

# Chapter 752

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## Professional Liability Insurance

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# INSURANCE

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**752.005 Definitions for ORS 752.005 to 752.055.** (1) For purposes of ORS 752.005 to 752.055, a "qualified member of a profession" means a person:

(a) Who holds a current license, certificate or registration in a profession which is regulated or governed by a board established by the Legislative Assembly;

(b) Whose principal office is in Oregon;

(c) Who is engaged in the private practice of the profession; and

(d) Who is not exempted by the commission from belonging to a professional liability fund managed by the commission.

(2) For purposes of subsection (1) of this section, a person is not engaged in the private practice of a profession if the person is a full-time employee of a corporation other than a corporation incorporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof. However, a person who practices a profession outside of the person's full-time employment is engaged in the private practice of the profession.

(3) For the purposes of subsection (1) of this section, the principal office of a person is considered to be the location where the person engages in the private practice of a profession more than 50 percent of the time engaged in that practice. In the case of a person in a branch office outside Oregon, if the main office to which the branch office is connected is in Oregon, the principal office of the person is not considered to be in Oregon unless the person engages in the private practice of a profession in Oregon more than 50 percent of the time engaged in that practice. [1987 c.774 §92]

752.010 [1975 c.796 §13; 1977 c.269 §1; repealed by 1987 c.774 §154]

**752.015 Determination of need for professional liability fund.** (1) If the Director of the Department of Insurance and Finance finds, after hearings, that qualified members of any profession are unable to obtain insurance for damages arising out of professional negligence or that such professional liability insurance is not available at a reasonable cost to such members, the director may determine that a professional liability fund is necessary. Any such fund shall be separate and distinct from the General Fund, and interest earned by the fund shall be credited to the fund.

(2) The director may not make a determination to implement a professional liability fund if:

(a) The lack of availability of insurance is due to legitimate insurance underwriting

considerations, including past claims experience, licensing noncompliance or inadequate risk management; and

(b) Actuarial studies show that private insurers are adequately setting rates for professional liability coverage, that a professional liability fund would not ultimately provide insureds lower premiums and that there is not an adequate number of potential insureds to fund a professional liability fund.

(3) The director may contract for actuarial studies in order to make the determinations required by this section. [1987 c.774 §89, 1989 c.966 §68]

752.020 [1975 c.796 §13a; 1977 c.269 §2, repealed by 1987 c.774 §154]

**752.025 Commission; appointment; membership; term of office.** (1) After a determination of necessity by the director under ORS 752.015, the Governor may appoint a commission for each professional liability fund that the Director of the Department of Insurance and Finance proposes to implement.

(2) Each commission appointed pursuant to subsection (1) of this section shall consist of nine individuals appointed by the Governor, subject to confirmation by the Senate in the manner described in ORS 171.562 and 171.565.

(3) Of the members of the commission, six shall be members of the profession and three shall be lay members.

(4) The term of office of each member is three years but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become effective for the unexpired term upon confirmation by the Senate. [1987 c.774 §§90, 91]

**Note:** Section 91a, chapter 774, Oregon Laws 1987, provides:

**Sec. 91a.** Notwithstanding the terms of office specified in section 91 of this Act [ORS 752.025 (2)], of the members first appointed to a professional liability fund commission:

(1) Two shall serve for a term ending on June 30 next after their appointment;

(2) Three shall serve for a term ending on June 30 one year after the end of the term specified in subsection (1) of this section; and

(3) Three shall serve for a term ending on June 30 two years after the end of the term specified in subsection (1) of this section. [1987 c.774 §91a]

752.030 [1975 c.796 §13b; repealed by 1987 c.774 §154]

**752.035 Professional liability funds: establishment; minimum insurance coverage; authority of commission.** A professional liability fund commission appointed

pursuant to ORS 752.025 shall establish a professional liability fund for qualified members of the appropriate profession. When a fund is established under this section:

(1) The commission shall require all qualified members of the profession to carry professional liability insurance offered by the fund with primary liability limits of at least \$200,000.

(2) A professional liability fund established under this section shall pay, on behalf of qualified members of the profession, all sums as may be provided under the fund which any such member shall become legally obligated to pay as money damages because of any claim made against such member as a result of any act or omission of such member in rendering or failing to render professional services for others in the member's professional capacity or caused by any other person for whose acts or omissions the member is legally responsible.

(3) The commission shall have the authority:

(a) To assess each person covered by the fund for contributions to the fund;

(b) To establish definitions of coverage to be provided by the fund;

(c) To employ legal counsel to represent the fund and to defend and control the defense of any person covered by the fund against whom a claim is made;

(d) To employ any persons necessary for the proper administration of the fund; and

(e) To contract with a local insurer to administer the fund. [1987 c.774 §93]

752.040 [1975 c.796 §14, 1977 c.269 §3, repealed by 1987 c.774 §154]

**752.045 Rules; reports by commissions; exemption from Insurance Code and Insurance Guaranty Association.** (1) The Director of the Department of Insurance and Finance shall adopt rules for the establishment of professional liability funds by the commissions described in ORS 752.025. Such rules shall include, but need not be limited

to, rules requiring annual reports from the commissions.

(2) The commissions shall report to the director annually on the operations of the fund. The reports shall contain any information required by the director.

(3) A professional liability fund established under ORS 752.005 to 752.055 shall be subject to the rules of the director adopted under subsection (1) of this section. Such funds shall not be otherwise subject to the Insurance Code, and shall not participate in the Oregon Insurance Guaranty Association. [1987 c.774 §93a]

752.050 [1975 c.796 §15; repealed by 1977 c.269 §12]

**752.055 Short title.** ORS 752.005 to 752.055 shall be known and may be cited as "The Oregon Professional Liability Funds Law." [1987 c.774 §93b]

752.060 [1975 c.796 §16; 1977 c.269 §4, repealed by 1987 c.774 §154]

752.070 [1975 c.796 §17, 1977 c.269 §5; repealed by 1987 c.774 §154]

752.080 [1975 c.796 §18; 1977 c.269 §6, repealed by 1987 c.774 §154]

752.090 [1975 c.796 §21; 1977 c.269 §7, repealed by 1987 c.774 §154]

752.100 [1975 c.796 §22; repealed by 1987 c.774 §154]

752.110 [1975 c.796 §23; 1977 c.269 §8, repealed by 1987 c.774 §154]

752.120 [1975 c.796 §24, 1977 c.269 §9, repealed by 1987 c.774 §154]

752.130 [1975 c.796 §19; repealed by 1987 c.774 §154]

752.140 [1975 c.796 §20, 1977 c.269 §10; repealed by 1987 c.774 §154]

752.150 [1975 c.796 §25; repealed by 1987 c.774 §154]

752.160 [1975 c.796 §27; repealed by 1987 c.774 §154]

752.170 [1977 c.851 §5; repealed by 1987 c.774 §154]

752.180 [1977 c.851 §6; repealed by 1987 c.774 §154]

752.190 [1977 c.269 §11; repealed by 1987 c.774 §154]

## CHAPTERS 753 to 755

[Reserved for expansion]