

# Chapter 746

## 1967 REPLACEMENT PART

### Trade Practices

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| Forms and filings prior to 1968, effect, 1967 c.359 §708          | 746.320  |
| "Insurance Code" defined, 731.004                                 | Use of certified mail when statute specifies registered, 174.150 |
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Note: ORS chapter 746 (1967 Replacement Part) first becomes operative on January 1, 1968. See 1967 c.359 §714.

### GENERAL PROVISIONS

**746.005 Trade practices exempted from prohibitions.** Nothing in this chapter shall apply to wet marine and transportation insurance or prohibit any of the following practices:

(1) In the case of life insurance policies, 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 insurer and its policyholders;

(2) In the case of industrial life insurance policies, 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;

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

(4) Extension of credit for payment of premiums without any service charge or interest by the insurer or agent for a period of not more than 90 days after the end of the month in which the policy becomes effective;

(5) Practices authorized pursuant to ORS 733.180, 733.190 and 733.200.

(6) The issuing of life or health insurance policies on a salary savings, bank draft, preauthorized check or payroll deduction plan or similar plan at a reduced rate reasonably related to the savings made by use of such plan; or

(7) The issuing of life or health insurance policies at rates less than the usual premium rates for such policies, or using modifications of premium rates based on amount of insurance, if such issuance or modification does not result in reduction in premium rates in excess of savings in administration and issuance expenses reasonably attributable to such policies.

[Formerly 736.825]

**746.010** [Amended by 1961 c.256 §1; 1967 c.359 §507; renumbered 743.702]

**746.015 Discriminations.** No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life or between risks of essentially the same hazard in the application of rates for insurance policies, in the dividends or other benefits payable thereunder, or in any other terms or conditions thereof.

[1967 c.359 §568]

**746.020** [Amended by 1965 c.610 §13; repealed by 1967 c.359 §704]

**746.025 Securities or other contracts as inducement to insurance.** No person shall sell, agree or offer to sell, or give or offer to give, directly or indirectly in any manner whatsoever, shares of stock, securities, bonds, special or advisory board contracts or agreements of any form or nature promising returns and profits as an inducement to insurance. No insurer engaging in or permitting its representatives to engage in such practices in this or any other state may be authorized to do business in this state.

[Formerly 739.535]

**746.030** [Amended by 1961 c.359 §508; 1967 c.359 §508; renumbered 743.705]

**746.035 Inducements not specified in policy.** Except as otherwise expressly provided by the Insurance Code, no person shall permit, offer to make or make any contract of insurance, or agreement as to such contract, unless all agreements or understandings by way of inducement are plainly expressed in the policy issued thereon.

[1967 c.359 §570]

**746.040** [Amended by 1961 c.256 §3; repealed by 1967 c.359 §704]

**746.045 Rebates.** No person shall personally or otherwise offer, promise, allow, give, set off, pay or receive, directly or indirectly, any rebate of or rebate of part of the premium payable on an insurance policy or the agent's commission thereon, or earnings, profit, dividends or other benefit founded, arising, accruing or to accrue on or from the policy, or any other valuable consideration or inducement to or for insurance on any domestic risk, which is not specified in the policy.

[1967 c.359 §571]

**746.050** [Amended by 1961 c.256 §4; repealed by 1967 c.359 §704]

**746.055 Title insurance commissions, rebates and discounts.** With respect to title insurance, no commissions, rebates or discounts shall be paid, allowed or permitted to any person having an interest in or lien upon real property which is the subject of the title insurance involved, or to any person acting for or on behalf of a person with such an interest or lien.

[Formerly 748.086]

**746.060** [Repealed by 1961 c.256 §5]

**746.065 Personal or controlled insurance.** (1) As used in this section, "personal or controlled insurance" means insurance covering an insurance agent or:

(a) His spouse, his employer or his employer's spouse, or any group of employees under a group policy issued to his employer;

(b) Any person related to him, to his spouse, to his employer or to his employer's spouse within the second degree by blood or marriage;

(c) If his employer is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such corporation;

(d) If his employer is a partnership or association, any person owning any interest in such partnership or association;

(e) If the agent is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in the agent, and any corporation which is likewise directly or indirectly controlled by the person who so directly or indirectly controls the agent; or

(f) If the agent is a corporation, any corporation making consolidated returns for United States income tax purposes with any corporation described in paragraph (e) of this subsection.

(2) If premiums on personal or controlled insurance transacted by an agent payable in one calendar year exceed the premiums or with respect to life and health insurance twice the premiums, on other insurance transacted by the agent payable in the same year, the receipt of commissions upon the excess is an unlawful rebate.

(3) This section shall not apply to an individual licensee who:

(a) Is licensed during all of such calendar year individually as an agent;

(b) During such calendar year conducts an individual agency business, not being designated to exercise the powers conferred by

an agent's license issued to any firm or corporation nor owning any interest in any firm or corporation transacting an insurance agency or brokerage business;

(c) Has been continuously licensed in some manner as an active insurance agent, broker or solicitor for at least 25 years; and

(d) Is at least 65 years of age at the beginning of such calendar year.

(4) This section does not apply to the writing, issuing or soliciting by a seller of personal property of insurance covering the personal property sold by him on an installment contract whereunder the title to the property is reserved by the seller.

[1967 c.359 §573]

**746.070** [Repealed by 1961 c.256 §5]

**746.075 Misrepresentation generally.** In the offer or sale of any insurance, directly or indirectly, or in connection with any inducement or attempted inducement, directly or indirectly, of any insured or person with ownership rights under an issued life insurance policy to lapse, forfeit, surrender, assign, effect a loan against, retain, exchange or convert the policy, no person shall:

(1) Make, issue, circulate or cause 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 therein or the dividends or share of surplus to be received thereon;

(2) Make any false or misleading representation as to the dividends or share of surplus previously paid on similar policies;

(3) Make any false or misleading representation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(4) Use any name or title of any policy or class of policies misrepresenting the true nature thereof;

(5) Employ any device, scheme, or artifice to defraud;

(6) Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading; or

(7) Engage in any other transaction, practice or course of business which operates as a fraud or deceit upon the purchaser, insured or person with policy ownership rights.

[1967 c.359 §574]

**746.080** [Amended by 1967 c.359 §509; renumbered 743.708]

**746.085 Replacing life insurance.** In addition to all other powers of the commissioner with respect thereto, the commissioner may issue rules requiring persons who replace, or offer or propose to replace, existing life insurance, to leave with the policyholder written, signed and dated statements which fully and correctly compare the terms, conditions and benefits of an existing policy with the proposed policy.

[1967 c.359 §575]

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

**746.100 Misrepresentation in insurance applications or transactions.** No person shall make a false or fraudulent statement or representation on or relative to an application for insurance, or for the purpose of obtaining a fee, commission, money or benefit from an insurer or agent.

[Formerly 736.460]

**746.110 False, deceptive or misleading statements.** No person 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 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.

[Formerly 736.608]

**746.120 Illegal dealing in premiums.** No person shall wilfully collect any sum as premium or charge for insurance which is not then provided, or is not in due course to be provided subject to acceptance of the risk by the insurer, under an insurance policy issued by an insurer in conformity to the Insurance Code.

[1967 c.359 §579]

**746.130 "Free" insurance as inducement to sale or rental of property.** (1) No insurer shall participate in any plan to offer or effect in this state, as an inducement to the purchase or rental by the public of any property or services, any insurance for which there is no separate charge to the insured.

No person shall arrange the sale of any such insurance.

(2) This section does not apply to:

(a) Insurance offered as a guarantee of the performance of goods, and designed to protect the purchasers or users of such goods;

(b) Title insurance;

(c) Credit life or credit health insurance as defined in ORS 743.561; or

(d) Towing and labor services of motorist service clubs transacting business in compliance with ORS chapter 751.

[1967 c.359 §580]

**746.140 Sale of life insurance with securities; written proposal; application of securities law.** (1) Every insurer or agent soliciting an offer to buy or selling life insurance in correlation with the sale of securities shall furnish the prospect with a clear and unambiguous written proposal prior to the signing of the application by the applicant.

(2) The written proposal shall be dated and signed by the insurance agent, or by the insurer if no agent is involved, and left with the prospect. The written proposal shall be on a form which has been filed with the commissioner. If a sale is made of both life insurance and securities, a duplicate copy of the written proposal left with the buyer shall be retained by the insurer for a period of not less than three years.

(3) Each such proposal shall:

(a) State the name of the insurer in which the life insurance is to be written;

(b) State that the prospect has the right to purchase the life insurance only, the securities only or both the life insurance and the securities;

(c) Contain no misrepresentations or false, deceptive or misleading words, figures or statements;

(d) State all material facts without which the proposal would have the capacity or tendency to mislead or deceive; and

(e) Set forth all matters pertaining to life insurance, including premium charges, separately from matters not pertaining to life insurance.

(4) This section shall not be construed to affect the application of any other provision of law concerning or regulating securities.

[Formerly 739.562]

**746.160 Practices injurious to free competition.** Except as otherwise expressly provided by law, no person, either within or outside of this state, directly or indirectly, shall enter into any contract, understanding or combination with any insurer or manager, agent or representative thereof for the purpose of, nor shall any such persons or insurers, jointly or severally do any act or engage in any practice for the purpose of:

(1) Controlling the rates to be charged, or the commissions or other compensations to be paid, for insuring any risk or class of risks in this state;

(2) Discriminating against or differentiating from any insurer, 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 insurers, managers, agents or representatives; or

(3) Doing anything which is detrimental to free competition in the business or injurious to the insuring public.

[Formerly 736.615]

**746.170 Definitions for ORS 746.170 to 746.210.** As used in ORS 746.170 to 746.210:

(1) "Borrower" means any person who is indebted to a lender.

(2) "Lender" means any person engaged in the business of financing the purchase of real property or lending money on the security of real property, and includes the servicing agent of the lender.

[Formerly 736.705]

**746.180 Designation of property insurer by lender prohibited.** It is the policy of this state that its citizens have the right of free choice in the procurement of insurance and that, accordingly, no lender shall designate an insurer or insurance agent from which a borrower may procure the insurance required by the loan or sales agreement on the property securing the indebtedness.

[Formerly 736.715]

**746.190 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 securing property; nor shall a lender require that any consideration be paid to it on account of any change in the kind, type or amount of such insurance, except for the premium charged for the insurance.

[Formerly 736.725]

**746.200 Confidentiality of information in policy of insurance furnished lender.** 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 any such information to any insurer or insurance agent other than those named on the policy without first procuring the written consent of the borrower.

[Formerly 736.735]

**746.210 Construction of ORS 746.170 to 746.210.** Nothing in ORS 746.170 to 746.210 shall be construed as preventing a lender from exercising a reasonable privilege of approval or disapproval of the insurance procured by the borrower on the property securing the indebtedness.

[Formerly 736.745]

**746.220 Debtor's option in furnishing credit life or credit health insurance.** When credit life insurance or credit health insurance, as defined in ORS 743.561, is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any authorized insurer.

[Formerly 739.615]

**746.230 Refusal to pay claims.** No insurer shall refuse, without just cause, to pay or settle claims arising under coverages provided by its policies and with such frequency as to indicate a general practice in this state, which general practice is evidenced by:

(1) A substantial increase in the number of complaints against the insurer received by the Insurance Division;

(2) A substantial increase in the number of lawsuits filed against the insurer or its insureds by claimants; or

(3) Other relevant evidence.

[1967 c.359 §588a]

**746.240 Procedure as to unfair methods of competition and unfair or deceptive acts or practices not expressly prohibited.** (1) Whenever the commissioner has reason to believe that any person transacting insurance is engaging in this state in any method of competition that is unfair or in any act or practice in the conduct of such business that is unfair or deceptive, which method,

act or practice is not expressly prohibited by the insurance code, and that a proceeding by him in respect thereto would be to the interest of the public, the commissioner may issue and serve upon such person a statement of the charges in respect thereto and a notice of a hearing thereon. The commissioner shall, after such hearing, make a report in writing in which he shall include his findings as to the facts, and he shall serve a copy thereof upon such person.

(2) If such report charges a violation of the insurance code and if such method of competition, act or practice has not been discontinued, the commissioner may, through the Attorney General of this state, cause a petition to be filed in the circuit court of this state within the district wherein the person resides or has his principal place of business, to enjoin and restrain the person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite.

(3) A transcript of the proceedings before the commissioner including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commissioner the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

(4) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice. [1967 c.359 §589]

**746.250 Appeal for judicial review by intervenor.** If the report of the commissioner under ORS 746.240 does not charge a violation of the Insurance Code, then any intervenor in the proceedings may within 20 days after the service of such report cause a notice of appeal for a review of such report to be filed in the Circuit Court for Marion County. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the commissioner, constitutes a violation of the Insurance Code.

[1967 c.359 §590]

### UNAUTHORIZED INSURANCE

**746.310 Representing or aiding unauthorized insurer prohibited.** (1) No person shall in this state directly or indirectly with respect to domestic risks act as agent for or otherwise transact insurance for any insurer not then authorized to transact such insurance in this state.

(2) This section does not apply to:

(a) Matters authorized to be done by the commissioner under ORS 746.320 to 746.360.

(b) Insurance written under a surplus line license in compliance with ORS 744.305 to 744.405.

(c) Any transaction with respect to reinsurance when transacted by an insurer duly authorized by its state of domicile to transact the class of insurance involved.

(d) A licensed adjuster or attorney at law representing such an insurer from time to time in such occupational or professional capacity.

[1967 c.359 §591]

**746.320 Service of process on commissioner equivalent to personal service on unauthorized foreign or alien insurer.** (1) When an unauthorized insurer does any of the acts specified in subsection (2) of this section in this 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 policies of insurance between the insurer

and persons residing or authorized to do business in this 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 this state.

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

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

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

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

(d) Any other transaction of business arising out of policies 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 then permitted by law.

[Formerly 736.252]

**746.330 Judgment by default after service of process under ORS 746.320.** Until the expiration of 30 days from the date of filing an affidavit of compliance under ORS 746.320, 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.

[Formerly 736.254]

**746.340 Conditions to be met by defendant unauthorized insurer before filing motions or pleadings.** (1) Except as provided in subsection (3) of this section, before any unauthorized 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 746.320, the defendant insurer shall either:

(a) Procure a certificate of authority to transact insurance in this 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 entered 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.

(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 its defense in such action.

(3) Nothing in ORS 746.320 to 746.360 shall be construed to prevent a defendant unauthorized insurer from filing a motion to set aside service of process made in the manner provided in ORS 746.320 on the ground that such insurer has not done any of the acts described in subsection (2) of such section.

[Formerly 736.256]

**746.350 Attorney fee allowable to plaintiff.** In any action against an unauthorized insurer in which service of process was made in the manner provided in ORS 746.320, 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 insurance

policy and the insurer does not make such payment, and if it appears to the court that failure to make such payment was vexatious and without reasonable cause, the court may allow to the plaintiff reasonable attorney fees and include such fees in any judgment that may be rendered in such action. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make such payment was vexatious and without reasonable cause.  
 [Formerly 736.258]

**746.360 Exceptions to application of unauthorized insurer service of process law.** ORS 746.320 to 746.360 do not apply to an action against an unauthorized insurer arising out of any policy of:

- (1) Reinsurance or wet marine and transportation insurance;
- (2) Insurance effected in compliance with ORS 744.305 to 744.405;
- (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 policy contains a provision designating the 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 policies of insurance between the insurer and persons residing or authorized to do business in this state.  
 [Formerly 736.260]

**746.370 Records of insureds.** In order that the commissioner may effectively administer ORS 746.310 to 746.370, every person for or by whom insurance has been placed with an unauthorized insurer shall, upon the commissioner's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the commissioner the amount of premiums paid or agreed to be paid for the insurance.  
 [1967 c.359 §597]

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

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.  
 Done at Salem, Oregon,  
 on December 1, 1967.

Robert W. Lundy  
 Legislative Counsel