes, nor as to local ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state in connection with particular kinds of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this subsection.

[1961 c.472 §§2, 3]

736.240 Domicile of alien insurer. (1) For the purposes of the General Insurance Law the domicile of an alien insurer, other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within 12 months after the effective date of this Act, whichever date is the later, and may be any one of the following states:

(a) That in which the insurer was first authorized to transact insurance;

(b) That in which is located the insurer's principal place of business in the United States; or

(c) That in which is held the larger deposit of assets of the insurer in trust for the protection of its policyholders and creditors in the United States.

(2) If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

(3) In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

[1961 c.472 §4]

736.245 Determination of applicability of ORS 736.237; notice. Upon an examination of the reports of foreign and alien insurers and not later than June 1 of each year, the commissioner shall make his determination as to whether the provisions of the laws of any state or country require the imposition of the burdens specified in subsection (1) of ORS 736.237, shall determine the companies affected thereby, and shall forthwith mail a notice thereof to the companies deemed affected; and no proceedings shall thereafter be brought on behalf of the State of Oregon based upon a redetermination of the specified burdens after June 1 of each year, except in case of fraud by the insurance company in making the above report.
[1961 c.472 §5]

736.250 Definitions for ORS 736.250 to 736.258. As used in ORS 736.250 to 736.258, unless the context requires otherwise:

(1) "Action" means an action, suit or proceeding.

(2) "Commissioner" means the State Insurance Commissioner.

(3) "Insurer" means a foreign or alien person which is not authorized or licensed to carry on insurance business in the state.

(4) "Insurance" means insurance covering property or operations in the state or the lives or persons of residents of the state who are physically present in the state at the time their contracts of insurance are issued or delivered.

(5) "Process" means summons and complaint.
[1959 c.323 §1]

736.252 Service of process on commissioner equivalent to personal service on foreign or alien insurer. (1) When an insurer does any of the acts specified in subsection (2) of this section in the state, by mail or otherwise, the doing of such acts shall constitute an appointment by such insurer of the commissioner, and his successor in office, as its lawful attorney upon whom all process may be served in any action begun by or on behalf of an insured or beneficiary and arising out of contracts of insurance between the insurer and persons residing or authorized to do business in the state. Subject to subsection (4) of this section, the doing of any such act shall signify the insurer's consent that service of process upon the commissioner is of the same legal force and effect as personal service of process upon such insurer within the state.

(2) The acts referred to in subsection (1) of this section are:

(a) Issuing or delivering contracts of insurance to persons residing or authorized to do business in the state.

(b) Soliciting applications for contracts of insurance from such persons.

(c) Collecting premiums, membership fees, assessments or other considerations under contracts of insurance from such persons.

(d) Any other transaction of business arising out of contracts of insurance with such persons.

(3) Service of process upon the commissioner shall be made by delivering to and leaving with the commissioner, or with any clerk on duty in his office, two copies of such process. Immediately after service of process, the commissioner shall send one of such copies to the defendant insurer at its principal office. The commissioner shall keep a record of all processes served upon him under this section.

(4) Service of process in the manner provided in this section gives jurisdiction over the person of an insurer provided:

(a) Notice of such service and a copy of the process are sent by registered mail by the plaintiff, or his attorney, to the defendant insurer at its principal office within 10 days after the date of service; and

(b) The defendant insurer's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed and an affidavit of the plaintiff, or his attorney, showing compliance with this section are filed with the clerk of the court in which the action against such insurer is pending on or before the date on which such insurer is required to appear, or within such further time as the court may allow.

(5) Nothing contained in this section shall limit or abridge the right to serve any process upon an insurer in any other manner now or hereafter permitted by law.
[1959 c.323 §2]

736.254 Judgment by default after service under ORS 736.252. Until the expiration of 30 days from the date of filing an affidavit of compliance under ORS 736.252, no plaintiff or complainant shall be entitled to a judgment by default in any action in which

service of process is made in the manner provided in such section.
[1959 c.323 §3]

736.256 Conditions to be met by defendant insurer before filing motions or pleadings. (1) Except as provided in subsection (3) of this section, before any insurer may file or cause to be filed any motion or pleading in an action started against it by service of process in the manner provided in ORS 736.252 the defendant insurer shall either:

(a) Procure a certificate of authority or license to transact insurance business in the state; or

(b) Deposit cash or securities or file a bond with good and sufficient sureties, approved by the court, with the clerk of the court in which such action is pending in an amount, fixed by the court, sufficient to secure the payment of any judgment which may be rendered in such action. However, the court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court that the insurer maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding.

(2) The court may order such postponement as may be necessary to give such insurer reasonable opportunity to comply with subsection (1) of this section and to prepare his defense to such action.

(3) Nothing in ORS 736.005, 736.250 to 736.260 and 736.990 shall be construed to prevent a defendant insurer from filing a motion to set aside service of process made in the manner provided in ORS 736.252 on the ground that such insurer has not done any of the acts described in subsection (2) of such section.
[1959 c.323 §§4, 5]

736.258 Attorney fee allowable to plaintiff. In any action against an insurer in which service of process was made in the manner provided in ORS 736.252, if, prior to the commencement of the action, demand is made by the plaintiff or his attorney upon such insurer for payment in accordance with the terms of the contract of insurance and the insurer does not respond to such demand, and if it appears to the court that such failure to make payment was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed 12½ percent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than $25. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.
[1959 c.323 §6]

736.260 Exceptions to application of ORS 736.250 to 736.258. ORS 736.250 to 736.258 do not apply to an action, suit or proceeding against an unauthorized insurer arising out of any contract of:

(1) Reinsurance, ocean marine, aircraft or railway insurance;

(2) Insurance effectuated in compliance with ORS 750.010 to 750.110, relating to surplus line agents;

(3) Insurance against legal liability arising out of ownership, operation or maintenance of any property having a permanent situs outside this state; or

(4) Insurance against loss of or damage to any property having a permanent situs outside this state, where such contract contains a provision designating the insurance commissioner or a bona fide resident of this state as the insurer's lawful attorney upon whom all process may be served in any action begun by or on behalf of an insured or beneficiary and arising out of contracts of insurance between the insurer and persons residing or authorized to do business in the state.
[1959 c.323 §7]

736.262 to 736.298 [Reserved for expansion]

POLICIES, ATTORNEY FEES AND MINORS

736.300 Approval of policies by commissioner; withdrawal of approval. (1) Except where otherwise provided by law, no policy or contract of insurance, including endowment or annuity contracts, shall be delivered or issued for delivery in this state until the form of the same has been filed with and approved by the commissioner.

(2) The commissioner shall within 30 days after the filing of any policy or contract of insurance, including endowment or

annuity contracts, approve or disapprove such policy or contract. The commissioner shall give written notice of such action to the company proposing to deliver such policy or contract and when a policy or contract is disapproved the notice shall show wherein such policy or contract does not comply with the law.

(3) The 30-day period referred to in subsection (2) of this section may be extended by the commissioner for an additional period not to exceed 30 days if he gives written notice within the first 30-day period to the company proposing to deliver the policy or contract that he needs such additional time for the consideration of such policy or contract.

(4) The commissioner shall not approve any policy or contract of insurance, including endowment or annuity contracts, for delivery in this state:

(a) If he finds that such policy or contract does not comply with the law;

(b) If he finds that such policy or contract contains any provisions, including statement of premium, or has any label, description of its contents, title, heading, backing or other indication of its provisions which is unintelligible, uncertain, ambiguous or abstruse, or likely to mislead a person to whom the policy or contract is offered, delivered or issued; or

(c) If, in his judgment, the use of such policy or contract would be prejudicial to the interests of the company's policyholders or members, or it contains provisions which are unjust, unfair or inequitable.

(5) The commissioner may, at any time after a hearing held not less than 20 days after written notice to the company, withdraw his approval of or disapprove any policy or contract of insurance, including endowment or annuity contracts, being delivered in this state on any ground set forth in subsection (4) of this section. The written notice of such hearing shall state the reason for the proposed withdrawal or disapproval. No company shall deliver such policy or contract in this state after the effective date of such withdrawal or disapproval, which shall be as the commissioner may prescribe but not less than 30 days after the giving of notice of withdrawal or disapproval.

[1965 c.406 §2]

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 automobiles 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.

(6) Insurance in one policy may be effected, by any company authorized to transact such business in this state, against any physical loss or damage occurring to private dwelling properties, consisting of four or less living units, provided that the rate and premium for the perils of fire insurance, as defined in ORS 736.060, are shown separately on the policy for buildings and for contents thereof. Provided further, that the perils of casualty insurance, as defined in ORS 736.060, may be included in such policy, provided that the premium for each casualty insurance peril assumed shall be separately set forth on the policy. [Amended by 1955 c.225 §1]

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.

736.317 Uninsured motorist clause required in automobile insurance. (1) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance or use of a motor vehicle, trailer or semitrailer, shall be issued or delivered in this state with respect to a motor vehicle, trailer or semitrailer registered in this state unless the policy includes the coverage described in subsection (2) of this section.

(2) The policy referred to in subsection (1) of this section shall provide coverage therein or supplemental thereto, under provisions approved by the State Insurance Commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles, trailers or semitrailers because of bodily injury, sickness or disease, including death resulting therefrom. Coverage shall be not less than the amounts or limits prescribed for bodily injury or death for a policy meeting the requirements of ORS chapter 486.

(3) Subsection (1) of this section does not apply to any policy covering motor trucks as defined in ORS 481.035 where the insured has employes who operate the motor trucks and such employes are covered by workmen's compensation. [1959 c.413 §1]

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 employe 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 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, fraternal benefit society or health care service contractor 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 a contract or agreement issued by a health care service contractor as defined in ORS 742.010, 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 provided in this section 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.
[Amended by 1965 c.611 §16]

736.330 Minor may contract for annuity or insurance. (1) Any minor of the age of 18 years or more, as determined by the nearest birthday, may, notwithstanding his minority, contract for annuities and for insurance upon his own life, body or health, or on the person of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon his own life, body or health, or any contract such minor effected on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such a minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay by promissory note or otherwise any premium on any such annuity or insurance contract.

(2) If any minor mentioned in subsection (1) of this section is possessed of an estate that is being administered by a guardian, no such contract shall be binding upon the estate as to payment of premiums, except as and when consented to by the guardian and approved by the probate court of the county in which the administration of the estate is pending. Such consent and approval shall be required as to each annual premium payment.

(3) Any annuity contract or policy of life or accident and health insurance procured by or for a minor under subsection (1) of this section shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor.
[1961 c.466 §2]

736.335 Minor may receive monthly payment on annuity or insurance not to exceed $200. Any minor domiciled in this state who has attained the age of 18 years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding $200 in any one month made by a life insurer under the maturity, death or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract if such policy, contract or agreement provides for the payment or payments to such minor, and if prior to such payment the insurer has not received written notice of the appointment of a duly qualified guardian of the property of the minor. No such minor shall be deemed competent to alienate the right to or to anticipate such payments. This section shall not be deemed to restrict the rights of minors set forth in ORS 736.330, nor shall it be deemed to require any insurer to determine whether any other insurer may be effecting a similar payment to the same minor.
[1961 c.466 §4]

736.340 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 agent shall at all times keep the commissioner informed of his current address. 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 firm or corporation unless it appears that it has an office in this state managed by an individual who is qualified in accordance with subsection (2) of ORS 736.427. The firm or corporation shall at all times maintain such an individual as the manager of such office.

(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. Renewal of an agent's license may be accomplished by the continuance of the existing license for the ensuing year upon proper application by the appointing company. The fee for issuing or renewing such license shall be as provided in ORS 736.130 and shall be paid to the commissioner.

(4) Any company appointing and licensing an agent as provided in this section may upon proper application to the commissioner and upon the surrender of the license revoke or otherwise terminate the license of any agent appointed by and licensed in behalf of the company. In lieu of surrender of such license, the company may furnish to the commissioner proof that it has made reasonable effort to secure such license and that it has sent to the licensee written notice that application for a termination of his license has been made to the commissioner. Upon such revocation or termination the agent or any person having possession of said license shall return the same to the commissioner upon demand.

(5) 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. [Amended by 1955 c.189 §1; 1965 c.610 §5]

Note: The 1965 amendment to ORS 736.405 takes effect April 1, 1966. Until then, ORS 736.405 (1963 Replacement Part) remains in effect.

736.410 Certification and licensing of solicitors; fee; revocation of license. (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 individuals 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 solicitor shall at all times keep the commissioner and his employing agent informed of his current address. 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. Renewal of a solicitor's license may be accomplished by the continuance of the existing license for the ensuing year upon proper application to the commissioner by the employing agent. The fee for issuing or renewing such license shall be as provided in ORS 736.130 and shall be paid to the commissioner.

(5) Any agent employing and licensing a solicitor as provided in this section may, upon proper application to the commissioner and upon the surrender of the license, revoke or otherwise terminate the license of any solicitor employed by him. In lieu of surrender of such license, the agent may furnish to the commissioner proof that it has made reasonable effort to secure such license and that it has sent to the licensee written notice that application for termination of his license has been made to the commissioner. Upon such revocation or termination the solicitor or any person having possession of said license, shall return the same to the commissioner upon demand.

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

[Amended by 1955 c.189 §2; 1965 c.610 §6]

Note: The 1965 amendment to ORS 736.410 takes effect April 1, 1966. Until then, ORS 736.410 (1963 Replacement Part) remains in effect.

736.415 Qualifications for agent's or solicitor's license; application; examination fee. (1) Agents' or solicitors' licenses shall be granted only to persons who are trustworthy and competent to transact the business of an insurance agent or solicitor in such manner as to safeguard the interest of the public and only after satisfactory proof thereof has been presented to the commissioner. Every applicant for issuance or renewal of such license shall:

(a) Have established his residence or place of business in this state prior to filing his application, except in the case of an applicant for licensing as a nonresident insurance agent;

(b) Not have been convicted of a felony, except in the case of an applicant having special merit as determined by the commissioner;

(c) Be a person of good character and business reputation; and

(d) Have the requisite learning and ability, as shown by the written examination required of the applicant for issuance of such license and by such other requirements as the commissioner may establish.

(2) 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 authorizing 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:

(a) 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 and the names of employers during the five years next preceding;

(b) Whether the applicant has ever been convicted of or is under indictment for a felony, whether the applicant has ever had a judgment entered against him for fraud, whether any insurer or agent claims the applicant is indebted to it and the details of any such indebtedness, and whether any license to act as an insurance agent or insurance solicitor or in any other occupational or professional capacity has ever been refused, revoked or suspended in this or any other state;

(c) The applicant's fingerprints; and

(d) Such other information as the commissioner may require.

(3) The information specified in paragraphs (b) and (c) of subsection (2) of this section shall also be furnished by a married female applicant with respect to her husband, and by a firm or corporate applicant

with respect to each individual member comprising the firm or the principal officers of the corporation.

(4) The applicant shall make sworn statements and answers to such interrogatories as the commissioner may require in such application.

(5) The 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.

(6) Each applicant for issuance of a license shall be subjected to an examination as provided in ORS 736.420 and shall pay to the commissioner, for each examination, an examination fee of $10. The fee shall be paid in advance and shall not be returned to the applicant. It shall be unlawful for any person other than the applicant, directly or indirectly, to pay the examination fee.

(7) The commissioner may in his discretion require an applicant for renewal of an agent's or solicitor's license to fulfill any or all of the requirements then applicable to the original issuance of such licenses.

[Amended by 1965 c.610 §7]

736.420 Examination for agent's or solicitor's license; when required; duties of commissioner. (1) Upon receipt of an application for issuance of a license as 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 the applicant to a personal written examination. When it is shown to the satisfaction of the commissioner from such application and examination, or from a renewal application that the applicant has the qualifications required or provided for in ORS 736.415, the commissioner shall issue to the applicant a license to transact business in this state as an insurance agent or insurance solicitor, or shall renew such license.

(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.

(3) If the applicant is a firm or corporation, the examination shall be taken by each individual who is to exercise the powers conferred by a license issued to such firm or corporation.

(4) 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.

[Amended by 1965 c.610 §8]

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 state whether the holder is an insurance agent or insurance solicitor and what company the agent is authorized to represent and by what agent the solicitor is employed. It shall designate the class 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.

[Amended by 1965 c.610 §9]

Note: The 1965 amendment to ORS 736.425 takes effect April 1, 1966. Until then, ORS 736.425 (1963 Replacement Part) remains in effect.

736.427 Licensing firm or corporate agency. (1) Before an agent's license may be issued to a firm or corporation and before it may be renewed, there shall be filed with the commissioner the following information on standard forms prescribed and furnished by him:

(a) The name of each individual member comprising the firm or the names of the principal officers of the corporation; and

(b) The name of each individual who is to exercise the powers conferred by the license upon the firm or corporation.

(2) Any individual exercising the powers conferred by an agent's license issued to a

firm or corporation shall qualify and otherwise be subject to the insurance laws of this state as though an individual licensed agent, except that no individual license or fee therefor shall be required.

(3) In the case of a licensed firm or corporation, the commissioner shall be promptly notified on standard forms prescribed and furnished by him of all changes in personnel required to be named pursuant to subsection (1) of this section. The commissioner shall collect fees in such amounts as though for an individual agent for each additional individual named by such firm or corporation as exercising the powers conferred by the license upon such firm or corporation and with respect to whom fees have not previously been collected for the issuance or renewal of the current firm or corporate license.

[1965 c.610 §2]

Note: ORS 736.427 takes effect April 1, 1966.

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 employes, 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 employes 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 or suspension of licenses; grounds; notice to company or employing agent; reinstatement. (1) The commissioner, after notice, and for cause shown shall revoke, or suspend for not exceeding one year, 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;

(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;

(f) The conduct of the agent or solicitor has been such that if he were then applying for a license as an agent or solicitor his application should be denied; or

(g) The agent refuses to pay upon written demand a return of commission on any unearned premium due the insured by reason of cancellation of or change in the policy of insurance requiring such return of unearned premium.

(2) Upon revoking or suspending any license the commissioner shall notify the company or companies or the employing agent of such revocation or suspension. 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) 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, if the license of such agent or solicitor was revoked.

(b) The period of suspension has expired and, if necessary, the license of such agent or solicitor is renewed, if the license of such agent or solicitor was suspended.

[Amended by 1955 c.7 §1; 1957 c.254 §1; 1963 c.361 §1; 1965 c.66 §1]

736.470 Revocation or suspension of licenses; hearing by commissioner; appeal to circuit court; fine in lieu of revocation or suspension for first offense. (1) Whenever the commissioner determines to revoke or suspend 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 subpena, 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 suspended, 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, suspending 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, suspension 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 or suspending 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 or suspended for a similar offense and if it believes the commissioner's order imposes 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 or suspended.

[Amended by 1955 c.7 §2]

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. Resident agents who are regularly engaged in the solicitation of insurance from the public 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 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.

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

(c) Contracts of life insurance, and contracts of accident and health insurance if issued from the home office or regional home office of a life insurance company.

(d) Bid bonds issued in connection with any public or private contract.

(4) Nothing contained in the General Insurance Law shall be construed as impairing the free and unlimited right of nonresident 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 who is regularly engaged in the solicitation of insurance from the public.

[Amended by 1961 c.284 §1; 1963 c.367 §1; 1965 c.70 §1]

736.480 [Repealed by 1959 c.323 §10]

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 (9), 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) The commissioner shall license as an adjuster only an individual who has furnished evidence satisfactory to the commissioner that he is qualified as follows:

(a) Is at least 21 years of age.

(b) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state.

(c) Is a trustworthy person with good reputation.

(d) Has had experience, education, or special training with reference to handling of loss claims under insurance policies, or contracts of insurance or indemnity, of sufficient duration and extent to make him competent to fulfill the responsibilities of an adjuster.

(e) Has successfully passed any examination required by subsection (3) of this section.

(3) Each applicant for a license as an adjuster shall take and pass an examination given by the commissioner as a test of his qualifications, competence and knowledge, except that this requirement shall not apply to:

(a) An applicant for the renewal of licenses in force on September 2, 1963, or reissued thereafter.

(b) An applicant who is licensed as an independent adjuster in another state which licenses Oregon adjusters without examination.

(4) Each such examination shall be as the insurance commissioner prescribes and shall be of sufficient scope to test the applicant's knowledge of the kinds of insurance or suretyship which may be dealt with under the license requested and also his knowledge of the duties and responsibilities of an adjuster under the laws of this state.

(5) The commissioner shall give examinations at such times and places within the state as he deems necessary to reasonably serve the best interests of all concerned, provided that the commissioner shall give an examination at least once every six months if applications for licenses are then pending.

(6) The examination taken by the applicant shall be written under the commissioner's supervision.

(7) The commissioner shall charge an examination fee of $10 for each examination. The fee shall be paid in advance and shall not be returned to the applicant.

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

(9) 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.

(10) 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 insurance adjuster.

(11) 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.

(12) 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 Division prior to entering upon adjustment of the loss.

[Amended by 1963 c.462 §1]

736.490 Temporary permit issued to adjusters under certain circumstances; application. (1) To facilitate the settlement of claims under insurance policies or contracts of insurance or indemnity involving widespread property loss in this state arising out of a catastrophe, the State Insurance Commissioner may issue a temporary permit to any person authorized in another state to adjust losses claimed under insurance policies or contracts of insurance or indemnity to act as an adjuster in the catastrophe area

for or against an insurer authorized to transact business in this state. A temporary permit issued pursuant to this section shall be effective for such time as the commissioner in his discretion deems necessary and shall be in lieu of the license and fee requirements of ORS 736.485.

(2) A temporary permit may be obtained by filing with the commissioner a written application therefor in the form prescribed by the commissioner. The application shall contain the name and address of the applicant, the name of the state in which the applicant is authorized to adjust losses claimed under insurance policies or contracts of insurance or indemnity and any other information that the commissioner may require.

(3) Such a permit may also be issued in respect to any adjuster who is licensed or permitted to act as such in the state of his domicile and who is sent into this state on behalf of an insurer or insured for the purpose of investigating or making adjustment of a particular loss under policies of insurance.
[1957 c.3 §2]

INSURANCE DIVISION

736.495 Insurance Division. The Insurance Division is established within the Department of Commerce and is charged with the execution of the laws relating to insurance.
[1963 c.580 §87]

Note: Chapter 580, Oregon Laws 1963, establishing the Department of Commerce is repealed on July 1, 1967. Section 85, chapter 580, Oregon Laws 1963, is set forth below for the convenience of the user:

Sec. 85 (1) The Insurance Division of the Department of Commerce succeeds to and is vested with all the duties, functions and powers vested in the Department of Insurance of the State of Oregon; and, except as otherwise provided by law, there hereby are transferred to, imposed upon and vested in the Insurance Division all the duties, functions and powers of the Department of Insurance of the State of Oregon and the State Insurance Commissioner. After the operative date of this Act the Insurance Division shall exercise such duties, functions and powers.

(2) The Legislative Counsel, for the purpose of harmonizing and clarifying the provisions of statute sections published in the Oregon Revised Statutes, may substitute for words designating the Department of Insurance of the State of Oregon and the State Insurance Commissioner, wherever such words occur in the statute sections to be published in the Oregon Revised Statutes, words designating the Insurance Division of the Department of Commerce.

736.500 Insurance Commissioner; qualifications; salary; oath; bond; conflict of interest. (1) The Insurance Division shall be under the supervision and control of an administrator who shall be known as the Insurance Commissioner. The Director of Commerce shall, with the approval of the Governor, appoint the Insurance Commissioner who shall be a person experienced in insurance matters. The commissioner shall hold his office at the pleasure of the Director of Commerce and shall be responsible for the performance of the duties imposed upon the division. The Insurance Commissioner shall receive such salary as may be provided by law.

(2) Before entering upon the duties of his office the commissioner 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, with good sureties, approved by the Director of Commerce, conditioned for the faithful performance of his duties in such sum as may be fixed by the Director of Commerce. The premium on the bond shall be paid in the same manner as other expenses of the division.

(3) The commissioner, during his term of office, shall not be interested in the business of any insurance company, except as a policyholder.
[1963 c.580 §88]

736.503 Administrative power of commissioner. The Insurance Commissioner shall have the power to:

(1) For the purpose of administration, with the approval of the Director of Commerce, organize and reorganize, as necessary, the division in the manner that he deems necessary to properly conduct the work of the division.

(2) Appoint all subordinate officers and employes of the division, including but not limited to, deputies, actuaries and assistants, and prescribe their duties and fix their compensation, subject to the applicable provisions of the State Civil Service Law. Subject to any other applicable law regulating travel expenses, the officers and employes of the division shall be allowed such reasonable and necessary travel and other expenses as may be incurred in the performance of their duties.
[1963 c.580 §89]

736.505 [Amended by 1963 c.523 §10; repealed by 1963 c.580 §103]

736.507 Official seal; evidentiary effect of sealed document. The Insurance Division shall adopt an official seal. Any certificate or other document or paper executed by the

division in pursuance of any authority conferred upon it by law and sealed with the seal of the division, and all copies of papers certified by it 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.
[1963 c.580 §90(1)]

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 division 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 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 division. The commissioner may distribute free of charge one copy of the insurance laws in pamphlet form to companies licensed under these laws, in addition to their state representative; general agents domiciled in Oregon; insurance departments of other states and territories; and to public and state libraries in quantities necessary to fulfill library needs. Copies not so distributed may be sold at a price not to exceed $5 per copy.

(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.
[Amended by 1963 c.307 §1]

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 Director of Commerce 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.

Note: Pursuant to section 8 of chapter 580, Oregon Laws 1963, the Legislative Counsel has substituted "Director of Commerce" for "Governor" in ORS 736.520.

736.525 Collection and disposition of fees, taxes and penalites. 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 after deductions of refunds shall be paid by him to the State Treasurer, at the end of every calendar month or oftener in his discretion, for deposit in the General Fund to become available for general governmental expenses.
[Amended by 1961 c.308 §3]

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 commissioner 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.

736.542 Commissioner's inquiries to companies. The commissioner may address any proper inquiries to any insurance company or its officers in relation to its activities or condition or any other matter connected with its transactions. Any company or officer so addressed shall promptly and truthfully reply in writing to such inquiries. The reply shall be verified by an officer of the company, if the commissioner so requires. A reply, upon receipt thereof by the commissioner, shall be deemed filed.
[1965 c.173 §2]

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; compensation and expenses. 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. The compensation and expenses including actual necessary transportation and travel expenses of examiners so appointed shall be paid by the commissioner.
[Amended by 1957 c.34 §1]

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 commissioner the just and legitimate costs of the examination as determined by the commissioner, including actual necessary transportation and traveling expenses. The commissioner shall revoke or refuse his certificate of authority to any company neglecting or refusing to pay such costs, or neglecting or refusing to furnish any information to the commissioner. [Amended by 1957 c.34 §2]

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 Expenses of division; audit. The expenses of the Insurance Division 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 division from the funds provided therefor. The division shall be examined and audited as other state agencies are audited.
[1963 c.580 §90(2)]

736.580 Recording complaints; commissioner to consider complaints before issuing licenses. Each written and signed complaint received by the Insurance Division relating to contracts of insurance or the sale thereof, regardless of its subsequent disposition, shall be recorded by the division and maintained for a period of not less than seven years. The

records of such complaints shall be indexed whenever applicable both by the name of the company and by the name of the agent involved. The Insurance Commissioner shall consider such complaints before issuing or renewing any license of a company or agent named in such complaints.
[1965 c.57 §2]

736.590 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.

736.608 Prohibition against untrue or deceptive advertising. (1) No insurance company or agent, or attorney as defined in ORS 749.010, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(2) Whenever the commissioner has knowledge of any violation of this section, he forthwith shall order such offending company, or agent, or attorney as defined in ORS 749.010 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, as provided in ORS 737.550, revoke the license or certificate of authority of such offending company or agent, or attorney as defined in ORS 749.010. No renewal of a license or certificate of authority revoked pursuant to this subsection shall be granted within three years from the date of the revocation.
[1955 c.500 §2]

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 Employe, officer or director profiting from sale of insurance to employer or corporation. (1) No employe 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 or suspended for not exceeding one year.

[Amended by 1955 c.7 §3]

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 instalment 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 False or misleading filings with commissioner. No person shall file or cause to be filed with the commissioner any article, certificate, report, statement, application or any other information required or permitted to be so filed under the insurance laws of this state and known to such person to be false or misleading in any material respect.
[1965 c.173 §3]

736.660 to 736.700 [Reserved for expansion]

PROHIBITED PRACTICES BY LENDERS ON REAL PROPERTY

736.705 Definitions for ORS 736.705 to 736.755. As used in ORS 736.705 to 736.755, unless the context requires otherwise:

(1) "Borrower" means any person, partnership, firm or corporation who is indebted to a lender.

(2) "Lender" means any person, partnership, firm or corporation engaged in the business of financing the purchase of real property or engaged in the business of lending money on the security of real property, and includes the servicing agent of the lender.
[1963 c.277 §2]

736.715 Policy; designation of insurer prohibited. It is the policy of the State of Oregon that its citizens have the right of free choice in the procurement of insurance and accordingly, no lender shall designate an insurance company or insurance agent from which a borrower may procure the insurance required by the loan or sales agreement.
[1963 c.277 §4]

736.725 Consideration for substitution of policy or change in kind, type or amount of insurance. No lender shall require a borrower to pay a consideration in excess of $10 for the substitution of an insurance policy written with respect to the secured property; nor shall a lender require that a consideration be paid to it on account of any change in the kind, type or amount of insurance, except for the premium charged for such insurance.
[1963 c.277 §3]

736.735 Confidentiality of information in a policy of insurance. The information contained in a policy of insurance furnished by a borrower to a lender is confidential to the borrower and accordingly the lender shall not divulge such information to any insurance company or insurance agent other than those named on the policy of insurance without first procuring the written consent of the borrower.
[1963 c.277 §5]

736.745 Construction of ORS 736.705 to 736.755. Nothing in ORS 736.705 to 736.755 shall be construed as preventing a lender from exercising a reasonable privilege of approval or disapproval of the insurance procured by the borrower.
[1963 c.277 §6]

736.755 Violation of ORS 736.715 or 736.735 as cause for license revocation. A violation by a lender of ORS 736.715 or

736.735 shall be cause for the revocation of its license as insurance agent by the State Insurance Commissioner in accordance with the procedures of ORS 736.470.
[1963 c.277 §8]

736.760 to 736.800 [Reserved for expansion]

UNFAIR TRADE PRACTICES

736.805 Purpose of ORS 736.805 to 736.840. The purpose of ORS 736.805 to 736.840 is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining certain practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined.
[1965 c.105 §2]

736.810 "Person" defined. As used in ORS 736.805 to 736.840, "person" means any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, solicitors, brokers and adjusters.
[1965 c.105 §3]

736.815 Definition of unfair trade practices. The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) (a) Except as provided in ORS 736.825, making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Except as provided in ORS 736.825, making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(2) Except as provided in ORS 736.825 or as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(3) Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(4) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any

person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(5) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(6) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(7) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

(8) Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

(9) Issuing or delivering or permitting agents, officers, or employes to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

[1965 c.105 §5]

736.820 Unfair trade practices prohibited. No person shall engage in this state in any trade practice which is defined in ORS 736.815 as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

[1965 c.105 §4]

736.825 Trade practices exempted from prohibition. Nothing in subsection (1) or (2) of ORS 736.815 shall prohibit any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense; or

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

[1965 c.105 §6]

736.830 Investigation by commissioner. The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by ORS 736.820.

[1965 c.105 §7]

736.835 Orders of commissioner; hearings. (1) Whenever the commissioner has reason to believe that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice prohibited by ORS 736.820, he shall issue an order, directed to such person, to discontinue such method, act or practice. A copy of the order shall be forwarded by certified mail to the last-known address of such person. The order shall become final 15 days after the date of mailing unless within such 15-day period the person to whom it is directed files with the commissioner a written request for a

hearing. The copy of the order forwarded to the person involved shall set forth a statement of the specific charges and the fact that the person may request a hearing within the 15-day period. Where a hearing is requested, the commissioner shall set a hearing date within 30 days after receipt of the request, and shall give the person involved written notice of the hearing date at least seven days prior thereto. The person requesting the hearing must establish to the satisfaction of the commissioner that such order should not be complied with. To the extent applicable and not inconsistent with the foregoing, the provisions of ORS 183.420 to 183.500 shall govern the hearing procedure and any judicial review thereof. Where the hearing has been requested, the commissioner's order shall become final at such time as the right to further hearing or review has expired or been exhausted.

(2) Any person who violates an order issued by the commissioner pursuant to subsection (1) of this section, after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Oregon a sum not to exceed $50, which may be recovered in a civil action, except that, if such violation is found to be wilful, the amount of such penalty shall be a sum not to exceed $500.

(3) No order of the commissioner under this section or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.
[1965 c.105 §8]

736.840 Nonexclusive powers of commissioner. The powers vested in the commissioner by ORS 736.805 to 736.840 shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices prohibited by ORS 736.820.
[1965 c.105 §9]

736.845 to 736.985 [Reserved for expansion]

PENALTIES

736.990 Penalties. (1) Violation of ORS 736.020 is punishable, upon conviction, by a fine of not more than $500 for each offense, or by imprisonment in the county jail not to exceed 30 days, or both.

(2) 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.

(3) 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.

(4) Violation of ORS 736.460 is a felony.

(5) Violation of ORS 736.605 is punishable, upon conviction, by a fine of $250 for the first offense and $500 for every subsequent offense.

(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.

(9) A violation by a lender of ORS 736.715, 736.725 or 736.735 shall be a misdemeanor and shall subject such lender, upon conviction, to a fine not to exceed $500.

(10) Violation of ORS 736.650 is punishable upon conviction, in the case of an individual, by imprisonment in the county jail for not more than one year or by a fine not exceeding $1,000, or, in the case of a corporation, by a fine not exceeding $10,000.
[Amended by 1959 c.323 §9; 1961 c.562 §4; subsection (9) enacted as 1963 c.277 §7; subsection (10) enacted as 1965 c.173 §4]

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 November 15, 1965.

Sam R. Haley
Legislative Counsel