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SHORT TITLE; PURPOSE AND CONSTRUCTION

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[1967 c.359 §1]

731.008 Purpose of Insurance Code. The Legislative Assembly declares that the Insurance Code is for the protection of the insurance-buying public.
[Formerly 736.003]

731.010 [Repealed by 1965 c.241 §3]

731.012 Effect of federal law. The Insurance Code shall regulate the business of insurance and every person engaged therein in accordance with the intent of Congress as expressed in the Act of March 9, 1945, as amended (Public Law 15, 79th Congress, 15 U.S.C. 1011 to 1014) which states in part that no Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any state for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance.
[1967 c.359 §3]

731.016 Construction of Insurance Code. The Insurance Code shall be liberally construed and shall be administered and enforced by the Insurance Commissioner to give effect to the policy stated in ORS 731.008.
[1967 c.359 §4]

731.020 [Repealed by 1965 c.241 §3]

APPLICATION OF INSURANCE CODE

731.022 Compliance with Insurance Code required. No person shall transact insurance in this state or relative to a domestic risk without complying with the applicable provisions of the Insurance Code.
[1967 c.359 §5]

731.026 Application of Insurance Code to particular insurers. The Insurance Code shall apply to:

(1) An educational institution or nonprofit corporation issuing annuity policies in compliance with ORS 731.704 to 731.724, only as provided in such sections.

(2) A fraternal benefit society complying with ORS chapter 748, only as provided in such chapter.

(3) A health care service contractor complying with ORS chapter 750, only as provided in such chapter.

(4) A motorist service club complying with ORS chapter 751, only as provided in such chapter.
[1967 c.359 §6; 1971 c.425 §1]

731.028 Applicability of certain Insurance Code provisions to State Accident Insurance Fund. The State Accident Insurance Fund is subject as a domestic insurer to ORS 731.256, 731.260, 731.296, 731.300 to 731.316, 731.574, 733.010 to 733.060, 733.140 to 733.170, 733.210, 737.205 to 737.340, 737.560, 746.075 and 746.110 to the extent that such provisions are not inconsistent with the express provisions of ORS chapter 656. However:

(1) ORS 731.300 and 731.574 first apply to the State Accident Insurance Fund after December 31, 1972.

(2) The requirements of the Insurance Commissioner under ORS 733.010 to 733.060, 733.140 to 733.170 and 733.210 govern in the case of a conflict between those requirements and the requirements of any accounting system prescribed by the Executive Department.

(3) The filing requirements of ORS 737.205 to 737.340 and 737.560 are in lieu of any similar filing requirements prescribed by any other law of this state.
[1971 c.385 §2]

731.030 [Repealed by 1965 c.241 §3]

731.032 Persons required to obtain certificate of exemption. Except as provided in ORS 731.042, the Insurance Code does not apply to:

(1) An association of employes that:

(a) Does not provide benefits to its members for accidents and illness of more than $500 in any one year on behalf of any one member. This limitation does not apply to an association of employes that was continuously active in this state for at least one year prior to June 8, 1967;

(b) Does not provide a death benefit of more than $500;

(c) Does not issue any policy of insurance; and

(d) Does not compensate anyone for procuring new members; provided, however, that notwithstanding this subsection, an association of employes described in this subsection may elect to be subject to the Insurance Code by a majority vote of its members residing in Oregon.

(2) A doctor contracting to furnish

health care services to an association of employes described in subsection (1) of this section.

(3) An association of grade schools, high schools, colleges or universities that:

(a) Provides health care services to students of member institutions; and

(b) Does not compensate anyone for procuring new members.

(4) A patrons of husbandry association, fraternal fire insurance association, fraternal life insurance association, or religious organization providing fire insurance for its members or churches, that was continuously active in this state for 15 years prior to January 1, 1957, and was not required to have a certificate of authority on that date.

(5) A fraternal benefit society that:

(a) Admits to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business; and

(b) Insures only its own members and their families, and its ladies' societies or ladies' auxiliaries.

(6) An air ambulance service which is operated by a nonprofit corporation, if the majority of the group of persons vested with the management of the affairs of the corporation are not employes of the corporation.
[1967 c.359 §7; 1971 c.69 §1; 1971 c.538 §1]

731.036 Persons completely exempt from application of Insurance Code. The Insurance Code does not apply to:

(1) A bail bondsman, other than a corporate surety and its agents; or

(2) A fraternal benefit society that has maintained lodges in this state and other states for 50 years prior to January 1, 1961, and for which a certificate of authority was not required on that date.
[1967 c.359 §8]

731.040 [Repealed by 1965 c.241 §3]

731.042 Certificate of exemption; application of certain Insurance Code provisions to exempt persons. (1) No person exempted by ORS 731.032 may transact insurance until a certificate of exemption has been received by such person from the commissioner.

(2) No certificate of exemption shall be issued to any such person by the commissioner 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 ORS 731.804, the commissioner shall issue a certificate of exemption authorizing the applicant to act as an exempt insurer until the succeeding April 1.

(4) An exempt insurer shall be subject to ORS 731.296 to 731.316, 731.414, 731.418, 731.988, 731.992, 733.010 to 733.210, 746.075 and 746.110.
[Formerly 736.020]

731.046 Exemption of policies from Securities Law. Any policy whose form has been filed with and approved by the commissioner shall be exempt from the application of ORS chapter 59, and the marketing of such policy shall be likewise exempt.
[1967 c.359 §10]

731.050 [Repealed by 1965 c.241 §3]

DEFINITIONS GENERALLY

731.052 Insurance Code definitions. Except where the context otherwise requires, the definitions given in the Insurance Code govern its construction.
[1967 c.359 §11]

731.056 "Action." "Action" means any action, suit or legal proceeding.
[1967 c.359 §12]

731.060 [Repealed by 1965 c.241 §3]

731.062 "Agent." "Agent" means a person appointed by an insurer to solicit applications for insurance or to negotiate insurance on its behalf, and, if authorized so to do by the insurer, to effect and countersign insurance policies.
[1967 c.359 §13]

731.066 "Authorized," "unauthorized" insurer. (1) An "authorized" insurer is one authorized by a subsisting certificate of authority to transact insurance in this state.

(2) An "unauthorized" insurer is one not so authorized.
[1967 c.359 §14]

731.070 [Repealed by 1965 c.241 §3]

731.072 "Certificate of authority," "license." (1) A "certificate of authority" is one issued by the commissioner pursuant to the Insurance Code evidencing the authority of an insurer to transact insurance in this state.

(2) A "license" is authority granted by the commissioner pursuant to the Insurance Code for the licensee to engage in a business or operation of insurance in this state other than as an insurer, and the certificate by which such authority is evidenced.
[1967 c.359 §15]

731.076 "Commissioner," "division." (1) "Commissioner" means the Insurance Commissioner of this state.

(2) "Division" means the Insurance Division of the Department of Commerce.
[1967 c.359 §16]

731.080 [Repealed by 1965 c.241 §3]

731.082 "Domestic," "foreign," "alien" insurer. (1) "Domestic" insurer means an insurer formed under the laws of this state.

(2) "Foreign" insurer means an insurer formed under the laws of a state other than this state.

(3) "Alien" insurer means an insurer formed under the laws of any country other than the United States of America or a state thereof.
[1967 c.359 §17]

731.086 "Domestic risk." "Domestic risk" means a subject of insurance resident, located or to be performed in this state.
[1967 c.359 §18]

731.090 [Repealed by 1965 c.241 §3]

731.092 "Domicile." The "domicile" of an insurer means:

(1) As to insurers formed under the laws of Canada or any province thereof, the province in which the insurer's head office is located.

(2) As to other alien insurers, as provided in ORS 731.096.

(3) As to all other insurers, the state under the laws of which the insurer was formed.
[1967 c.359 §19]

731.096 "Domicile of alien insurer." (1) The domicile of an alien insurer, other than insurers formed under the laws of Canada or a province thereof, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or before January 1, 1962, whichever date is the later, and may be any one of the following states:

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

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

(c) The state in which is held the largest 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.
[Formerly 736.240]

731.100 [Repealed by 1965 c.241 §3]

731.102 "Insurance." "Insurance" means a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies, and includes annuities.
[1967 c.359 §21]

731.106 "Insurer." "Insurer" includes every person engaged in the business of entering into policies of insurance.
[1967 c.359 §22]

731.110 [Repealed by 1965 c.241 §3]

731.112 "Judgment." "Judgment" includes decree or other final order.
[1967 c.359 §23]

731.116 "Person." "Person," as defined in subsection (3) of ORS 174.100, includes individuals, corporations, associations, firms, partnerships and joint stock companies.
[1967 c.359 §24]

731.120 [Repealed by 1965 c.241 §3]

731.122 "Policy." "Policy" means the written contract or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, indorsements and papers which are a part thereof and annuities.
[1967 c.359 §25]

731.126 "Reinsurance." "Reinsurance" means a contract under which an originating insurer, called the "ceding" insurer, procures insurance for itself in another insurer, called the "assuming" insurer or the "reinsurer," with respect to part or all of an insurance risk of the originating insurer.
[1967 c.359 §26]

731.130 [Repealed by 1965 c.241 §3]

731.132 "Required capitalization." "Required capitalization" means the minimum combined paid-up capital and surplus required by the Insurance Code of a stock insurer, or the minimum surplus so required of an insurer without capital stock.
[1967 c.359 §27]

731.136 "State." When used in context signifying a jurisdiction other than the State of Oregon, "state" means any state, district, territory, commonwealth or possession of the United States of America, and the Panama Canal Zone.
[1967 c.359 §28]

731.140 [Repealed by 1965 c.241 §3]

731.142 "Stock," "mutual" and "reciprocal" insurer. (1) "Stock" insurer means an incorporated insurer whose capital is divided into shares and owned by its stockholders.

(2) "Mutual" insurer means an incorporated insurer without capital stock and the governing body of which is elected by its policyholders. This definition does not exclude as a "mutual" insurer a foreign insurer found by the commissioner to be organized on the mutual plan under the laws of its domicile, but having temporary share capital or providing for election of the insurer's governing body on a reasonable basis by policyholders and others.

(3) "Reciprocal" insurer means an unincorporated aggregation of persons known as "subscribers," operating individually and collectively through an attorney in fact common to all such persons, interexchanging among themselves reciprocal agreements of indemnity.
[1967 c.359 §29]

731.146 "Transact insurance." (1) "Transact insurance" means one or more of the following acts effected by mail or otherwise:

(a) Making or proposing to make an insurance contract.

(b) Taking or receiving any application for insurance.

(c) Receiving or collecting any premium, commission, membership fee, assessment, due or other consideration for any insurance or any part thereof.

(d) Issuing or delivering policies of insurance.

(e) Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof, the dissemination of information as to coverage or rates, the forwarding of applications, the delivering of policies, the inspection of risks, the fixing of rates, the investigation or adjustment of claims or losses, the transaction of matters subsequent to effectuation of the policy and arising out of it, or in any other manner representing or assisting a person with respect to insurance.

(f) Advertising locally or circularizing therein without regard for the source of such circularization, whenever such advertising or circularization is for the purpose of solicitation of insurance business.

(g) Doing any other kind of business specifically recognized as constituting the doing of an insurance business within the meaning of the Insurance Code.

(h) Doing or proposing to do any insurance business in substance equivalent to any of paragraphs (a) to (g) of this subsection in a manner designed to evade the provisions of the Insurance Code.

(2) Subsection (1) of this section does not include, apply to or affect the following:

(a) Making investments within a state by an insurer not admitted or authorized to do business within such state.

(b) Except as provided in ORS 743.015, doing or proposing to do any insurance business arising out of a policy of group life insurance or group health insurance, or both, or a policy of blanket health insurance, if the master policy was validly issued to cover a group organized for purposes other than the procurement of insurance and was delivered in and pursuant to the laws of another state in which:

(A) The insurer was authorized to do an insurance business;

(B) The policyholder is domiciled or otherwise has a bona fide situs; and

(C) With respect to a policy of blanket health insurance, the policy was approved by the commissioner of such state.

(c) Investigating, settling, or litigating claims under policies lawfully written within a state, or liquidating assets and liabilities, all resulting from the insurer's former authorized operations within such state.

(d) Transactions within a state under a policy subsequent to its issuance if the policy was lawfully solicited, written and delivered outside the state and did not cover a subject of insurance resident, located or to be performed in the state when issued.

(e) The continuation and servicing of life or health insurance policies remaining in force on residents of a state if the insurer has withdrawn from such state and is not transacting new insurance therein.

(3) If mail is used, an act shall be deemed to take place at the point where the matter transmitted by mail is delivered and takes effect.
[1967 c.359 §30; 1971 c.231 §10]

CLASSES OF INSURANCE DEFINED

731.150 Definitions of classes of insurance not mutually exclusive. It is intended that certain insurance coverages may come within the definitions of two or more classes of insurance as defined in the Insurance Code, and the inclusion of such coverage within one definition shall not exclude it as to any other class of insurance within the definition of which such coverage is likewise reasonably includable.
[1967 c.359 §32]

731.154 "Annuity." "Annuity" or "annuity policy" means any agreement to make periodic payments, whether fixed or variable in amount, where the making of all or some of such payments, or the amount of any such payment, is dependent upon the continuance of human life, except payments made pursuant to the settlement provisions of a life insurance policy, and includes additional benefits operating to safeguard the policy from lapse or to provide a special surrender value or special benefit or annuity in the event of total and permanent disability of the annuitant.
[1967 c.359 §33]

731.158 "Casualty insurance." "Casualty insurance" means:

(1) Insurance against legal, contractual or assumed liability for death, injury or disability of any human, or for damage to property; and provision for medical, hospital, surgical and disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(2) Motor vehicle physical damage, burglary and theft, glass, boiler and machinery, credit and livestock insurance, 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; and

(3) Insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other class of insurance otherwise defined, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.
[1967 c.359 §34]

731.162 "Health insurance." "Health insurance" means insurance of humans against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness or childbirth, or against expense incurred in prevention of sickness, in dental care or optometrical service, and every insurance appertaining thereto. "Health insurance" does not include workmen's compensation coverages.
[1967 c.359 §35]

731.166 "Industrial life insurance." "Industrial life insurance" means that form of life insurance written under policies of face amount of $2,500 or less, under which premiums are payable monthly or more often and the policy specifies it is an industrial life insurance policy.
[1967 c.359 §36]

731.170 "Life insurance"; includes annuities. (1) "Life insurance" means insurance on human lives and every insurance appertaining thereto and includes the granting of endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's or premium payor's disability and optional modes of settlement of proceeds of life insurance including annuity benefits payable under such a settlement provision. "Life insurance" does not include workmen's compensation coverages.

(2) For convenience, reference to "life insurance" in the Insurance Code includes life insurance as defined in subsection (1) of this section and annuities as defined in ORS 731.154, except if the inclusion of annuities obviously is inapplicable or if the context requires, or the Insurance Code provides, otherwise.
[1967 c.359 §37]

731.174 "Marine and transportation insurance." "Marine and transportation insurance" includes:

(1) Insurance against any and all kinds of loss of or damage to:

(a) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in

action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builders' risks, and all personal property floater risks including bailees' customers risks;

(b) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles);

(c) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same is in course of transportation or otherwise; and

(d) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion, or any of them, are the only hazards to be covered; piers, wharves, docks, and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion or any of them; other aids to navigation and transportation, including dry docks and marine railways, against all risks.

(2) Marine protection and indemnity insurance meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

[Formerly 745.005]

731.178 "Mortgage insurance." "Mortgage insurance" means insurance against financial loss by reason of:

(1) Nonpayment of principal, interest and other sums agreed to be paid under the terms of an obligation secured by a mortgage, deed of trust or other instrument constituting a lien or charge on real or personal property; or

(2) Nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real property, such insurance also being referred to in the Insurance Code as "lease insurance."

[1967 c.359 §39; 1969 c.692 §1]

731.182 "Property insurance." "Property insurance" means insurance on real or personal property of every kind and of every interest therein, whether on land, water or in the air, against loss or damage from any and all hazard or cause, and against consequential loss from such loss or damage, other than noncontractual legal liability for loss or damage. "Property insurance" does not include title insurance.

[1967 c.359 §40]

731.186 "Surety insurance." "Surety insurance" means insurance guaranteeing the fidelity of persons holding places of trust, the performance of duties, contracts, 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.

[1967 c.359 §41]

731.190 "Title insurance." "Title insurance" means insurance of owners of property or others having an interest therein or liens or encumbrances thereon, against loss by encumbrance, defective titles, invalidity or adverse claim to title.

[1967 c.359 §42]

731.194 "Wet marine and transportation insurance." "Wet marine and transportation insurance" is that part of marine and transportation insurance that includes only:

(1) Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;

(2) Insurance of marine builder's risks, marine war risks and contracts referred to in subsection (2) of ORS 731.174;

(3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this section; and

(4) Insurance of personal property and interests therein, in course of exportation from or importation into any country, and in course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto.
[1967 c.359 §43]

INSURANCE COMMISSIONER

731.204 Insurance Division. The Insurance Division is established within the Department of Commerce.
[Formerly 736.495]

731.208 Insurance Commissioner; appointment; term; salary. 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. 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 commissioner shall receive such salary as may be provided by law.
[Formerly 736.500]

731.212 Commissioner's oath and bond. 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 approved by the Director of Commerce, conditioned for the faithful performance of his duties in a sum fixed by the Director of Commerce. The premium on the bond shall be paid in the same manner as other expenses of the division.
[1967 c.359 §46]

731.216 Administrative power of commissioner.

The 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, investigators and assistants, and prescribe their duties and fix their compensation, subject to the applicable provisions of the State Merit System 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.

(3) Contract for and procure, on a fee or part-time basis, or both, such actuarial, technical or other professional services as he may require for the discharge of his duties.

(4) Obtain such other services as he considers necessary or desirable, including participation in organizations of state insurance supervisory officials and appointment of advisory committees. A member of an advisory committee so appointed shall receive no compensation for his services as a member; but, subject to any other applicable law regulating travel and other expenses of state officers, he shall receive his actual and necessary travel and other expenses incurred in the performance of his official duties.
[Formerly 736.503]

731.220 Official seal; evidentiary effect of sealed document. (1) The Insurance Division shall have 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 paper 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.

(2) The commissioner shall issue under the official seal all certificates and licenses provided for in the Insurance Code.
[Formerly 736.507]

731.224 Delegation of powers. (1) The commissioner may delegate to any of the officers and employes of the Insurance Division the exercise or discharge in the commissioner's name of any power, duty or function of whatever character, vested in or imposed upon the commissioner under the Insurance Code. However, the power to administer oaths and affirmations, subpena witnesses, take evidence and require the production of books, papers, correspondence, memoranda,

agreements or other documents or records may be exercised by an officer or employe of the division only when specifically delegated in writing by the commissioner.

(2) The official act of any such person so acting in the commissioner's name and by his authority shall be deemed to be an official act of the commissioner.
[1967 c.359 §49]

731.228 Prohibited interests and rewards. (1) The commissioner or any officer or employe of the division shall not:

(a) Be a director, officer, or employe of or be financially interested in any person regulated by the division, except as a policyholder or claimant under an insurance policy or by reason of rights vested in commissions, fees, or retirement benefits related to services performed prior to affiliation with the division; or

(b) Be engaged in any other business or occupation interfering with or inconsistent with the duties of his office or employment.

(2) No person shall directly or indirectly give or pay, or offer to give or pay, to the commissioner, or any officer or employe of the division, and the commissioner or such officer or employe shall not directly or indirectly solicit, receive or accept any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by law, for:

(a) Any service rendered or to be rendered as such commissioner, officer or employe, or in connection therewith;

(b) Services rendered or to be rendered in relation to legislation;

(c) Extra services rendered or to be rendered; or

(d) Any cause whatsoever related to any person regulated by the division.

(3) This section does not permit any conduct, affiliation or interest that is otherwise prohibited by public policy.
[1967 c.359 §50]

731.232 Subpena power. (1) For the purpose of an investigation or proceeding under the Insurance Code, the commissioner may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner considers relevant or material to the inquiry. Each witness who appears before the commissioner under a subpena shall receive the fees and mileage provided for witnesses in civil cases in the circuit court.

(2) If a person fails to comply with a subpena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court for any county, on the application of the commissioner, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein.
[1967 c.359 §51]

731.236 General powers and duties. (1) The commissioner shall enforce the provisions of the Insurance Code for the public good, and shall execute the duties imposed upon him by the code.

(2) The commissioner has the powers and authority expressly conferred upon him by or reasonably implied from the provisions of the Insurance Code.

(3) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he considers proper to determine whether any person has violated any provision of the Insurance Code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.

(4) The commissioner has such additional powers and duties as may be provided by other laws of this state.
[1967 c.359 §52]

731.240 Hearings in general. (1) The commissioner shall hold a hearing upon written demand for a hearing by a person aggrieved by any act, threatened act or failure of the commissioner to act, or by any report, rule or order of the commissioner.

(2) To the extent applicable and not inconsistent with subsection (1) of this section, the provisions of ORS 183.310 to 183.500 shall govern the hearing procedure and any judicial review thereof.
[1967 c.359 §53]

731.244 Rules. In accordance with the applicable provisions of ORS 183.310 to 183.500, the commissioner may make reasonable rules necessary for or as an aid to the effectuation of the Insurance Code. No such rule shall extend, modify or conflict with the Insurance Code or the reasonable implications thereof.
[1967 c.359 §54]

731.248 Orders. (1) Orders of the commissioner shall be effective only when in writing and signed by him or by his authority. Orders shall be filed in the Insurance Division.

(2) Every such order shall state:

(a) Its effective date;

(b) Its intent or purpose;

(c) The grounds on which based; and

(d) The provisions of the Insurance Code pursuant to which action is taken or proposed to be taken.

(3) Except as may be provided in the Insurance Code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it by certified or registered mail, return receipt requested, postage prepaid, addressed to him at his residence or principal place of business as last of record in the division. Notice so mailed shall be deemed to have been given when deposited in a letter depository of a United States post office.

[1967 c.359 §55]

731.252 Cease and desist orders. (1) Whenever the commissioner has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, he may issue an order, directed to such person, to discontinue or desist from such violation or threatened violation. 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 20 days of the date of mailing. Where a hearing is requested, the commissioner shall set a date for the hearing to be held 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. The order shall become final 20 days after the date of mailing unless within such 20-day period the person to whom it is directed files with the commissioner a written request for a hearing. To the extent applicable and not inconsistent with the foregoing, the provisions of ORS 183.310 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) 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.

(3) The powers vested in the commissioner pursuant to this section are supplementary and not in lieu of any other powers to suspend or revoke certificates of authority or licenses or to enforce any penalties, fines or forfeitures, authorized by law with respect to any violation for which an order of discontinuance has been issued.

[Formerly 736.835]

731.256 Enforcement generally. (1) The commissioner may institute such actions or other lawful proceedings as he may deem necessary for the enforcement of any provision of the Insurance Code or any order or action made or taken by him in pursuance of law.

(2) If the commissioner has reason to believe that any person has violated any provision of the Insurance Code or other law applicable to insurance operations, for which criminal prosecution is provided and in his opinion would be in order, he shall give the information relative thereto to the Attorney General or district attorney having jurisdiction of any such violation. The Attorney General or district attorney promptly shall institute such action or proceedings against such person as the information requires or justifies.

[1967 c.359 §57]

731.258 Enforcement of orders and decisions by Attorney General; filing, enforcement and effect of foreign decrees. (1) The Attorney General upon request of the commissioner may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

(2) As used in this section:

(a) "Reciprocal state" means any state the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states, against any insurer incorporated or authorized to do business in such state.

(b) "Foreign decree" means any decree or order in equity of a court located in a reciprocal state, including a court of the United

States located therein, against any insurer incorporated or authorized to do business in this state.

(c) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(3) The commissioner of this state shall determine which states qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(4) A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk, upon verifying with the commissioner that the decree or order qualifies as a foreign decree shall treat the foreign decree in the same manner as a decree of a circuit court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a circuit court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a circuit court of this state and may be enforced or satisfied in like manner.

(5) (a) At the time of the filing of the foreign decree, the Attorney General shall make and file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the defendant.

(b) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner of this state and shall make a note of the mailing in the docket. In addition, the Attorney General may mail a notice of the filing of the foreign decree to the defendant and to the commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the Attorney General has been filed.

(c) No execution or other process for enforcement of a foreign decree filed under subsection (4) of this section shall issue until 30 days after the date the decree is filed.

(6) (a) If the defendant shows the circuit court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(b) If the defendant shows the circuit court any ground upon which enforcement of a decree of any circuit court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

[1969 c.336 §5]

Note: ORS 731.258 was not added to and made a part of ORS 731.204 to 731.354 by legislative action.

731.260 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 Code and known to such person to be false or misleading in any material respect.

[Formerly 736.650]

731.264 Complaints and investigations confidential. (1) A complaint made to the commissioner against any person regulated by the Insurance Code, and the record thereof, shall be confidential, and shall not be disclosed except as considered necessary by the commissioner in the administration of the Insurance Code. No such complaint, or the record thereof, shall be used in any action, suit or proceeding except to the extent considered necessary by the commissioner in the prosecution of apparent violations of the Insurance Code.

(2) Data gathered pursuant to an investigation by the commissioner of a complaint shall be confidential, and shall not be disclosed or used in any action, suit or proceeding except to the extent considered necessary by the commissioner in the investigation or prosecution of apparent violations of the Insurance Code.

[1967 c.359 §59; 1971 c.231 §11]

731.268 Use of reproductions and certified copies as evidence. (1) Photographs or microphotographs in the form of film or prints of documents and records made by the commissioner for his files shall have the same force and effect as the originals thereof, and duly certified or authenticated reproductions of such photographs or microphotographs shall be as admissible in evidence as are the originals.

(2) Upon request of any person and payment of the applicable fee, the commissioner

shall furnish a certified copy of any record in his office which is then subject to public inspection.

(3) Copies of original records or documents in his office certified by the commissioner shall have the same force and effect and be received in evidence in all courts equally and in like manner as if they were originals.

[1967 c.359 §60]

731.272 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 containing:

(1) In condensed form statements made to the commissioner by every insurer authorized to do business in this state.

(2) A statement of all insurers authorized to do business in this state on December 31 next preceding.

(3) A list of insurers whose business in this state was terminated and the reason for such termination; and if such termination was a result of liquidation or delinquency proceedings brought against the insurer in this or any other state, the amount of the insurer's assets and liabilities so far as the same are known to the commissioner.

(4) A statement of the operating expenses of the division, including salaries, transportation, communication, printing, office supplies, fixed charges and miscellaneous expenses.

(5) A detailed statement of the moneys, fees and taxes received by the division and from what source.

(6) Such other pertinent information and matters as the commissioner considers to be in the public interest.

[Formerly 736.520]

731.276 Recommendations for changes in Insurance Code. The commissioner shall continuously review the Insurance Code and may, from time to time, make recommendations for changes therein.

[1967 c.359 §62]

731.280 Publications authorized. The commissioner shall publish:

(1) Pamphlet or booklet copies of the insurance laws of this state;

(2) The commissioner's annual report;

(3) Such copies of results of investigations or examinations of insurers for public distribution as he considers to be in the public interest;

(4) Such compilations as he considers advisable from time to time of the general orders of the commissioner then in force; and

(5) Such other material as he may compile and consider relevant and suitable for the effective administration of the Insurance Code.

[1967 c.359 §63]

731.282 Authority to sell publications. The commissioner may sell, at a price reasonably calculated to cover the costs of preparation, any of the copies, compilations or materials described in subsections (4) and (5) of ORS 731.280.

[1971 c.231 §2]

731.284 Distribution of insurance laws. Copies of the insurance laws in pamphlet form may be sold by the commissioner at a reasonable price. The commissioner may distribute free of charge one copy of such pamphlet to each of the following:

(1) Authorized insurers and licensed rating organizations;

(2) State representatives, and general agents domiciled in this state, of authorized insurers;

(3) Insurance departments of other states; and

(4) Public agencies. However, he may distribute such quantities to public agencies as he determines.

[1967 c.359 §64]

731.288 Recording complaints; commissioner to consider complaints before issuing licenses. Each written and signed complaint received by the division shall be recorded by the division, including the subsequent disposition thereof, 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 insurer and by the name of the agent involved. The commissioner shall consider such complaints before issuing or continuing any certificate of authority or license of an insurer or agent named in such complaints.

[Formerly 736.580]

731.292 Collection and disposition of fees, taxes and penalties. (1) Except as provided in subsection (2) of this section, all fees, taxes, fines and penalties paid pursuant to the Insurance Code, shall be paid to the commissioner and after deductions of refunds shall be paid by him to the State Treas-

urer, 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.

(2) All premium taxes received by the commissioner pursuant to ORS 731.820 shall be paid by the commissioner to the State Treasurer for deposit in the State Fire Marshal Fund.
[Formerly 736.525]

731.296 Commissioner's inquiries. The commissioner may address any proper inquiries to any insurer, licensee or its officers in relation to its activities or condition or any other matter connected with its transactions. Any such person so addressed shall promptly and truthfully reply in writing to such inquiries. The reply shall be verified by an officer of such person, if the commissioner so requires. A reply is subject to the provisions of ORS 731.260.
[Formerly 736.542]

731.300 Examination of insurers; when required. (1) For the purpose of determining its financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations and compliance with the Insurance Code, the commissioner shall examine every domestic insurer, including an audit of the financial affairs of such insurer, at least once each three years. The commissioner may at any time make such examination of any insurer or a person holding the capital stock of any insurer for the purpose of controlling the management thereof as a voting trustee or otherwise, or both.

(2) Examination of an alien insurer shall be limited to its insurance transactions, assets, trust deposits and affairs in the United States except as otherwise required by the commissioner.
[Formerly 736.545]

731.304 Investigation of persons transacting insurance. The commissioner, whenever he deems it advisable in the interest of policyholders or for the public good, shall investigate into the affairs of any person engaged in, proposing to engage in or claiming or advertising to engage in:

(1) Transacting insurance in this state;

(2) Organizing or receiving subscriptions for or disposing of the stock of or in any manner taking part in the formation or business of an insurer; or

(3) Holding capital stock of one or more insurers for the purpose of controlling the management thereof as voting trustee or otherwise.
[1967 c.359 §69]

731.308 Procedure at examination or investigation; production of books. (1) Upon an examination or investigation the commissioner may examine under oath all persons who may have material information regarding the property or business of the person being examined or investigated.

(2) Every person being examined or investigated shall produce all books and records in its possession or control relating to the matter under examination or investigation.
[Formerly 736.555]

731.312 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. The report shall comprise only facts appearing upon the books, papers, records or documents of the person being examined or ascertained from testimony of individuals under oath concerning the affairs of such person, together with such conclusions and recommendations as reasonably may be warranted from such facts. Such a verified report shall be presumptive evidence of the relevant facts stated therein in any action or proceeding by the commissioner against the person so examined, its officers or agents.

(2) The commissioner may withhold any report from public inspection for such time as he considers proper and shall grant a hearing to the person examined before filing any report or making public the report or any matters relating thereto upon the request of such person. The commissioner, after filing any report, if he considers it for the interest of the public to do so, may publish any report or the result of any examination as contained therein in one or more newspapers of the state without expense to the person examined.
[Formerly 736.560]

731.316 Expenses of examination of insurer. Any person examined under ORS 731.300 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.
[Formerly 736.565; 1969 c.336 §6]

731.324 Service of process on Secretary of State; notice to unauthorized insurer. (1) Any act set forth in ORS 731.146 by an unauthorized insurer is equivalent to and shall constitute an irrevocable appointment by such insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the Secretary of State or his successor in office, to be the true and lawful attorney of such insurer. All lawful process in any action in any court by the commissioner or by the state and any notice, order, pleading or process in any proceeding before the commissioner which arises out of transacting insurance in this state by such insurer may be served upon the Secretary of State or his successor in office. Transacting insurance in this state by an unauthorized insurer shall be signification of its agreement that lawful process in a court action and any notice, order, pleading, or process in an administrative proceeding before the commissioner so served shall be of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Service of process in such action shall be made by delivering to and leaving with the Secretary of State, or one of his assistants, two copies of the document served and by payment to the Secretary of State of the fee prescribed by law. Service upon the Secretary of State shall be service upon the principal.

(3) The Secretary of State shall forward by certified mail one of the copies of such process or such notice, order, pleading, or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at its last-known principal place of business and shall keep a record of all process so served on him. Such record shall show the day and hour of service. Service is sufficient, provided:

(a) Notice of service and a copy of the court process or the notice, order, pleading, or process in the administrative proceeding are sent within 10 days thereafter by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner in the administrative proceeding to the defendant at the last-known principal place of business of the defendant.

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

(4) No plaintiff shall be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the commissioner is served under this section until the expiration of 45 days after the date of filing of the affidavit of compliance.

(5) Nothing in this section shall limit or affect the right to serve any process, notice, order, or demand upon any person or insurer in any other manner now or hereafter permitted by law.

[1969 c.336 §3]

731.328 Deposits by unauthorized insurers in actions or proceedings. (1) Before an unauthorized insurer files or causes to be filed any pleading in any court action or any notice, order, pleading, or process in an administrative proceeding before the commissioner instituted against such person or insurer, by services made as provided in ORS 731.324, such insurer shall deposit with the clerk of the court in which such action is pending, or with the commissioner in administrative proceedings before the commissioner, cash or securities. The insurer may also file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.

(2) The commissioner, in any administrative proceeding in which service is made as provided in ORS 731.324, may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) of this section and to defend such action.

(3) Nothing in subsection (1) of this section shall be construed to prevent an unauthorized insurer from filing a motion to

quash a writ or to set aside service thereof made in the manner provided in ORS 731.324.
[1969 c.336 §4]

AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

731.354 Certificate of authority required. No person shall act as an insurer and no insurer shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the commissioner.
[1967 c.359 §73]

731.356 Unauthorized insurance transaction enforcement. When the commissioner believes, from evidence satisfactory to him, that any insurer is violating or about to violate the provisions of ORS 731.354, the commissioner may cause a complaint to be filed in the Circuit Court of Marion County to enjoin and restrain such insurer from continuing such violation. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.
[1969 c.336 §2]

731.358 Requirements of domestic insurers generally. Upon application a domestic insurer shall be granted a certificate of authority to transact any class of insurance permitted by the Insurance Code and provided for in its articles of incorporation upon its compliance with all the laws of this state and the rules of the division relating to such insurers.
[Formerly 736.085]

731.362 Requirements of foreign or alien insurers generally. (1) A foreign or alien insurer may be authorized to transact insurance 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 all 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 its required capitalization.

(d) It shall make such deposits with the State Treasurer as are required by the provisions of the Insurance Code.

(2) Upon compliance with the requirements of this section and all other requirements imposed on such insurer by the Insurance Code, the commissioner shall issue to it a certificate of authority.
[Formerly 736.205]

731.366 Requirements of reciprocal insurers generally. (1) A reciprocal insurer, through its attorney, shall file with the commissioner a declaration, verified by the oath of such attorney, setting forth:

(a) The name or title of the reciprocal insurer.

(b) The location of the principal office of the reciprocal insurer.

(c) The class or classes of insurance to be effected or exchanged.

(d) A copy of the form of power of attorney or instrument under which such insurance is to be effected or exchanged.

(e) A copy of the policy under or by which such contracts of insurance are effected or exchanged among the subscribers.

(f) That applications have been made for insurance upon at least 200 risks aggregating not less than $3 million represented by bona fide applications, or, in case of employers' liability or workmen's compensation, for insurance covering a total payroll of not less than $3 million, and, in case of automobile insurance, that applications have been made upon at least 2,500 automobiles covering any or all classes of automobile insurance. However, a lesser number of automobiles may suffice if the aggregate annual premium to be expected for such automobile insurance exceeds $500,000. Such applications must be concurrently effective when the reciprocal insurer is authorized to commence business by the commissioner.

(g) If a foreign or alien reciprocal insurer, that there has been deposited and shall be maintained at all times with the State Treasurer or other proper official of the state in which the insurer is domiciled $50,000 in cash or securities, as a general deposit for the benefit of subscribers wherever located. Where the laws of the home state do not provide for the acceptance of such a deposit, the deposit may be made

with a bank or trust company in escrow subject to the control of the insurance commissioner of the home state, and such deposit shall be released only upon the written order of such insurance commissioner. A certification from the insurance commissioner or other proper state official of the state in which the reciprocal insurer is domiciled shall be attached to the application for the certificate of authority.

(2) The applicant shall furnish any other relevant information required by the commissioner, except no reciprocal insurer shall be required to furnish or file the names or addresses of its policyholders or subscribers.
[Formerly 749.040; 1971 c.231 §42]

731.370 Reciprocal insurer's financial statement; service of process. (1) The application for a certificate of authority shall be accompanied by a sworn statement of a reciprocal insurer showing the financial condition of the insurer as of December 31 immediately preceding. The commissioner may require a supplemental statement to be furnished as of a later date.

(2) Concurrently with the filing of the declaration provided for by the terms of ORS 731.366, the attorney shall file with the commissioner an instrument in writing executed for the subscribers conditioned that upon the issuance of certificate of authority, action may be brought in the county in which the property insured thereunder is situated or where the injured person resides, and service of process may be had as provided in ORS 731.434 in all actions in this state arising out of policies issued by the reciprocal insurer, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Actions may be brought against or defended in the name of the reciprocal insurer adopted by the subscribers.
[Formerly 749.050]

731.374 Exemptions to certificate of authority requirement. A certificate of authority is not required of an insurer with respect to the following:

(1) Transactions pursuant to surplus lines coverages lawfully written under the Insurance Code.

(2) Reinsurance, when transacted by an insurer duly authorized by its state of domicile to transact the class of insurance involved.
[1967 c.359 §78]

731.378 Foreign insurers exempt from laws governing admission of foreign corporations. No foreign or alien insurer that has complied with the requirements of the Insurance Code shall be subject to any other provisions of the laws of this state relating to admission or licensing of foreign or alien corporations.
[Formerly 736.220]

731.382 General eligibility for certificate of authority. To qualify for and hold authority to transact insurance in this state an insurer must be an incorporated insurer, or a reciprocal insurer or an incorporated fraternal benefit society.
[1967 c.359 §80]

731.386 Management of insurers. The commissioner shall not grant or continue authority to transact insurance in this state for any insurer:

(1) The management of which is found by him to be untrustworthy, or so lacking in insurance experience as to make the proposed operation hazardous to the insurance-buying public; or

(2) That he has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person whose business operations are or have been marked to the detriment of policyholders, stockholders, investors, creditors or the public, by manipulation or dissipation of assets, manipulation of accounts or reinsurance, or by similar injurious actions.
[1967 c.359 §81]

731.390 Government insurers not to be authorized. No certificate of authority may be issued to any state, province or foreign government nor to any instrumentality, political subdivision or agency thereof.
[Formerly 736.080]

731.394 Combinations of insuring powers in one insurer. An insurer that otherwise qualifies therefor may be authorized to transact any one class or combination of classes of insurance, except:

(1) A reciprocal insurer shall not transact life insurance or title insurance.

(2) A title insurer shall be a stock insurer, and shall not transact any other class of insurance.

(3) A mortgage insurer shall be a stock insurer, and shall not transact any other class of insurance.
[1967 c.359 §83; 1969 c.692 §2]

731.398 Amendment of certificate of authority. The commissioner at any time may amend an insurer's certificate of authority to accord with lawful changes in the insurer's charter or insuring powers.
[1967 c.359 §84]

731.402 Issuance or refusal of certificate of authority. (1) The commissioner shall issue to an insurer a certificate of authority if upon completion of the application for a certificate of authority by the insurer the commissioner finds, from the application and such other investigation and information he may acquire, that the insurer is fully qualified and entitled thereto under the Insurance Code.

(2) The commissioner shall take all necessary action and shall either issue or refuse to issue a certificate of authority within a reasonable time after the completion of the application for such authority.

(3) The certificate of authority, if issued, shall specify the class or classes of insurance the insurer is authorized to transact in this state. The commissioner may issue authority limited to particular subclasses of insurance or types of insurance coverages within the scope of a class of insurance.
[1967 c.359 §85]

731.406 What certificate evidences; ownership of certificate. (1) An insurer's subsisting certificate of authority is evidence of its authority to transact in this state the class or classes of insurance specified therein, either as direct insurer or as reinsurer or as both.

(2) Although issued to the insurer the certificate of authority is at all times the property of this state. Upon any suspension, revocation or termination thereof the insurer promptly shall deliver the certificate of authority to the commissioner.
[1967 c.359 §86]

731.410 Continuance, expiration or reinstatement of certificate of authority. (1) A certificate of authority shall continue in force as long as the insurer is entitled thereto under the Insurance Code and until suspended or revoked by the commissioner, or terminated at the request of the insurer; subject, however, to continuance of the certificate by the insurer each year by:

(a) Payment prior to April 1 of the continuation fee provided in ORS 731.804;

(b) Due filing by the insurer of its annual statement for the calendar year preceding; and

(c) Payment by the insurer of premium taxes with respect to the preceding calendar year as required by ORS 731.808 to 731.832.

(2) If not so continued by the insurer, its certificate of authority shall expire at midnight on April 30 next following failure of the insurer to continue it in force. The commissioner promptly shall notify the insurer of impending expiration of its certificate of authority.

(3) The commissioner, in his discretion, upon the insurer's request made within three months after expiration, may reinstate a certificate of authority which the insurer has permitted to expire, after the insurer has cured all its failures which resulted in the expiration and has paid the fee for reinstatement specified in ORS 731.804. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.
[1967 c.359 §87]

731.414 Suspension or revocation of certificate of authority; mandatory grounds. (1) The commissioner shall refuse to continue, or shall suspend or revoke, an insurer's certificate of authority if:

(a) As a foreign insurer, it no longer meets the requirements for the authority; or as a domestic insurer, it has failed to cure an impairment of required capitalization within the time allowed therefor by the commissioner under ORS 732.230;

(b) The insurer knowingly exceeds its charter powers or powers granted under its certificate of authority; or

(c) As a foreign or alien insurer, its certificate of authority to transact insurance is suspended or revoked by its domicile.

(2) Except in cases of impairment of required capitalization or suspension or revocation by another domicile as referred to in paragraph (c) of subsection (1) of this section, the commissioner shall refuse, suspend or revoke the certificate of authority only after a hearing granted to the insurer, unless the insurer waives such hearing in writing.
[1967 c.359 §88]

731.418 Suspension or revocation of certificate of authority; discretionary and special grounds. (1) The commissioner may refuse to continue or may suspend or revoke

an insurer's certificate of authority if he finds after a hearing that the insurer:

(a) Has violated or failed to comply with any lawful order of the commissioner, or any provision of the Insurance Code other than those for which suspension or revocation is mandatory;

(b) Is in unsound condition, or in such condition or using such methods and practices in the conduct of its business, as to render its further transaction of insurance in this state hazardous or injurious to its policyholders or to the public.

(c) Has failed, after written request by the commissioner, to remove or discharge an officer or director who has been convicted in any jurisdiction of an offense which, if committed in this state, constitutes a misdemeanor involving moral turpitude or a felony, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of his conviction shall be conclusive evidence.

(d) Is affiliated with and under the same general management, interlocking directorate or ownership as another insurer that transacts direct insurance in this state without having a certificate of authority therefor, except as permitted under the Insurance Code.

(e) Refuses to be examined; or its directors, officers, employes or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(f) Has failed to pay any final judgment rendered against it in this state upon any policy, bond, recognizance or undertaking issued or guaranteed by it, within 30 days after the judgment became final, or within 30 days after time for taking an appeal has expired, or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

(g) Fails to comply with subsection (1) of ORS 743.925.

(2) Without advance notice or a hearing thereon, the commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state.

[1967 c.359 §89; 1971 c.321 §17; 1971 c.523 §10]

731.422 Order of suspension, revocation or refusal; effect upon agents' authority. (1) All suspensions or revocations of, or refusals to continue, an insurer's certificate of authority shall be by the commissioner's order.

(2) Upon suspending, revoking or refusing to continue the insurer's certificate of authority, the commissioner forthwith shall give notice thereof to the insurer's agents in this state of record in the division, and likewise shall suspend or revoke the authority of such agents to represent the insurer. The commissioner also shall give notice to the insurance supervisory authority in jurisdictions in which the insurer is authorized, if a domestic insurer, or in its domicile if a foreign or alien insurer.

(3) In his discretion the commissioner may publish notice of such suspension, revocation or refusal in one or more newspapers of general circulation in this state.

[1967 c.359 §90]

731.426 Duration of suspension; insurer's obligations during suspension period; reinstatement. (1) Suspension of an insurer's certificate of authority shall be for such period as the commissioner specifies in the order of suspension, but not to exceed one year for any one suspension order. During the suspension the commissioner may rescind or shorten the suspension by his further order.

(2) During the suspension period the insurer shall not solicit or write any new business in this state, but shall file its annual statement and pay fees, licenses and taxes as required under the Insurance Code, and may service its business already in force in this state, as if the certificate of authority had continued in full force.

(3) Upon expiration of the suspension period, if within such period the certificate of authority has not terminated, the insurer's certificate of authority automatically shall reinstate unless the commissioner finds that the causes of the suspension have not terminated, or that the insurer is otherwise not in compliance with the requirements of the Insurance Code, and of which the commissioner shall give the insurer notice not less than 30 days in advance of the expiration of the suspension period.

(4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate. The commissioner

promptly shall notify the insurer and its agents in this state of record in the division, of such reinstatement. If pursuant to ORS 731.422 the commissioner has published notice of suspension, in like manner he shall publish notice of the reinstatement.
[1967 c.359 §91]

731.430 Name of insurer. (1) No insurer shall be formed or authorized to transact insurance in this state which has or will have, or which uses or will use as an assumed business name, a name or principal identifying name factor:

(a) That is the same as or deceptively similar to:

(A) Any other insurer so formed or authorized;

(B) Any name reserved or registered as authorized by this section;

(C) Any name on file with the Corporation Commissioner pursuant to ORS chapter 57 or ORS chapter 61;

(D) Any name on file with the Corporation Commissioner pursuant to ORS chapter 648; or

(E) The name of any insurer that was authorized to transact insurance in this state within the preceding 10 years if insurance policies issued by such other insurer still are outstanding in this state. With the consent of the insurer issuing such policies, the commissioner may waive this provision if he finds that the waiver will not be detrimental to the public; or

(b) That is deceptive or misleading as to the type of organization of the insurer or that does not indicate the insurer is transacting insurance.

(2) Any insurer doing business in this state may file and register with the commissioner in writing, in its articles of incorporation or otherwise, an assumed name that it will use in transacting insurance in this state. Such name may not be a name prohibited by subsection (1) of this section.

(3) Any person may reserve a name for use as a corporate name or an assumed business name in transacting insurance in this state by filing in writing with the commissioner a reservation of such name. Such name may not be a name prohibited by subsection (1) of this section. Such reservation shall expire six months after the date of filing unless:

(a) If filed by an insurer, it is using such name as an authorized insurer; or

(b) If filed by a noninsurer, it has filed with the commissioner a formal application for a permit to form an insurer in this state. If a valid reservation is on file, the commissioner may accept the filing of a same or deceptively similar name by another person which filing shall become effective, in the order of filing, at the expiration of the six-month provision unless the original reservation does not expire pursuant to this subsection.

(4) When an insurer is consolidated or merged as provided in the Insurance Code, the resulting insurer may retain the use of the name for a period of five years after the effective date of consolidation or merger. If such name is retained, use of the same or deceptively similar name by other insurers shall be prohibited as specified under this section during the five-year period.
[1967 c.359 §92]

731.434 Registered office and agent. (1) The provisions, procedures and requirements of ORS chapter 57 relating to a registered office, registered agent and to service of process, notice and demand shall govern all insurers transacting insurance in this state, whether authorized or unauthorized, except that the Insurance Commissioner shall be substituted for the Corporation Commissioner as the person with whom all filings shall be made and upon whom, in the circumstances specified by statute, such service may be effected.

(2) This section shall not apply to insurers for whom a certificate of authority is not required under ORS 731.374.
[1967 c.359 §93]

731.438 Title plant requirement for title insurers. A title insurer shall own and maintain in the county in which its principal office in the state is located a title plant consisting of a general index, adequate maps, and currently posted tract or geographic indexes for all the lands in such county. It shall also directly or through its agent own and maintain for each additional county in which it shall be authorized to transact a title insurance business a comparable title plant or obtain from a person having a comparable title plant for such additional county or counties a certificate showing the status of the title.
[Formerly 748.084]

731.442 Authorization of business on mutual assessment plan. (1) Except as provided in subsection (2) of this section, no insurer may transact a life insurance business

upon the mutual assessment plan within this state.

(2) Insurers transacting a credit life insurance business, as defined in ORS 743.561, before September 2, 1963, may continue such business if such insurers:

(a) Adopt and use only such rates and plans as are based upon the Commissioner's 1941 Standard Ordinary Table of Mortality with interest at three percent per annum or a less rate and have the reserve required by such mortality table invested in assets of an approved character; and

(b) Maintain admitted assets in excess of actual liabilities by an amount equal to one percent of all insurance such insurer has in force or $5,000, whichever is the greater. Such assets shall consist of cash, money on deposit in banks or investments authorized by ORS 733.510 to 733.780 or the laws of the state in which the insurer is domiciled.

[Formerly 739.105]

731.446 Policyholder deposits. An insurer may accept, from a holder of a life insurance policy, deposits in addition to current premium payments to provide a fund for payment of future premiums or to make possible the future acquisition of additional insurance, annuities or other benefits, whether the interest to be paid on such deposits be fixed or variable. Such deposits, or any portion thereof, not used for the purposes described in this section shall be refunded to the policyholder or, upon his death, to designated beneficiaries.

[1967 c.359 §96]

731.450 Unrelated business prohibited; title insurer as escrow agent. No insurer shall engage in any business except the making of insurance or a kind of business related to the insurance business. However, a foreign or alien insurer may engage, outside this state, in any business permitted by its articles of incorporation and the laws of the state of its domicile; and a title insurer also may engage in business as an escrow agent; provided, however, that a title insurer engaging in business as an escrow agent shall be subject to the provisions of ORS chapters 731 and 746 of the Insurance Code in respect to its escrow activities.

[1967 c.359 §97; 1971 c.398 §5]

731.454 Domestic insurers not to transact business in jurisdiction where not authorized. No domestic insurer, or any of the representatives thereof, shall transact insurance in any jurisdiction in which such insurer is not authorized in accordance with the laws of such jurisdiction.

[Formerly 736.645]

731.458 Exchange of reciprocal or interinsurance contracts authorized; "subscriber" and "attorney" defined. (1) Individuals, partnerships and corporations of this state, hereby designated as subscribers, may exchange reciprocal or interinsurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under the Insurance Code, except life insurance and title insurance. Such contracts may be executed by an attorney, agent or other representative, hereby designated as attorney, duly authorized and acting for such subscribers. The attorney may be an individual, firm or corporation organized under the laws of this state or any other state or territory and having his principal office at the place designated by the subscribers in the power of attorney.

(2) Any corporation now or hereafter organized under the laws of the state, in addition to the rights, powers and franchises specified in its articles of incorporation, may exchange insurance contracts of the kind and character described in subsection (1) of this section. The right to exchange such contracts is declared to be incidental to the purpose for which such corporations are organized and as much granted as the rights and powers expressly conferred.

[Formerly 749.010]

731.462 Nonassessable policies of reciprocal insurer. A reciprocal insurer having a surplus of not less than $500,000 may issue nonassessable policies.

[1967 c.359 §100]

731.466 Power of attorney for reciprocal insurer. (1) The rights and power of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

(2) The power of attorney must set forth:

(a) The powers of the attorney;

(b) That the attorney may accept service of process on behalf of the insurer;

(c) The services to be performed by the attorney in general;

(d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney;

(e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount not less than one nor more than 10 times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

(d) Contain other lawful provisions.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement or any amendment thereof, shall be used or be effective in this state until approved by the commissioner.
[1967 c.359 §101]

731.470 Attorney for reciprocal insurer. (1) Any instrument required to be verified by the oath of the attorney for a reciprocal insurer may, in case of an incorporated attorney, be verified by the oath of the president, vice president, secretary or other executive officer of such corporation.

(2) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(3) The commissioner may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, for failure of a reciprocal insurer's attorney to comply with any provision of the Insurance Code.

(4) The attorney for an authorized foreign or alien reciprocal insurer shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign persons.
[Formerly 749.140]

LIMIT OF RISK; REINSURANCE

731.504 Limit of risk. (1) No insurer shall retain any risk on any one subject of insurance, whether a domestic risk or not, in an amount exceeding 10 percent of its surplus to policyholders, or in the case of title insurance, more than 50 percent of such surplus.

(2) A "subject of insurance" for the purposes of this section:

(a) As to insurance against fire and hazards other than windstorm, earthquake and other catastrophic hazards, includes all properties insured by the same insurer that customarily are considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of any other hazard insured against;

(b) As to group life and health insurance, refers individually to each person benefited under the group policy as a separate subject; and

(c) As to mortgage insurance, includes all obligations secured by real property in a single tract, or in multiple tracts not separated by at least one-half mile.

(3) Reinsurance ceded as authorized by ORS 731.508 shall be deducted in determining risk retained. As to surety risks, deduction also shall be made of the amount assumed by any established incorporated co-surety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section relates only to risks and surplus to policyholders of the insurer's United States branch.

(5) As used in this section, "surplus to policyholders," in addition to the insurer's capital and surplus, includes any voluntary reserves that are not required pursuant to law, includes the contingency reserve held for mortgage insurance as required by ORS 733.100, and shall be determined from the last sworn statement of the insurer on file with the commissioner, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(6) This section does not apply to wet marine and transportation insurance or to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.
[1967 c.359 §103; 1969 c.692 §3]

731.508 Approved reinsurance. (1) An insurer may accept reinsurance only of such risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) Except as provided in ORS 731.512 or 732.505 to 732.570, an insurer may reinsure risks with an insurer authorized to transact such insurance in this state, or in

any other solvent insurer approved or accepted by the commissioner for the purpose of such reinsurance. The commissioner shall not approve or accept any such reinsurance by a ceding domestic insurer in an unauthorized insurer which he finds for good cause would be contrary to the interests of the policyholders or stockholders of such domestic insurer.

(3) No credit shall be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

(4) Upon request of the commissioner, a ceding insurer promptly shall inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

(5) This section does not apply to wet marine and transportation insurance.
[1967 c.359 §104]

731.512 Withdrawal of insurer; reinsurance. (1) No insurer shall withdraw from this state until its direct liability to its policyholders and obligees under all its insurance policies then in force in this state has been assumed by another authorized insurer under an agreement approved by the commissioner. In the case of a life insurer, its liability pursuant to policies issued in this state in settlement of proceeds under its policies shall likewise be so assumed.

(2) The commissioner may waive this requirement if he finds upon examination that a withdrawing insurer then is fully solvent and that the protection to be given its policyholders in this state will not be impaired by the waiver.

(3) The assuming insurer within a reasonable time shall replace the assumed insurance policies with its own, or by indorsement thereon acknowledge its liability thereunder.

(4) This section is in addition to the requirements of ORS 732.505 to 732.570.
[1967 c.359 §105]

731.516 Mortgage insurance limitation. A mortgage insurer shall not have outstanding at any time mortgage insurance policies covering amounts of insured obligations and amounts of insured future lease payments aggregating more than 25 times the insurer's "surplus to policyholders" as defined in subsection (5) of ORS 731.504.
[1969 c.692 §5]

CAPITAL AND SURPLUS

731.554 Capital and surplus requirements. (1) Except as provided in subsections (2) to (5) of this section and ORS 731.558, 731.562 and 731.566, to qualify for authority to transact insurance in this state, an insurer shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than $500,000.

(2) An insurer transacting any workmen's compensation insurance business shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than $1,500,000.

(3) An insurer transacting mortgage insurance shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than $2 million.

(4) A domestic insurer applying for its original certificate of authority in this state shall possess, when first so authorized, additional capital or surplus, or any combination thereof, of not less than $500,000.

(5) Subsection (3) of this section shall not become operative until July 1, 1971, for an insurer holding a valid certificate of authority to transact mortgage insurance immediately prior to August 22, 1969.
[1967 c.359 §106; 1969 c.335 §1; 1969 c.692 §6]

731.558 Capital and surplus requirements (prior law). A domestic insurer holding a valid certificate of authority to transact insurance in this state immediately prior to June 8, 1967:

(1) May continue to be authorized to transact the same class or classes of insurance as permitted by such certificate of authority by maintaining unimpaired thereafter not less than the capital and surplus required under the laws of this state for such authority in force immediately prior to June 8, 1967, and as if such laws had continued in force.

(2) Shall not be granted authority to transact any other or additional class of insurance unless it complies with ORS 731.554.

(3) Reapplying for a certificate of authority after having its certificate of authority revoked for any cause, shall not be granted authority to transact any insurance unless it complies with ORS 731.554.
[1967 c.359 §107]

731.562 Title insurer capital and surplus requirements. (1) To qualify for authority to transact title insurance in this state, an insurer shall possess and thereafter maintain capital or surplus, or any combination thereof, to qualify for the county in which its principal office within the state is located in amounts as follows:

(a) In counties having a population of more than 200,000, as evidenced by the last official census of the United States or of this state, not less than $100,000.

(b) In counties having a population of more than 100,000 but not more than 200,000, as evidenced by such census, not less than $60,000.

(c) In counties having a population of more than 50,000 but not more than 100,000, as evidenced by such census, not less than $40,000.

(d) In counties having a population of 50,000 or less, as evidenced by such census, not less than $20,000.

(2) To transact business in any county or counties other than that in which its principal office in the state is located it shall have capital or surplus, or any combination thereof, based upon the combined population of all counties in which it shall be authorized to transact a title insurance business.
[Formerly 748.010]

731.566 Reciprocal insurer surplus requirements. To qualify for authority to transact insurance in this state, a reciprocal insurer shall possess and thereafter maintain a surplus of not less than $50,000, and any reciprocal insurer which exchanges policies of insurance covering workmen's compensation insurance shall possess and thereafter maintain a surplus of not less than $1,500,000.
[1967 c.359 §109]

731.570 Withdrawing advancements made to reciprocal insurer. No advancement made by the subscribers or the attorney of a reciprocal insurer shall be withdrawn or refunded except out of the surplus of the insurer in excess of its required capitalization, and then only upon the written consent of the commissioner.
[1967 c.359 §110]

731.574 Annual financial statement. Every authorized insurer 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 prescribed by the commissioner. In prescribing such form, the commissioner shall give consideration to the form of statement recommended by the National Association of Insurance Commissioners. It shall contain such detailed exhibit of the condition and transactions of the insurer, 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 insurer, 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. The commissioner may grant a reasonable extension of time for filing the annual statement.
[Formerly 736.120]

DEPOSITS

731.604 Acceptance of deposits of insurers. The following deposits of insurers shall be accepted and held by the State Treasurer for the purposes for which such deposits are made and are subject to the applicable provisions of the Insurance Code:

(1) Deposits required or permitted under the Insurance Code.

(2) Deposits of domestic insurers made pursuant to the laws of other jurisdictions.
[1967 c.359 §112]

731.608 Purpose of deposit. (1) Except as provided in subsection (2) of this section, deposits made in this state under ORS 731.624 shall be held for the faithful performance by the insurer of all insurance obligations with respect to domestic risks pertaining to the particular class of insurance for which the deposit was made.

(2) If at any time a deposit made under ORS 731.624 by a particular insurer is insufficient to perform the insurance obligations upon the faithful performance of which the deposit was conditioned, then any other deposit made under ORS 731.624 by that insurer shall be so used to the extent that such other deposit is not used to perform the insurance obligations upon the faithful performance of which such other deposit was conditioned.

(3) Deposits made in this state under ORS 731.628 shall be held for the payment of compensation benefits to workmen employed by direct responsibility employers to whom the insurer has issued a guaranty contract under ORS 656.001 to 656.794.

(4) A deposit made in this state by a domestic insurer transacting insurance in another jurisdiction, and as required by the laws of such jurisdiction, shall be held for the purpose or purposes required by such laws.

(5) Deposits of foreign and alien insurers required pursuant to ORS 731.854 shall be held for such purposes as are required by such law, and as specified by the commissioner's order by which the deposit is required.

(6) Deposits of domestic reciprocal insurers required pursuant to ORS 731.632 shall be held for the benefit of subscribers wherever located.

[1967 c.359 §113; 1971 c.231 §12]

731.612 Rights of insurer regarding deposits. While the insurer remains unimpaired and is in compliance with the Insurance Code it may:

(1) Demand, receive, sue for and recover the income from the assets deposited;

(2) Exchange and substitute for the deposited assets, or any part thereof, other eligible assets of equivalent or greater value; and

(3) At any reasonable time inspect such deposit.

[1967 c.359 §114]

731.616 Valuation of deposits; deficiencies. (1) For the purpose of determining the sufficiency of its deposit in this state the assets of the insurer on deposit shall be valued at current market value.

(2) If assets deposited by an insurer are subject to material fluctuations in market value, the commissioner, in his discretion, may require the insurer to deposit and maintain on deposit additional assets in such amount as reasonably is necessary to assure that the deposit at all times will have a market value of not less than the amount specified under or pursuant to the law by which the deposit is required.

(3) If for any reason the current market value of such assets falls below the amount of deposit required of the insurer, the insurer shall promptly deposit other or additional assets eligible for deposit in an amount sufficient to cure the deficiency. The insurer has 30 days in which to cure the deficiency after notice thereof from the commissioner.

[1967 c.359 §115]

731.620 Assignment of deposited securities. (1) Except for deposits made in accordance with ORS 731.628, the insurer shall assign in trust to the commissioner and his successors in office all securities being deposited through him under the Insurance Code that are not negotiable by delivery; or, in lieu of such assignment, the insurer may give the commissioner an irrevocable power of attorney authorizing him to transfer the securities or any part thereof for any purpose within the scope of the Insurance Code.

(2) Upon release to the insurer, or other person entitled thereto, of any such security the commissioner shall reassign the security to such insurer or person; or, in the case of power of attorney given pursuant to subsection (1) of this section, the commissioner shall deliver the power of attorney, together with the securities covered thereby, to the insurer or person entitled thereto.

[1967 c.359 §116]

731.624 Special deposits: property, casualty, surety and title insurers. Every insurer, before transacting insurance in this state, shall make the following deposits with the State Treasurer:

(1) Foreign or alien insurers transacting fire insurance in this state, $25,000.

(2) Foreign or alien insurers transacting casualty insurance within this state, $25,000.

(3) Foreign or alien insurers transacting surety insurance in this state, $25,000.

(4) Title insurers, an amount equal to one-half of the required capitalization for a particular insurer under ORS 731.562. Within 30 days after filing its annual statement with the commissioner, a title insurer shall add to its deposit 10 percent of all fees received by it on domestic risks until the total amount on deposit equals the amount of its required capitalization.

[1967 c.359 §117]

731.628 Deposit required of workmen's compensation insurers. Insurers issuing guaranty contracts to direct responsibility employers under ORS 656.001 to 656.794, in addition to any other requirement therefor under the Insurance Code, shall deposit with the State Treasurer in favor of the Workmen's Compensation Board as trustee, $100,000 or, if the sum of subsections (1) and (2) of this section, less credits for approved reinsurance, computed as of December 31 next preceding in respect to guaranty contracts written subject to ORS 656.001 to 656.794, is greater than $100,000, such sum less such credits:

(1) The aggregate of the present values at four percent interest of the determined

and estimated future loss and loss-expense payments upon claims incurred more than three years prior to such date; and

(2) The aggregate of the amounts computed as follows: For each of the three years next preceding such date, 65 percent of the earned premiums for the year less all loss and loss-expense payments made upon claims incurred in the corresponding year; provided, however, that the amount for any year shall not be less than the present value at four percent interest of the determined and estimated future loss and loss-expense payments upon claims incurred in that year.
[1967 c.359 §118; 1971 c.231 §13]

731.632 Deposit required of domestic reciprocal insurers. Every domestic reciprocal insurer shall deposit with the State Treasurer $50,000.
[1967 c.359 §119]

731.636 Deposit or trusteed assets of alien insurer required. (1) Except as provided in subsection (3) of this section, every alien insurer, before transacting insurance in this state as an authorized insurer, shall deposit with the State Treasurer the sum of the following amounts:

(a) The amount of its outstanding liabilities arising out of its insurance transactions in the United States; and

(b) Its required capitalization.

(2) Paragraph (d) of subsection (1) of ORS 731.640 does not apply with respect to such deposit.

(3) In lieu of such deposit, the insurer may furnish evidence satisfactory to the commissioner that it maintains in the United States, by way of trust deposits with public depositories or with trust institutions acceptable to the commissioner, assets at least equal to the deposit otherwise required by this section.
[1967 c.359 §120]

731.640 Eligible deposits. (1) Deposits which are required or permitted under the Insurance Code shall consist only of the following:

(a) Cash;

(b) Amply secured obligations of the United States, a state or a political subdivision thereof;

(c) Certificate of deposit or other investments described in subsection (5) of ORS 733.650 to the extent such investments are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) A surety bond, approved by the commissioner, executed by an authorized surety insurer that is not under common ownership, management or control with the person making the deposit. This paragraph does not apply to deposits made by surety insurers.

(2) Deposits of domestic insurers made pursuant to the laws of other jurisdictions shall consist of cash or securities as required or permitted by the laws of such jurisdictions.
[1967 c.359 §121]

731.642 Contracts for security deposits. The State Treasurer in performing his duties under ORS 731.604 to 731.652 may enter into contracts with banks qualified to act as trust companies and as depositories of state funds to hold and service securities deposited by insurers with the State Treasurer. The insurers whose securities are held and serviced by the banks shall pay for the cost of such contracts.
[1969 c.143 §2]

731.644 Payment of losses out of deposits, generally. (1) Except as otherwise provided in the Insurance Code, no judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets or securities of the insurer held on deposit in this state.

(2) As to deposits made in this state pursuant to ORS 731.854, levy thereupon shall be permitted only if expressly so provided in the commissioner's order under which the deposit is required.
[1967 c.359 §122]

731.648 Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant to the Insurance Code shall be so held as long as there is outstanding any liability of the insurer as to which the deposit was required; or, if the deposit was required under ORS 731.854, the deposit shall be held for so long as the basis of such retaliation exists.

(2) No surety insurer shall be permitted to withdraw its deposit for a period of three years after discontinuing business within this state.

(3) A deposit shall be released by the State Treasurer upon the written direction of the commissioner and returned:

(a) To the insurer upon extinguishment by reinsurance or otherwise of all liability of

the insurer for the security of which the deposit is held. If extinguishment is by reinsurance, the assuming insurer shall be one authorized to transact such insurance in this state.

(b) To the insurer, while unimpaired, to the extent such deposit is in excess of the amount required.

(c) To the resulting or surviving corporation or to such person as it may designate for the purpose, upon effectuation of a merger or consolidation of the depositing insurer, if the resulting or surviving insurer is authorized to transact insurance in this state.

(d) Upon order of a court of competent jurisdiction, to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets pursuant to delinquency proceedings brought against the insurer.

[1967 c.359 §123]

731.652 Proofs for release of deposit to insurers; commissioner's responsibility. (1) Before authorizing or permitting the release of any deposit or portion thereof to the insurer, as provided in ORS 731.648, the commissioner shall require the insurer to file with him a written statement in such form and with such verification as he deems advisable setting forth the facts upon which it bases its entitlement to such release.

(2) If release of the deposit is claimed by the insurer upon the ground that all its liabilities, as to which the deposit was held, have been assumed by another insurer authorized to transact insurance in this state, the insurer shall file with the commissioner a copy of the contract or agreement of such reinsurance duly attested under the oath of an officer of each of the insurers that are parties thereto.

(3) If release of the deposit is claimed by a domestic insurer upon the ground that all its liabilities, as to which the deposit was held, have been terminated other than by reinsurance, the commissioner shall make an examination of the affairs of the insurer for determination of the actuality of such termination.

(4) Upon being satisfied by such statement and reinsurance contract, or examination of the insurer if required under subsection (3) of this section, or by such other examination of the affairs of the insurer as he deems advisable to make, that the insurer is entitled to the release of its deposit or portion thereof as provided in ORS 731.648, the commissioner shall release the deposit or excess portion thereof to the insurer or its authorized representative.

(5) If the commissioner or the State Treasurer wilfully fails faithfully to keep, deposit, account for or surrender any such assets or securities deposited through him, in the manner as authorized or required under the Insurance Code, they shall be liable therefor upon their official bonds, and suit may be brought upon the bonds by any person injured by such failure. The commissioner or the State Treasurer shall not, however, have any liability as to any assets or securities of an insurer released by him in good faith pursuant to the authority vested in him under the Insurance Code.

[1967 c.359 §124]

EDUCATIONAL INSTITUTIONS AND NONPROFIT CORPORATIONS PAYING ANNUITIES

731.704 Educational institution and nonprofit corporations may receive transfer of money or property conditioned upon paying annuity. (1) An educational institution or nonprofit corporation may receive a transfer of money or property conditioned upon its agreement to pay an annuity to the transferor or his nominee, if the institution or nonprofit corporation holds a certificate of authority issued under subsection (3) of this section.

(2) Application for a certificate of authority shall be made in compliance with the rules of the commissioner. The commissioner may by his rules require such information relating to an educational institution or nonprofit corporation as the commissioner considers desirable in the administration and enforcement of ORS 731.704 to 731.720.

(3) If the commissioner finds that the application is in order, that the educational institution or nonprofit corporation is eligible to receive transfers under ORS 731.704 to 731.720 and that the institution or nonprofit corporation has complied with subsection (4) of this section, the commissioner shall issue a certificate of authority to the applicant upon payment of the fee required by ORS 731.804.

(4) Each educational institution or nonprofit corporation applying for a certificate of authority shall designate one or more of its officers as its agent or agents to execute and issue agreements for the payment of an annuity.

(5) The commissioner shall issue a certificate of authority only if:

(a) The institution is a private nonprofit college or university that is accredited by the Northwest Association of Colleges and Secondary Schools, or comparable accrediting association, and has been operating for 20 years;

(b) The institution is a graduate school or college that has continuously operated in this state for at least 20 years immediately prior to the application for a certificate of authority, and has financial resources satisfactory to the commissioner to maintain the reserve fund required under ORS 731.716;

(c) The institution is operated by the State Board of Higher Education;

(d) The institution is a community college operated under ORS chapter 341; or

(e) The nonprofit corporation is an independent Oregon nonprofit corporation which is either recognized by the State Board of Higher Education as affiliated with and operated solely or substantially for the benefit of an institution operated by the State Board of Higher Education or is recognized by a community college district established and operated under ORS chapter 341 as affiliated with and operated solely or substantially for the benefit of a community college established and operated under ORS chapter 341.

[Formerly 128.820; 1971 c.425 §2]

731.708 Contents of annuity agreement form. Each annuity agreement form shall include the following information:

(1) The value of the property to be transferred.

(2) The amount of the annuity to be paid to the transferor or his nominee.

(3) The manner in which and the intervals at which payment is to be made.

(4) The age of the person during whose life payment is to be made.

(5) The reasonable value as of the date of the agreement of the benefits thereby created. This value shall not exceed by more than 15 percent the net single premium for the benefits, determined in accordance with the standard of valuation set forth in ORS 731.716.

[Formerly 128.830]

731.712 Obtaining approval of agreement forms. (1) An institution or nonprofit corporation shall file with the commissioner a copy of each form of agreement proposed to be used relating to a transfer. Within 10 days the commissioner shall approve or disapprove the proposed agreement forms and the commissioner shall notify the educational institution or nonprofit corporation of his decision as soon as practicable.

(2) No educational institution or nonprofit corporation shall amend an approved agreement form until a copy of the proposed amendment has been filed with and approved by the commissioner in the manner prescribed by subsection (1) of this section.

[1967 c.359 §127; 1971 c.425 §3]

721.716 Reserve funds required. (1) Every educational institution or nonprofit corporation that has accepted one or more transfers under ORS 731.704 to 731.724 shall maintain a separate and distinct trust fund as a reserve fund adequate to meet the future payments under all outstanding annuity agreements. The reserve fund shall in no event be less than an amount computed on the basis of the transfers to which it relates in accordance with the standard of valuation based upon the 1937 Standard Annuity Mortality Table with interest at two and one-half percent per year or, if permitted by the rules of the commissioner, another table of mortality derived from recent annuity experience with interest not higher than is currently yielded on safe securities.

(2) If an educational institution or nonprofit corporation fails to establish and maintain adequate reserve funds required by this section, the commissioner shall revoke the certificate of authority of such institution or nonprofit corporation.

[Formerly 128.850; 1971 c.425 §4]

731.720 Application of other provisions to reports. (1) Every educational institution or nonprofit corporation holding a certificate of authority is subject to ORS 731.296 to 731.316, 731.414, 731.418, 731.988, 731.992, 733.010 to 733.210, 746.075 and 746.110.

(2) Every educational institution or nonprofit corporation holding a certificate of authority shall make an annual report of its business relating to annuities in such form as the commissioner requires.

[Formerly 128.860; 1971 c.425 §5]

731.724 Procedure if authority is revoked or suspended. If the certificate of authority of an educational institution or nonprofit corporation is revoked or suspended, the commissioner may bring a proceeding under ORS 734.140 and 734.150 to take possession of so much of the property of the

institution or nonprofit corporation as is necessary to guarantee payments under agreements pursuant to ORS 731.704 to 731.724 then in effect.
[Formerly 128.880; 1971 c.425 §6]

FEES AND TAXES

731.804 Fee schedule. The commissioner shall collect in advance, and persons so served shall pay to him in advance, fees and miscellaneous charges as follows:

(1) Certificate of authority of insurer, except as provided in subsections (2) to (4) of this section:

(a) Filing application for original certificates, $10.

(b) Issuance of original certificate and annual continuation thereof, $150.

(c) Reinstatement of certificate, $50.

(2) (a) Certificate of authority for educational institution or nonprofit corporation issuing annuities, $10.

(b) Annual continuation of certificate of authority, $5.

(3) (a) Certificate of exemption, $10.

(b) Annual continuation of certificate of exemption, $5.

(4) Certificate of authority of motorist service club, and annual continuation thereof, $100.

(5) Filing annual statement other than as part of application for original certificate, $5.

(6) Agent's license:

(a) Filing application for original license, and including issuance of license, if issued, $10.

(b) Original appointment and annual continuation of appointment of individual agent, each insurer, $4.

(c) Original appointment and annual continuation of appointment of firm or corporate agent, for each individual exercising powers conferred by such license, each insurer, $4.

(d) Temporary license, $10.

(e) Examination for license, each examination and each time taken, $10.

(f) Changing of licensee name to reflect change of corporate or assumed business name, $10.

(7) Insurance vending machine license, each machine, each year, $10.

(8) Surplus line license, application for original license, including issuance of license, if issued, and annual continuation thereof, $25.

(9) (a) Adjuster's license, application for original license, including issuance of license, if issued, and annual continuation thereof, $25.

(b) Adjuster's license for adjusting losses under policy issued by unauthorized insurer, $100 or 10 percent of amount adjusted, whichever is greater.

(c) Examination for license, each examination and each time taken, $10.

(10) Rating organization, triennial license fee, $25.

(11) Filing application for a permit to organize an insurer, including issuance of permit, if issued, $1,000, said fee to be deposited by the commissioner in the State Treasury revolving account for payment of costs of investigations of the organizers and functioning of proposed insurers, said account to be continuously appropriated for such purpose.

(12) Miscellaneous services:

(a) Filing appointment of commissioner as process agent, $5.

(b) Commissioner's certificate under seal, $2.

(c) Each copy of public document filed in commissioner's office, per page, 50 cents.

(d) Comparison of documents with documents on file in commissioner's office, per page, $1.

(e) Receiving and forwarding copy of summons or other process served upon the commissioner as process agent, $2.

(f) Filing an application for a reserved or registered name, $5.

(g) Filing power of attorney, $5.

(13) Premium finance license, application for original license, including issuance of license, if issued, and annual continuation thereof, $50.
[1967 c.359 §131; 1971 c.231 §14; 1971 c.425 §7]

731.808 "Gross amount of premiums" defined. As used in ORS 731.812, 731.816 and 731.820, "gross amount of premiums" means the consideration paid by insureds to an insurer for policies of insurance, and includes all premiums, assessments, dues and fees received or derived, or obligations taken therefor, by whatever term known.
[1967 c.359 §132]

731.812 Foreign and alien insurer's report of Oregon business. Every foreign or alien insurer, in its annual statement to the commissioner, shall set forth the gross amount of premiums received by it or its

agents, return premiums paid, dividend payments made to policyholders, savings paid or credited to the accounts of subscribers in the case of a reciprocal insurer, and insurance benefit payments to policyholders, from and under its policies covering direct domestic risks in the preceding calendar year.
[1967 c.359 §133]

731.816 Gross premium tax on insurers. (1) Every foreign and alien insurer and every domestic insurer described in subsection (2) of this section shall pay a tax to the commissioner, on or before April 1 of each year, equal to two and one-quarter percent of the gross amount of premiums received by it or its agents from and under its policies covering direct domestic risks in the preceding calendar year after deducting the amount of return premiums paid and the amount of dividend payments made to policyholders or, in the case of a reciprocal insurer, the amount of savings paid or credited to the accounts of subscribers, with respect to such policies.

(2) A domestic insurer organized after January 1, 1971, is subject to the tax imposed by subsection (1) of this section if its ownership or control is exercised, directly or indirectly, by a foreign insurer or other foreign corporation owning or controlling, directly or indirectly, a foreign insurer. The commissioner shall require each domestic insurer to submit affidavits, in a form prescribed by him, stating the ownership or control of such insurer for each calendar year. If the commissioner finds that such insurer is subject to the tax imposed by this section, taxes are payable for the entire calendar year in which such ownership or control is effected.

(3) If a foreign or alien insurer or a domestic insurer described in subsection (2) of this section ceases to do business or collect premiums on direct domestic risks, 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 direct domestic risks, and not theretofore reported, and shall forthwith pay to the commissioner the tax thereon.

(4) If at any time or times during the five-year period immediately following the payment of the tax as provided in subsections (1) to (3) of this section the commissioner finds the amount of payment to have been incorrect, he shall charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid.

(5) The tax payable under this section is in addition to any amounts payable under ORS 731.820.

(6) This section does not apply to premiums received from:

(a) Annuity policies whether fixed or variable in nature;

(b) Wet marine and transportation insurance policies; or

(c) Policies issued by an insurer organized and operated without profit to any private shareholder or individual, exclusively for the purpose of aiding nonproprietary educational and scientific institutions.
[1967 c.359 §134; 1971 c.560 §1]

731.820 Gross premium tax on fire insurance premiums. (1) (a) For the purpose of maintaining the office of State Fire Marshal and paying the expenses incident thereto, every insurer transacting insurance covering the peril of fire shall pay a tax to the commissioner, on or before April 1 of each year, equal to three-quarters of one percent of the gross amount of premiums received by it or its agents from such business, from and under its policies covering direct domestic risks in the preceding calendar year after deducting the amount of return premiums paid and the amount of dividend payments made to policyholders or, in the case of a reciprocal insurer, the amount of savings paid or credited to the accounts of subscribers, with respect to such policies.

(b) For the purpose of paragraph (a) of this subsection the following portions of the amounts required to be reported by line of business in the annual financial statement required by ORS 731.574 shall be considered premiums for insurance covering the peril of fire:

(A) Fire, 100 percent.

(B) Homeowners multiple peril, 65 percent.

(C) Commercial multiple peril, 50 percent.

(D) Inland marine, 20 percent.

(E) Automobile physical damage, eight percent.

(2) If an insurer ceases to do business or collect premiums on direct domestic risks, it thereupon shall make a report to the commissioner of its premiums subject to taxation as provided in subsection (1) of this section and collected or due as of the date

when it ceased to do business or collect premiums on direct domestic risks, and not theretofore reported, and shall forthwith pay to the commissioner the tax thereon.

(3) If at any time or times during the five-year period immediately following the payment of the tax as provided in subsection (1) or (2) of this section the commissioner finds the amount of payment to have been incorrect, he shall charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid.

[1967 c.359 §135; 1967 c.453 §4; 1971 c.231 §15]

731.824 Tax on underwriting profits of wet marine and transportation insurers. (1) Wet marine and transportation insurance written by foreign or alien insurers within this state shall be taxed only on that proportion of the total underwriting profit of such insurer from such insurance written within the United States that the gross premiums of the insurer from such insurance written within this state bear to the gross premiums of such insurer from such insurance written within the United States.

(2) The "underwriting profit," for purposes of this section, is arrived at by deducting from the net earned premiums on such insurance policies written within the United States during the calendar year:

(a) The losses incurred, and

(b) Expenses incurred, including all taxes, state and federal, in connection with such net earned premiums.

(3) The amount of "net earned premiums" on such insurance policies written during the calendar year is the sum of paragraphs (a) and (b) less paragraph (c) of this subsection.

(a) Gross premiums on such insurance policies written during the calendar year, less any and all return premiums, any and all premiums on policies not taken and any and all premiums paid for such reinsurance.

(b) Unearned premiums on such outstanding marine business at the end of the preceding calendar year.

(c) Unearned premiums on such outstanding marine business at the end of the current calendar year.

(4) "Losses incurred," as used in this section, means gross losses incurred during the calendar year under such policies written within the United States, less reinsurance claims collected or collectible and salvages or recoveries collectible from any source applicable to the such losses.

(5) "Expenses incurred" includes:

(a) Specific expenses incurred on such earned wet marine and transportation insurance premiums, consisting of all commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically in connection with such premiums, less recoveries or reimbursements on account of or in connection with such commissions or other expenses collected or collectible because of reinsurance or from any other source.

(b) General expenses incurred on such earned premiums, consisting of that proportion of general or overhead expenses, such as salaries of officers and employes, printing and stationery, all taxes of this state and of the United States, except as otherwise provided herein, and all other expenses not chargeable specifically to a particular class of insurance, which the net premiums of such insurance written bear to the total net premiums written by such insurer from all classes of insurance written by it during the current calendar year. However, in arriving at the "underwriting profit" for purposes of taxation under this section there shall not be deducted in respect to expenses incurred, as defined and specified in paragraphs (a) and (b) of this subsection, amounts which, in the aggregate, exceed 40 percent of the gross premiums on such insurance policies.

[Formerly 745.145]

731.828 Computation of wet marine and transportation insurance tax. (1) Each insurer transacting wet marine and transportation insurance in this state shall file annually on or before April 1 with the commissioner and in the form prescribed by him, a report of all the items pertaining to its insurance business as enumerated and prescribed in ORS 731.824.

(2) Each insurer that has been writing such insurance in this state for three years shall furnish the commissioner a statement of all of the items referred to in subsection (1) of this section, in the form prescribed by him, for each of the preceding three calendar years. An insurer that has not been writing such insurance for three years shall furnish to the commissioner a statement of all such items for each of the calendar years during which it has written such insurance.

(3) On or before April 1 of each year, if the insurer has transacted such insurance for three years, the insurer shall:

(a) Ascertain the average annual underwriting profit, as provided in ORS 731.824, derived by the insurer from such insurance business written within the United States during the last preceding three calendar years.

(b) Ascertain the proportion which the average annual premiums of the insurer from such insurance written by it in this state during the last preceding three calendar years bears to the average total of such wet marine and transportation insurance premiums of the insurer during the same three years.

(c) Pay five percent on this proportion of the average annual underwriting profit of the insurer from such insurance to the commissioner as a tax upon such insurance written by it in this state during the current calendar year.

(4) The insurer each year shall compute the tax, according to the method described in this section, upon the average annual underwriting profit of such insurer from such insurance during the preceding three years, including the current calendar year. At the expiration of each current calendar year, the profit or loss on such insurance business of that year is to be added or deducted, and the profit or loss upon such insurance business of the first calendar year of the preceding three-year period is to be dropped so that the computation of underwriting profit for purposes of taxation under this section will always be on a three-year average.

(5) An insurer that has not been writing wet marine and transportation insurance in this state for three years shall, until it has transacted such business in this state for that number of years, be taxed on the basis of its annual underwriting profit on such insurance written within the United States for the current calendar year, subject, however, to an adjustment in the tax as soon as the insurer, in accordance with the provisions of this section, is enabled to compute the tax on the three-year basis.

(6) In the case of mutual insurers the insurer shall not include in the underwriting profit, when computing the tax prescribed by this section, the amounts refunded by such insurers on account of premiums previously paid by their policyholders.

(7) If at any time or times during the five-year period immediately following the payment of the tax as provided in subsection (3) or (5) of this section the commissioner finds the amount of payment to have been incorrect, he shall charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid.

(8) If an insurer ceases to transact wet marine and transportation insurance in the state, it shall thereupon make report to the commissioner of the items pertaining to such insurance business, as enumerated and described in this section, to the date of its ceasing to transact such insurance and not theretofore reported, and forthwith pay to the commissioner the taxes computed according to this section and the annual authorization fees thereon.

[Formerly 745.150; 1969 c.158 §1]

731.832 Offset of workmen's compensation insurer 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 731.816 on premiums for insuring obligations of employers under ORS 656.001 to 656.794.

[Formerly 736.175]

731.836 Limitation on enforcement of insurer's tax obligations. An action for the recovery of taxes payable under ORS 731.816, 731.820, 731.824, 731.828 and 731.859 shall be commenced within five years from the date such taxes were payable to the commissioner under such sections.

[1967 c.359 §139; 1969 c.158 §4]

731.840 Premium tax in lieu of certain taxes; local taxes prohibited. (1) Payment to the commissioner by an insurer of the tax upon its premiums as required by ORS 731.808 to 731.832, shall be in lieu of all other taxes upon premiums, taxes upon income, franchise or other taxes measured by income except the corporate excise taxes imposed upon insurers by ORS chapter 317. However, all real and personal property, if any, of the insurer shall be listed, assessed and taxed the same as real and personal property of like character of noninsurers.

(2) Subsection (1) of this section applies to a reciprocal insurer and its attorney in its capacity as such, except for taxes upon or measured by net income from which the insurer or attorney is not otherwise specifically exempt.

(3) Subsection (1) of this section applies to insurers issuing policies referred to in subsection (5) of ORS 731.816 which insurers, for the purposes of subsection (1) of this

section, shall be deemed to have paid to the commissioner a tax upon the premiums of such policies.

(4) The State of Oregon hereby preempts the field of regulating or of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes, licenses and fees upon insurers and their agents and other representatives as such; and no county, city, district, or other political subdivision or agency in this state shall so regulate, or shall levy upon insurers, or upon their agents and representatives as such, any such tax, license or fee; nor shall any such county, city, district, political subdivision or agency require of any such insurer, agent or representative, duly authorized or licensed as such under the Insurance Code, any additional authorization, license, or permit of any kind for conducting therein transactions otherwise lawful under the authority or license granted under this code.
[1967 c.359 §140; 1969 c.600 §12]

731.844 No personal liability for paying invalid tax. No personal liability shall arise against any director, trustee, officer or agent of any insurer on account of any taxes 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.
[1967 c.359 §141]

RETALIATORY PROVISIONS

731.854 Equalizing obligations of domestic and foreign or alien 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 insurers domiciled in this state, 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 this state. 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 insurers domiciled in this state or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this subsection.

(2) This section does 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 classes 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 section.

(3) For the purpose of applying this section to an alien insurer, its domicile shall be determined in accordance with ORS 731.092 and 731.096.
[Formerly 736.237]

731.858 [Formerly 736.245; repealed by 1969 c.158 §2 (731.859 enacted in lieu of 731.858)]

731.859 Applicability of retaliatory provisions. (1) On or before April 1 of each year, each foreign or alien insurer shall:

(a) Determine and report to the commissioner whether the provisions of the laws of any state or country require the imposition of the burdens specified by ORS 731.854;

(b) Compute the amount owing under ORS 731.854; and

(c) Pay to the commissioner that amount.

(2) If at any time or times during the five-year period immediately following the payment of the amount as provided in subsection (1) of this section the commissioner finds the amount of payment to have been incorrect, he shall charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid.
[1969 c.158 §3 (enacted in lieu of 731.858)]

PENALTIES

731.988 Civil penalties. (1) Any person who violates any provision of the Insurance Code, any lawful rule or final order of the commissioner or any final judgment or decree made by any court upon application of the commissioner, shall forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner of not more than $2,000 for each offense, or $10,000 in the aggregate for all such offenses within any three-month period. In the case of individual agents or adjusters, the civil penalty shall be not more than $200 for each offense or $1,000 in the aggregate for all such offenses within any three-month period. Each violation shall be deemed a separate offense.

(2) In addition to the civil penalty set forth in subsection (1) of this section, any person who violates any provision of the Insurance Code, any lawful rule or final order of the commissioner or any final judgment or decree made by any court upon application of the commissioner, may be required to forfeit and pay to the General Fund of the State Treasury a civil penalty in an amount determined by the commissioner but not to exceed the amount by which such person profited in any transaction which violates any such provision, rule, order, judgment or decree.

(3) Such civil penalty may be recovered in an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction.

(4) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount.

(5) The provisions of this section are in addition to and not in lieu of any other enforcement provisions contained in the Insurance Code.

[1967 c.359 §144; 1971 c.231 §16]

731.990 [Repealed by 1965 c.241 §3]

731.992 Criminal penalty. (1) Violation of ORS 731.260 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.

(2) Violation of any provision of the Insurance Code, for which a greater penalty is not otherwise provided by the Insurance Code or by other applicable laws of this state, shall in addition to any applicable prescribed denial, suspension or revocation of any certificate or license, or any civil forfeiture, is punishable upon conviction as for a misdemeanor.

[1967 c.359 §145]

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, 1971.

Robert W. Lundy
Legislative Counsel