

# Chapter 746

## 1979 REPLACEMENT PART

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# INSURANCE

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**GENERAL PROVISIONS**

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

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

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

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

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

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

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

(7) The issuing of life or health insurance policies at rates less than the usual premium rates for such policies, or using modifications of premium rates based on amount of insurance, if such issuance or modification does not result in reduction in premium rates in excess of savings in administration and issuance expenses reasonably attributable to such policies. [Formerly 736.825]

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

**746.015 Discriminations; noncompliance; hearing.** (1) No person shall make or permit any unfair discrimination between

individuals of the same class and equal expectation of life, or between risks of essentially the same degree of hazard, in the availability of insurance, in the application of rates for insurance, in the dividends or other benefits payable under insurance policies, or in any other terms or conditions of insurance policies.

(2) Discrimination by an insurer in the application of its underwriting standards or rates based solely on an individual's physical handicap is prohibited, unless such action is based on sound actuarial principles or is related to actual or reasonably anticipated experience. For purposes of this subsection, "physical handicap" shall include, but not be limited to, blindness, deafness, hearing or speaking impairment or loss, or partial loss, of function of one or more of the upper or lower extremities.

(3) If the commissioner has reason to believe that an insurer in the application of its underwriting standards or rates is not complying with the requirements of this section, he shall, unless he has reason to believe the noncompliance is wilful, give notice in writing to the insurer stating in what manner such noncompliance is alleged to exist and specifying a reasonable time, not less than 10 days after the date of mailing, in which the noncompliance may be corrected.

(4) (a) If the commissioner has reason to believe that noncompliance by an insurer with the requirements of this section is wilful, or if, within the period prescribed by the commissioner in the notice required by subsection (3) of this section, the insurer does not make the changes necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, the commissioner may hold a hearing in connection therewith. Not less than 10 days before the date of such hearing the commissioner shall mail to the insurer written notice of the hearing, specifying the matters to be considered.

(b) If, after the hearing, the commissioner finds that the insurer's application of its underwriting standards or rates violates the requirements of this section, he may issue an order specifying in what respects such violation exists and stating when, within a reasonable period of time, further such application shall be prohibited. If he finds that the violation was wilful, he may suspend or revoke the certificate of authority of the insurer. [1967 c.359 §568; 1977 c.331 §1; 1979 c.140 §1]

**746.018 Discrimination in issuance of burglary, theft, robbery or casualty policies prohibited.** (1) In cities of 300,000 or more, and except as provided in subsection (3) of this section, no insurer shall make or permit any unfair discrimination between risks of essentially the same degree of hazard in the issuance of burglary and theft or robbery insurance policies or casualty insurance policies which insure against liability to persons arising out of the use or control of real or personal property other than motor vehicles.

(2) Property insured or persons insured against liability arising out of use or control of real or personal property other than motor vehicles, if comparable in other respects in exposures to the peril insured against, shall not be deemed to be of different hazard solely because of the geographic location of the property or the place of residence or business of the person to be insured.

(3) Notwithstanding subsection (1) of this section an insurer may make or permit discrimination between risks of essentially the same degree of hazard in the issuance of insurance policies described in subsection (1) of this section if the insurer, at the time of the discrimination, insures a percentage of the similar risks at least equal to the ratio that its premiums for the respective line of business as reported in the annual statement required by ORS 731.574 for the second preceding calendar year bears to the total premium for the same line of business as reported by all insurers in the annual statements required by ORS 731.574 for the second preceding calendar year, within a square one mile on each side centered upon the location of the property, insurance in regard to which the insurer declines to issue. [1971 c.522 §2; 1973 c.9 §1]

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

**746.025 Securities or other contracts as inducement to insurance.** No person shall sell, agree or offer to sell, or give or offer to give, directly or indirectly in any manner whatsoever, shares of stock, securities, bonds, special or advisory board contracts or agreements of any form or nature promising returns and profits as an inducement to insurance. No insurer engaging in or permitting its representatives to engage in such practices in this or any other state may be authorized to do business in this state. [Formerly 739.535]

**746.030** [Amended by 1961 c.256 §2; 1967 c.359 §508; renumbered 743.705]

**746.035 Inducements not specified in policy.** Except as otherwise expressly provided by the Insurance Code, no person shall permit, offer to make or make any contract of insurance, or agreement as to such contract, unless all agreements or understandings by way of inducement are plainly expressed in the policy issued thereon. [1967 c.359 §570]

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

**746.045 Rebates.** No person shall personally or otherwise offer, promise, allow, give, set off, pay or receive, directly or indirectly, any rebate of or rebate of part of the premium payable on an insurance policy or the agent's commission thereon, or earnings, profit, dividends or other benefit founded, arising, accruing or to accrue on or from the policy, or any other valuable consideration or inducement to or for insurance on any domestic risk, which is not specified in the policy. [1967 c.359 §571]

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

**746.055 Title insurance commissions, rebates and discounts.** With respect to title insurance, no commissions, rebates or discounts shall be paid, allowed or permitted to any person having an interest in or lien upon real property which is the subject of the title insurance involved, or to any person acting for or on behalf of a person with such an interest or lien. [Formerly 748.086]

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

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

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

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

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

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

(e) If the agent is a corporation, any person directly or indirectly owning or controlling

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

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

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

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

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

(b) During such calendar year conducts an individual agency business, not being designated to exercise the powers conferred by an agent's license issued to any firm or corporation nor owning any interest in any firm or corporation transacting an insurance agency or brokerage business;

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

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

(4) This section does not apply to the writing, issuing or soliciting by a seller of personal property of insurance covering the personal property sold by him on an instalment contract whereunder the title to the property is reserved by the seller. [1967 c.359 §573]

746.070 [Repealed by 1961 c.256 §5]

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

(1) Make, issue, circulate or cause to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be

issued or the benefits or advantages therein or the dividends or share of surplus to be received thereon;

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

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

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

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

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

(7) Engage in any other transaction, practice or course of business which operates as a fraud or deceit upon the purchaser, insured or person with policy ownership rights. [1967 c.359 §574]

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

**746.085 Regulating replacement of life insurance; compensation of agents.** In addition to all other powers of the commissioner with respect thereto, the commissioner may issue rules:

(1) Requiring persons who replace, or offer or propose to replace, existing life insurance, to leave with the policyholder written, signed and dated statements which fully and correctly compare the terms, conditions and benefits of an existing policy with the proposed policy; and

(2) Limiting the commission or compensation payable to an agent on account of a life insurance policy that provides a nonforfeiture value sold to replace an existing life insurance policy that provides a nonforfeiture value to the commission or compensation the agent would have received if both the replaced and the replacement insurance policies had been carried by the insurer which issues the replacement policy. [1967 c.359 §575; 1971 c.231 §35]

746.090 [Repealed by 1967 c.359 §704]

**746.100 Misrepresentation in insurance applications or transactions.** No person shall make a false or fraudulent state-

ment or representation on or relative to an application for insurance, or for the purpose of obtaining a fee, commission, money or benefit from an insurer or agent. [Formerly 736.460]

**746.110 False, deceptive or misleading statements.** No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading. [Formerly 736.608]

**746.120 Illegal dealing in premiums.** No person shall wilfully collect any sum as premium or charge for insurance which is not then provided, or is not in due course to be provided subject to acceptance of the risk by the insurer, under an insurance policy issued by an insurer in conformity to the Insurance Code. [1967 c.359 §579]

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

(2) Subsection (1) of this section does not apply to:

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

(b) Title insurance;

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

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

(3) The charge for any insurance incidental to the purchase or rental by the public of any property or services shall be in accordance with rates on file with the commissioner. [1967 c.359 §580; 1969 c.336 §16]

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

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

(3) Each such proposal shall:

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

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

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

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

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

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

[Formerly 739.562]

**746.145 Workers' compensation insurance; combination of experience of group of employers; purpose; conditions.**

(1) An insurer may combine for dividend purposes the experience of a group of employers covered for workers' compensation insurance by the insurer, if done in compliance with ORS 746.150 and if:

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

(b) The organization was formed for purposes other than the obtaining of workers' compensation insurance.

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

(d) The employers in the group constitute at least 50 percent of the employers in the organization, unless the number of covered workers in the group exceeds 500, in which case the employers in the group must constitute at least 25 percent of the employers in the organization.

(e) The grouping of employers is likely to substantially improve accident prevention and claims handling for the employers.

(2) This section does not apply to an organization of employers for which organization a workers' compensation policy was lawfully issued before October 4, 1977. The guaranty contract required by ORS 656.419 shall contain for each employer covered thereby the information required by subsection (2) of ORS 656.419. When an employer becomes an insured member of the organization the insurer shall, within 30 days after the date insured membership commenced, file a notice thereof with the Workers' Compensation Board. [1977 c.405 §3]

**746.150 Other insurance; combination of experience of group of persons or risks; purpose; conditions.** (1) For property, inland marine, casualty or surety insurance, an insurer may combine for dividend purposes the experience of a group of persons or risks any of which are within this state, if done in compliance with ORS 746.145 and this section in the case of workers' compensation insurance and the applicable rules made by the commissioner.

(2) The commissioner shall make reasonable rules regarding such dividend groupings as an aid to the effectuation and enforcement of the Insurance Code. Such rules shall have as their purpose the prevention of misrepresentation, unfair discrimination and other unfair trade practices, and may among other things require that:

(a) Such a grouping comprises substantially homogeneous risks.

(b) The organization under the auspices of which such a grouping is made has had a stable existence for a purpose other than that of obtaining insurance.

(c) A substantial improvement in loss prevention or claims handling will be a likely result of such a grouping.

(d) Information regarding eligibility for participation in the grouping and the system for allocation of dividends among the participants be filed with the commissioner.

(3) An insurer shall not unfairly discriminate in the allocation of dividends among the participants in such a dividend grouping.

(a) The system for allocation of dividends among the participants may provide for allocation at a fixed percentage of premiums, or may provide for variations in the percentage of premiums paid as dividends, or may provide for other variations in determining the amounts of dividends allocated to participants. The variations may be based on loss or expense factors or on other reasonable considerations, such as risk size, risk location or industry or trade hazard classification, that have a probable effect on losses or expenses.

(b) Failure to apply in a consistent manner the dividend allocation system specified in an insurer's dividend declaration shall be prima facie evidence of unfair discrimination. [1977 c.405 §4]

**746.155 Applicability of ORS 746.145 and 746.150.** ORS 746.145 and 746.150 do not apply to groupings or combinations of persons or risks by way of common ownership or common use and control as permitted under ORS 737.346. [1977 c.405 §2]

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

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

(2) Discriminating against or differentiating from any insurer, manager or agent, by reason of its or his plan or method of transacting business or its or his affiliation or nonaffiliation with any board or association of insurers, managers, agents or representatives; or

(3) Doing anything which is detrimental to free competition in the business or injurious to the insuring public. [Formerly 736.615]

746.170 [Formerly 736.705; repealed by 1977 c 742 §9]

**746.180 Designation of property insurer by lender prohibited.** It is the policy of this state that its citizens have the right of free choice in the procurement of insurance and that, accordingly, no lender shall designate an insurer or insurance agent from which a borrower may procure the insurance required by the loan or sales agreement on the property securing the indebtedness. [Formerly 736.715]

**746.185 Definitions for ORS 746.185 to 746.211.** As used in ORS 746.185 to 746.211, "lending institution" means:

(1) A financial institution as defined in ORS 706.005;

(2) A national bank authorized to do business in this state;

(3) A corporation that transacts savings and loan business under articles of incorporation issued by this state;

(4) A corporation that transacts savings and loan business in this state under authority to do so issued under federal law;

(5) A credit union organized under and subject to ORS chapter 723;

(6) A federal credit union located in this state; or

(7) A bank holding company subject to the provisions of ORS chapters 706 to 716 or section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), as amended. [1977 c.742 §2]

746.190 [Formerly 736.725; repealed by 1977 c 742 §9]

**746.191 Right of borrower to select property insurer; notice to borrower.** A lending institution which solicits insurance on real or personal property must explain to the borrower in prominently displayed writing that insurance related to a loan or credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lending institution's right to reject a given insurance policy or insurer as provided in subsection (2) of ORS 746.195. Compliance with the notice provided for in section 106 of

the Truth in Lending Act (15 U.S.C.) shall be considered compliance with this section. [1977 c.742 §3]

**746.195 Insurance on property securing loan or credit; certain practices by lending institutions prohibited.** A lending institution shall not:

(1) Solicit the sale of insurance for the protection of real or personal property after a person indicates interest in securing a loan or credit extension, until the lending institution has agreed to make the loan or credit extension;

(2) Unreasonably reject an insurance policy furnished by the borrower for the protection of the property securing the loan or credit. A rejection shall not be considered unreasonable when it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. The standards shall not discriminate against any particular type of insurer, nor shall the standards call for rejection of an insurance policy because the policy contains coverage in addition to that required in the credit transaction;

(3) Require that any borrower, mortgagor, purchaser, insurer or agent pay a separate charge in connection with the handling of any insurance policy required as security for a loan or credit extension, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection does not apply to the interest that may be charged on premium loans or premium advancements under the terms of the loan or credit document;

(4) Require any procedures or conditions of an insurer or agent not customarily required of insurers or agents that are affiliated or in any other way connected with the lending institution;

(5) Refuse to accept a written binder issued by an agent as proof that temporary insurance exists covering the real or personal property that is the subject matter of, or security for, a loan or extension of credit, and that a policy of insurance will be issued covering that property. A written binder issued by an agent or insurer covering real or personal property that is the subject matter of, or security for, a loan or extension of credit shall be effective until a policy of insurance is issued in lieu thereof, including within its terms the identical insurance bound under the binder and the premium therefor, or until

notice of the cancellation of the binder is received by the borrower and the lending institution extending credit or offering the loan. When a lending institution closes on a binder under ORS 743.075, the agent or insurer issuing the binder shall be bound to provide a policy of insurance, equivalent in coverage to the coverage set forth in the binder, within 60 days from the date of the binder. The provisions of this subsection do not apply when prohibited by federal or state statute or regulations;

(6) Use or disclose to any other insurance agent, other than the original agent, the information relating to a policy of insurance furnished by a borrower unless the original agent fails to deliver a policy of insurance within 60 days prior to expiration to the lending institution without first procuring the written consent of the borrower; or

(7) Solicit the sale of insurance on real or personal property to a person who does not have a credit or deposit relationship with the lending institution. [1977 c.742 §4]

**746.200** [Formerly 736.735; repealed by 1977 c.742 §9]

**746.201 Lending institution to obtain required property insurance when borrower does not.** Nothing contained in ORS 746.185 to 746.205 shall prevent a lending institution from placing insurance on real or personal property when the mortgagor, borrower or purchaser fails to provide required insurance under the terms of the loan or credit document. [1977 c.742 §5]

**746.205 ORS 746.185 to 746.205 not applicable to certain policies of insurance.** Nothing contained in ORS 746.185 to 746.205 applies to credit life, credit health or accidental death and disability insurance. [1977 c.742 §6]

**746.210** [Formerly 736.745; repealed by 1977 c.742 §9]

**746.211 ORS 746.185 to 746.195 not applicable to certain lending institutions.** ORS 746.185 to 746.195 do not apply to a bank holding company which, on or before January 1, 1977, owned, controlled or had power to vote not more than 20 percent of any class of voting securities of another lending institution. Subsection (7) of ORS 746.195 shall not apply to a mutual savings bank with a general lines license issued by the commissioner prior to January 1, 1970. [1977 c.742 §7]

**746.220 Debtor's option in furnishing credit life or credit health insurance.** When credit life insurance or credit health insurance, as defined in ORS 743.561, is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any authorized insurer. [Formerly 739.615]

**746.225** [1975 c.469 §2; repealed by 1979 c.140 §3]

**746.230 Unfair claim settlement practices.** (1) No insurer or other person shall commit or perform any of the following unfair claim settlement practices:

(a) Misrepresenting facts or policy provisions in settling claims;

(b) Failing to acknowledge and act promptly upon communications relating to claims;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;

(d) Refusing to pay claims without conducting a reasonable investigation based on all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof of loss statements have been submitted;

(f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear;

(g) Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered in actions brought by such claimants;

(h) Attempting to settle claims for less than the amount to which a reasonable man would believe he was entitled after referring to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application altered without notice to or consent of the applicant;

(j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made;

(k) Delaying investigation or payment of claims by requiring a claimant or his physician to submit a preliminary claim report and

then requiring subsequent submission of loss forms when both require essentially the same information;

(L) Failing to promptly settle claims under one coverage of a policy where liability has become reasonably clear in order to influence settlements under other coverages of the policy; or

(m) Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim.

(2) No insurer shall refuse, without just cause, to pay or settle claims arising under coverages provided by its policies with such frequency as to indicate a general business practice in this state, which general business practice is evidenced by:

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

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

(c) Other relevant evidence. [1967 c.359 §588a; 1973 c.281 §1]

**746.240 Undefined trade practices injurious to public prohibited.** No person shall engage in this state in any trade practice that, although not expressly defined and prohibited in the Insurance Code, is found by the commissioner to be an unfair or deceptive act or practice in the transaction of insurance that is injurious to the insurance-buying public. [1967 c.359 §589; 1973 c.281 §2]

**746.250** [1967 c.359 §590; repealed by 1973 c.281 §3]

**746.260 Employment driving record not to be considered in issuance of motor vehicle insurance.** (1) When an individual applies for a policy of casualty insurance providing either automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage on an individually owned passenger vehicle including pickup and panel trucks and station wagons or a renewal of such policy, an insurer shall not consider the applicant's employment driving record in determining whether the policy will be issued or renewed or in determining the rates for the policy. An insurer shall not cancel such policy or discriminate in regard to other terms or conditions of the policy based upon the applicant's employment driving record.

(2) As used in this section, "employment driving record" means the employment driving record described in ORS 486.054.

(3) This section is not intended to affect the enforcement of the motor vehicle laws. [1973 c.113 §2; 1979 c.662 §2]

**746.270 Use of past investment or predicted future investment experience in sale of variable life insurance policies.** No person shall make or use in the offer or sale of a variable life insurance policy any illustrations of benefits payable that include projections of past investment experience into the future or predictions of future investment experience. This section is not intended to prohibit use of hypothetical assumed rates of investment return to illustrate possible levels of benefits. [1973 c.435 §26]

**746.275 Definitions for ORS 746.275 to 746.300.** As used in ORS 746.275 to 746.300:

(1) "Adjuster" means a person authorized to do business under ORS 744.505 or 744.515.

(2) "Motor vehicle liability insurance policy" means an insurance policy which provides automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage on motor vehicles, but does not include any insurance policy:

(a) Covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards; or

(b) Issued principally to cover personal or premises liability of an insured, even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance or use of a motor vehicle on the premises of such insured or on the ways immediately adjoining such premises.

(3) "Motor vehicle body and frame repair shop" means a business or a division of a business organized for the purpose of effecting repairs to motor vehicles which have been physically damaged. [1977 c.785 §1]

Note: 746.275 to 746.300 and 746.991 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 746 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

**746.280 Designation of particular motor vehicle repair shop by insurer prohibited.** An insurer shall not require that a particular person make the repairs to the

insured's motor vehicle as a condition for recovery by the insured under a motor vehicle liability insurance policy. [1977 c.785 §2]

Note: See note following 746.275.

**746.285 Notice of prohibition in motor vehicle repair shops; size; location.** A person operating a motor vehicle body and frame repair shop shall display in a conspicuous place in the shop a sign in bold face type in letters at least two inches high reading substantially as follows:

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PURSUANT TO OREGON INSURANCE LAW, AN INSURANCE COMPANY MAY NOT REQUIRE THAT REPAIRS BE MADE TO A MOTOR VEHICLE BY A PARTICULAR PERSON OR REPAIR SHOP.

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[1977 c.785 §3]

Note: See note following 746.275.

**746.290 Notice of prohibition in policies and by adjusters.** (1) An adjuster establishing loss under a motor vehicle liability insurance policy shall advise the insured of the provisions of ORS 746.280.

(2) Every motor vehicle liability insurance policy issued in this state after December 31, 1977, and any extension or renewal after that date of a policy issued before that date shall be accompanied by a statement in clear and conspicuous language approved by the commissioner of:

(a) The rights and responsibilities of the insured when a claim is submitted; and

(b) The provisions of ORS 746.280. [1977 c.785 §4]

Note: See note following 746.275.

**746.292 Motor vehicle repair shops; invoices; estimates; prohibited practices.**

(1) All work done by a motor vehicle body and frame repair shop shall be recorded on an invoice and shall describe all service work done and parts supplied. If any used parts are supplied, the invoice shall clearly state that fact. If any component system installed is composed of new and used parts, such invoice shall clearly state that fact. One copy of the invoice shall be given to the customer and one copy shall be retained by the motor vehicle body and frame repair shop.

(2) Before commencing repair work and upon the request of any customer, a motor vehicle body and frame repair shop shall

make an estimate in writing of the parts and labor necessary for the repair work, and shall not charge for the work done or parts supplied in excess of the estimate without the consent of such customer.

(3) No motor vehicle body and frame shop may:

(a) Supply or install used parts, or any component system composed of new and used parts, when new parts or component systems are or were to be supplied or installed.

(b) Charge for repairs not actually performed, or add the cost of repairs not actually to be performed to any repair estimate.

(c) Refuse any insurer, or its insured, or their agents or employes, reasonable access to any repair facility for the purpose of inspecting or reinspectng the damaged vehicle during usual business hours. [1977 c.785 §5]

Note: See note following 746.275.

**746.295 Proof and amount of loss under motor vehicle liability policies; determination by insurer.** Nothing in ORS 746.275 to 746.300 or 746.991 shall prohibit an insurer from establishing proof of loss requirements for motor vehicle liability insurance policies, investigating and determining the amount of an insured's loss through its agents or employes or negotiating with any person for the repair of such loss. [1977 c.785 §6]

Note: See note following 746.275.

**746.300 Liability of insurers and motor vehicle repair shops for damages; attorney fees.** An insured whose insurer violates ORS 746.280 or 746.290, or a customer whose motor vehicle body and frame repair shop violates ORS 746.292, may file an action to recover actual damages or \$100, whichever is greater, for each violation. Any person who brings an action under this section may also recover his costs, necessary disbursements and reasonable attorney fees as determined by the court. [1977 c.785 §7]

Note: See note following 746.275.

## UNAUTHORIZED INSURANCE

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

(2) In the event of failure of any unauthorized insurer to pay any claim or loss within the provisions of such insurance policy, any insurance agent who assisted or in any manner aided in the procurement of such insurance policy knowing it to be procured through an unauthorized insurer shall be liable to the insured for the full amount of the claim or loss.

(3) This section does not apply to:

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

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

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

(d) A licensed adjuster or attorney at law representing such an insurer from time to time in such occupational or professional capacity. [1967 c.359 §591; 1969 c.336 §17]

**746.320 Service of process on commissioner equivalent to personal service on unauthorized foreign or alien insurer.**

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

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

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

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

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

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

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

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

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

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

(5) Nothing contained in this section shall limit or abridge the right to serve any process upon an insurer in any other manner then permitted by law. [Formerly 736.252]

**746.330 Judgment by default after service of process under ORS 746.320.**

Until the expiration of 30 days from the date of filing an affidavit of compliance under ORS 746.320, no plaintiff or complainant shall be entitled to a judgment by default in any action in which service of process is made in the manner provided in such section. [Formerly 736 254]

**746.340 Conditions to be met by defendant unauthorized insurer before filing motions or pleadings.**

(1) Except as provided in subsection (3) of this section, before any unauthorized insurer may file or cause to be filed any motion or pleading in an action started against it by service of process in the manner provided in ORS 746.320, the defendant insurer shall either:

(a) Procure a certificate of authority to transact insurance in this state; or

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

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

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

[Formerly 736.256]

**746.350 Attorney fee allowable to plaintiff.** In any action against an unauthorized insurer in which service of process was made in the manner provided in ORS 746.320, if, prior to the commencement of the action, demand is made by the plaintiff or his attorney upon such insurer for payment in accordance with the terms of the insurance policy and the insurer does not make such payment, and if it appears to the court that failure to make such payment was vexatious and without reasonable cause, the court may allow to the plaintiff reasonable attorney fees and include such fees in any judgment that may be rendered in such action. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make such payment was vexatious and without reasonable cause. [Formerly 736.258]

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

(1) Reinsurance or wet marine and transportation insurance;

(2) Insurance effected in compliance with ORS 744.305 to 744.405;

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

(4) Insurance against loss of or damage to any property having a permanent situs outside this state, where such policy contains a provision designating the commissioner or a bona fide resident of this state as the insurer's lawful attorney upon whom all process may be served in any action begun by or on behalf of an insured or beneficiary and arising out of policies of insurance between the insurer and persons residing or authorized to do business in this state. [Formerly 736.260]

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

## PREMIUM FINANCING

**746.405 Definitions for ORS 746.405 to 746.525.** As used in ORS 746.405 to 746.525, unless the context requires otherwise:

(1) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company or to its assignee the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance policy together with a service charge. No mortgage, conditional sale contract or other security agreement covering property which authorizes the lien holder to pay or advance premiums for insurance with respect thereto shall be deemed to be a premium finance agreement.

(2) "Premium finance company" means a person engaged in the business of entering into premium finance agreements with insureds or of acquiring such premium finance

agreements from insurance agents, brokers or other premium finance companies. [1969 c.639 §2]

**746.415 License required for premium financing.** Except as provided in ORS 746.425, no person shall engage in the business of financing insurance premiums in this state, either directly or indirectly, without a license therefor obtained from the commissioner. [1969 c.639 §3]

**746.425 Applicability of ORS 746.405 to 746.525.** ORS 746.405 to 746.525 do not apply to:

(1) Any insurer authorized to transact business in this state who finances insurance premiums on domestic risks with a service charge no greater than that provided in ORS 746.485 and 746.495;

(2) Any bank, trust company, savings and loan association, credit union or other lending institution authorized to transact business in this state that does not possess or acquire any right, title or interest with respect to the insurance policy for which the premiums are financed other than in the proceeds thereof in the event of loss;

(3) The inclusion of a charge for insurance in connection with an instalment sale in accordance with ORS 83.010 to 83.840 and 83.990;

(4) The financing of insurance premiums in this state with aggregate charges not exceeding the limitations contained in ORS 82.010 to 82.170 relating to rates of interest; or

(5) Agents financing only their own accounts and whose aggregate charge for financing does not exceed one and one-half percent per month on the outstanding balance. [1969 c.639 §4]

**746.435 License application; renewal; denial.** (1) Application for a license required under ORS 746.415 shall be in writing, and in the form prescribed by the commissioner.

(2) The person to whom the license may be or is issued shall file sworn answers to such interrogatories as the commissioner may require. The commissioner shall have authority, at any time, to require the licensee fully to disclose the identity of all stockholders, partners, officers and employees and he may, in his discretion, refuse to issue or continue a license in the name of any firm or corporation if he is not satisfied that any officer, employee, stock-

holder or partner thereof who may materially influence the licensee's conduct meets the standards of ORS 746.405 to 746.525.

(3) All premium finance licenses shall continue in force until suspended or revoked, subject to the payment on or before April 1 of each year of the annual continuation fee as provided in ORS 731.804. [Amended by 1969 c.639 §5; 1971 c.231 §36]

**746.445 Qualifications of licensee; investigation; hearing.** (1) Upon the filing of an application and the payment of the license fee the commissioner shall make an investigation of each applicant and shall issue a premium finance company license if the applicant is qualified in accordance with ORS 746.405 to 746.525. If the commissioner does not so find, he shall, within 30 days after he has received such application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue a license as may be applied for when he is satisfied that the person to be licensed:

(a) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(b) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied; and

(c) If a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state. [1969 c.639 §6]

**746.455 License revocation; suspension.** The commissioner may revoke or suspend the license of any premium finance company when and if after investigation it appears to the commissioner that:

(1) Any license issued to such company was obtained by fraud;

(2) There was any misrepresentation in the application for the license;

(3) The holder of such license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company; or

(4) Such company has violated any of the provisions of ORS 746.405 to 746.525. [1969 c.639 §7; 1971 c.231 §37]

**746.465 Records required of licensees; form; inspection.** (1) Every premium finance company shall maintain records of its

premium finance transactions and the records shall be open to examination and investigation by the commissioner. The commissioner may at any time require the company to bring such records as he may direct to the commissioner's office for examination.

(2) Every premium finance company shall preserve its records of such premium finance transactions, including cards used in a card system, for at least three years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement. [1969 c.639 §8]

**746.475 Premium finance agreements; contents; form; delivery.** (1) A premium finance agreement shall:

(a) Be dated, signed by the insured or by any person authorized in writing to act in behalf of the insured, and the printed portion thereof shall be in at least eight-point type;

(b) Contain the name and place of business of the insurance agent negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by him, the name and place of business of the premium finance company to which payments are to be made, a description of the insurance policies involved and the amount of the premium therefor; and

(c) Set forth the following items where applicable:

(A) The total amount of the premiums.

(B) The amount of the downpayment.

(C) The principal balance (the difference between items (A) and (B)).

(D) The amount of the service charge.

(E) The balance payable by the insured (sum of items (C) and (D)).

(F) The number of payments required, the amount of each payment expressed in dollars, and the due date or period thereof.

(2) The items set out in paragraph (c) of subsection (1) of this section need not be stated in the sequence or order in which they appear in such paragraph, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The premium finance company or the insurance agent shall deliver to the insured, or mail to him at his address shown in the

agreement, a complete copy of the agreement. [1969 c.639 §9; 1971 c.231 §38]

**746.485 Charges for premium financing regulated; method of computation.** (1) A premium finance company shall not charge, contract for, receive, or collect a service charge other than as permitted by ORS 746.405 to 746.525.

(2) The service charge is to be computed on the balance of the premiums due (after subtracting the downpayment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final payment of the premium finance agreement is payable.

(3) The service charge shall not exceed interest at the nominal annual rate of 18 percent, plus an additional charge of \$10 per premium finance agreement which need not be refunded upon cancellation or prepayment. However, any insured may prepay his premium finance agreement in full at any time before the due date of the final payment and in such event the unearned service charge shall be refunded. The amount of any such refund shall be calculated in accordance with the rule commonly known as the "Rule of 78" and shall represent at least as great a proportion of the service charge, if any, as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of payments in the agreement. [1969 c.639 §10; 1971 c.231 §39]

**746.495 Delinquency charges regulated.** (1) A premium finance agreement may provide for the payment by the insured of a delinquency charge for any payment that is in default for a period of 10 days or more. Such charge may be made for each month or fraction thereof that the payment is in default. The amount of such charge may be a minimum of \$1 and as a maximum shall be subject to the following limits:

(a) For delinquent payments of less than \$250, five percent of the payment or \$5, whichever is less; or

(b) For delinquent payments of \$250 or more, two percent of the payment.

(2) If a payment default results in the cancellation of any insurance policy listed in the agreement, the agreement may provide for the payment by the insured of a cancellation

charge of \$5, less any delinquency charges imposed in respect to the payment in default. [1969 c.639 §11]

**746.505 Cancellation of policy by premium finance company; notice required; effective date of cancellation.** (1) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance policy or policies listed in the agreement, the insurance policy or policies shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than 10 days' written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance policy unless the default is cured within such 10-day period. A copy of such notice shall also be mailed to the insurance agent indicated on the premium finance agreement.

(3) After expiration of such 10-day period, the premium finance company may thereafter in the name of the insured, cancel such insurance policy or policies by mailing to the insurer a notice of cancellation, and the insurance policy shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance policy or policies. The premium finance company shall also mail a notice of cancellation to the insured at his last-known address and to the insurance agent indicated on the premium finance agreement.

(4) All statutory, regulatory and contractual restrictions providing that the insurance policy may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed

notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation. [1969 c.639 §12]

**746.515 Return of unearned premiums on cancellation.** (1) Whenever a financed insurance policy is canceled, the insurer on notice of such financing shall return whatever gross unearned premiums are due under the insurance policy to the premium finance company for the account of the insured or insureds.

(2) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured provided that no such refund shall be required if it amounts to less than \$1. [1969 c.639 §13]

**746.525 Agreement effective as security interest.** No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors or assigns. [1969 c.639 §14]

## PENALTIES

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

**746.991 Criminal penalties.** Violation of ORS 746.280 to 746.292 is punishable by a fine not exceeding \$100. [1977 c.785 §8]

Note: See note following 746.275.

## CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,  
October 1, 1979.

Thomas G. Clifford  
Legislative Counsel