

Chapter 278

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Insurance for Public Bodies

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DEFINITIONS

278.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Actuarially sound" means funding and insurance sufficient to pay those losses and their related costs which are known or are projected by the Department of General Services from analyses of claims, loss experience and risk factors.

(2) "Components" of the Insurance Fund means accounts created by the department within the Insurance Fund to provide specific coverages and administer the duties of this chapter.

(3) "Data" means information previously converted to language or symbols in a form which can be directly read by the information processing equipment.

(4) "Department" means the Department of General Services.

(5) "Engineering specifications" means those records which provide detailed documentation of the construction, wiring, arrangement and related engineering details of the information processing equipment.

(6) "Media" means all active information processing material including all forms of data, program material and related engineering specifications employed in the agency's information processing operation except property which the agency elects not to cover.

(7) "Participating local public body" and "public body" mean any public body other than the state which has elected to participate in the Insurance Fund under ORS 30.282.

(8) "Personal property" means tangible personal property owned, leased, controlled or possessed by a state agency and includes all chattels and moveables, such as merchandise, furniture, goods, livestock, vehicles, aircraft, moveable machinery, moveable tools, moveable equipment, general operating supplies and media. "Personal property" does not include cash, currency or negotiable papers and securities and similar property which may be excluded by policy of the department.

(9) "Program material" means stored data used to direct the information processing equipment as to which input or memory to use, how to use it, and the type of results to obtain, including any diagrams or other records which can be used to reproduce such instructions.

(10) "Property" means real and personal property as defined in this section, and any other property under the control of the state

in which the state has an insurable interest as determined by the department.

(11) "Real property" means the land and all buildings, structures, improvements, machinery, equipment or fixtures erected on, above or under the land the title of which is vested in the State of Oregon, or is under the control of the state through a lease purchase agreement, instalment purchase, mortgage or lien. "Real property" does not include any paving, roadways, tunnels, bridges, bike paths, sidewalks and other related improvements which may be excluded by policy of the department.

(12) "State agency" or "agency" means each state branch, institution, department, board, commission or activity of whatever nature.

(13) "Vessel" means a boat, ship, craft or structure made to float or travel upon the water which may or may not be powered by a marine engine. [1961 c.448 §2; 1975 c.609 §21; 1977 c.428 §2; 1981 c.109 §6; 1985 c.731 §7; 1989 c.40 §1]

278.010 [Repealed by 1953 c.581 §11]

INSURANCE OF PUBLIC PROPERTY

278.011 State agencies to supply information on property; appraised value determined. At times determined by the Department of General Services, each state agency shall supply such information regarding its property, personal and real, and its personnel, budget and activities as the department shall require for risk control, insurance and claims purposes. The appraised value of the property shall be established by the department on the basis of present day replacement costs excluding the value of land. [1953 c.581 §9; 1957 c.385 §1; 1961 c.448 §3; 1965 c.140 §1; 1969 c.670 §5; 1981 c.109 §7; 1991 c.566 §1]

278.020 [Amended by 1953 c.581 §11; 1961 c.448 §4; 1963 c.634 §4; 1967 c.262 §1; 1969 c.670 §1; 1975 c.609 §10; 1981 c.109 §8; 1982 s.s.1 c.28 §1; 1985 c.731 §8; repealed by 1991 c.566 §14]

278.022 Coverage of vessels; contributions. In addition to any other coverage under this chapter, if a vessel which is the personal property of an agency or if property on any other vessel is damaged or destroyed as a direct result of collision with another vessel, striking any object, whether submerged or not, sinking, grounding, stranding, or other perils of the sea, the department shall pay the cost of restoring the vessel or property out of the Insurance Fund in an amount not to exceed the appraised value established pursuant to this chapter. If an agency's vessel becomes disabled at sea for any reason, the department shall reimburse the agency from the Insurance Fund for the cost of towing the vessel to the nearest port where repairs can be accomplished. [1961 c.448

§11; 1965 c.140 §2; 1969 c.670 §6; 1975 c.609 §22; 1982 s.s.1 c.28 §2; 1985 c.731 §9; 1991 c.566 §2]

278.025 [1953 c.581 §5; 1969 c.670 §7; 1975 c.609 §23; repealed by 1985 c.731 §32]

278.030 [Amended by 1981 c.109 §9; 1982 s.s.1 c.28 §3; repealed by 1985 c.731 §32]

278.035 [1961 c.448 §§6, 7; 1969 c.670 §8; 1975 c.609 §24; repealed by 1985 c.731 §32]

278.040 [Amended by 1961 c.448 §8; repealed by 1985 c.731 §32]

278.043 [1969 c.670 §3; 1982 s.s.1 c.28 §4; repealed by 1985 c.731 §32]

278.047 [1969 c.670 §4; 1982 s.s.1 c.28 §5; repealed by 1985 c.731 §32]

278.050 Restoring lost, damaged or destroyed property; reversion of unused payment; exceptions; use of fund for other purposes; deductibles. (1) Subject to subsections (2) and (3) of this section, if any property designated in ORS 278.011 is lost, damaged or destroyed by any peril the department may elect to cover by rule or policy, but excluding any loss from mysterious disappearance, lack of maintenance or inherent vice, the department shall pay the cost of restoring the property out of the Insurance Fund in an amount not to exceed the appraised value established pursuant to ORS 278.011.

(2) Any amounts received by an agency from the Insurance Fund may be applied for purposes other than the restoration of the property destroyed provided such use is approved by the Department of General Services, the Legislative Administration Committee or the State Court Administrator, as appropriate, and further, in the event the amount received from the Insurance Fund exceeds \$50,000, approval must also be received from the Legislative Assembly if in session, or the Emergency Board if during the interim. If the restoration of any property designated in ORS 278.011 that is lost, damaged, or destroyed by any covered peril is not required, the cost of razing the property may be paid out of the Insurance Fund. Any amounts approved on claims for use in rebuilding or replacing real or personal property may be transferred to other agencies if approved by the Department of General Services, the Legislative Administrator or the State Court Administrator, as appropriate. However, in the event that the amount exceeds \$50,000, approval must also be secured from the Legislative Assembly if in session, or the Emergency Board if during the interim.

(3) The department may establish deductibles for certain perils or classes of property covered by the Insurance Fund. Payments from the fund to cover loss, damage or destruction shall be reduced by the deductible amount adopted by the department.

(4) The Executive Department shall draw warrants on the State Treasurer payable from the Insurance Fund for all claims approved by the department in carrying out the provisions of this chapter. [Amended by 1953 c.581 §11; 1957 c.385 §2; 1961 c.448 §9; 1965 c.140 §3; 1969 c.670 §9; 1981 c.109 §10; 1985 c.731 §10; 1991 c.566 §3]

278.052 Right of action against person responsible for loss; investigations. (1) If a payment is made out of the Insurance Fund to or for a state agency for any loss covered by the Insurance Fund, the department is subrogated, to the extent of the payment, to the rights of the state agency against any person or other entity legally responsible in damages for the loss. The department may commence an appropriate action in any court, in the name of the state, to enforce the rights. Any amounts recovered as a result of the proceeding shall be paid into the State Treasury and credited to the Insurance Fund.

(2) The department may conduct an investigation of a loss to determine whether legal action should be commenced. The department may administer oaths and examine witnesses in connection with its investigation. The State Fire Marshal and the Department of State Police and all state agencies covered under this chapter shall cooperate with the Department of General Services in the investigation. [1961 c.448 §12; 1985 c.731 §11; 1991 c.566 §4]

278.054 [1953 c.581 §6; repealed by 1975 c.605 §33]

278.056 [1953 c.581 §7; repealed by 1975 c.605 §33]

278.060 [Amended by 1961 c.448 §13; 1981 c.109 §11; repealed by 1985 c.731 §32]

278.070 [Amended by 1961 c.448 §14; repealed by 1985 c.731 §32]

278.075 State agencies to supply information on media property; scope of coverage. (1) At times determined by the department, each state agency owning, leasing, controlling or possessing media shall supply such information as the department may require regarding the agency's media. The appraised value of the media shall be established on the basis of present-day replacement costs or restoration to operational condition.

(2) If any media designated in subsection (1) of this section is damaged or destroyed by any covered peril, the department shall pay all extraordinary expenses related to replacement or re-creation of new or backup media out of the Insurance Fund in an amount not to exceed the appraised value established pursuant to this chapter. Such costs may include reproduction of media, temporary service and equipment rental costs, reinstallation, shipping and other related costs.

(3) Media coverage by the Insurance Fund does not include any loss of moneys because of the lack of any revenue producing function connected with the operation, nor does it cover any other costs of business interruption outside the direct expenses as outlined in subsection (2) of this section. [1981 c.109 §23; 1985 c.731 §12; 1991 c.566 §5]

278.080 [Amended by 1953 c.581 §11; repealed by 1959 c.12 §1]

278.085 [1953 c.581 §1; 1957 c.385 §3; 1961 c.448 §15; 1969 c.670 §10; repealed by 1985 c.731 §32]

278.090 [Amended by 1955 c.288 §1; 1959 c.662 §18; repealed by 1975 c.609 §25]

278.100 [1975 c.609 §2; 1977 c.428 §3; 1981 c.109 §12; 1981 c.490 §1; 1981 c.913 §1; repealed by 1985 c.731 §32]

278.105 [1975 c.609 §3; repealed by 1985 c.731 §32]

278.110 [1975 c.609 §4; 1981 c.109 §13; repealed by 1985 c.731 §32]

278.115 [1975 c.609 §5; 1981 c.109 §14; 1985 c.731 §13; repealed by 1991 c.566 §14]

278.120 Defense of claims by Attorney General; approval of settlements; payment of defense costs. (1) Upon receipt by the Department of General Services of a claim for damages against the State of Oregon or a state officer, employee or agent within the scope of ORS 30.260 to 30.300, if the claim is covered by insurance, the department shall tender defense of the claim to the insurer, and if such tender is accepted, ORS chapter 180 and the remaining provisions of this section shall not be applicable. If the claim is not covered by insurance or if the tender is rejected, the department shall cause an investigation to be conducted to determine whether the claim is meritorious and comes within the provisions of ORS 30.260 to 30.300. The Attorney General may conduct the investigation if requested by the department. If the department determines that the state or a state officer, agent or employee is or may be liable to the claimant under ORS 30.260 to 30.300, the department may negotiate, compromise and settle with the claimant. However, the department shall not compromise or settle a claim for declaratory, injunctive or other protective relief against a state department or agency that is headed by an elected official, its officers, employees or agents, or that elected official, without the express prior consent of the elected official. The Attorney General shall defend all lawsuits after the department has determined that a reasonable settlement cannot be achieved. The department shall pay from the Special Liability Revolving Fund authorized in ORS 278.150 or the Insurance Fund the amount of any judgment, and, if the department determines such action to be appropriate, the amount of any settlement unless the defense of the claim has been rejected pursuant to ORS 30.285 (5) or the Attorney General determines, in con-

sultation with the department, that the act or omission of a state officer, employee or agent out of which the claim arose was committed maliciously or with an intent to cause unlawful damage or injury or with gross recklessness.

(2) The Department of General Services, through the Insurance Fund, shall pay reasonable defense expenditures for and indemnify liabilities of an officer, employee or agent of a court of this state who is a state officer, employee or agent that arise out of a mandamus proceeding brought against that person in the person's official capacity.

(3) As used in this section, "state officer, employee or agent" includes the district attorney and deputy district attorneys, special prosecutors and law clerks of the office of district attorney who act in a prosecutorial capacity, but does not include any other employee of the office of district attorney or any employee of the justice, district or circuit court whose salary is paid wholly or in part by a county and who shall be considered an officer, agent or employee of the county. [1975 c.609 §6; 1979 c.669 §1; 1981 c.109 §16; 1981 c.350 §3; 1985 c.731 §14; 1987 c.763 §2]

278.125 Purchase of insurance; payment of premium; legislative approval of self-insurance plan. (1) The Department of General Services is authorized to negotiate for and purchase such insurance as it deems necessary or desirable to accomplish the purposes of this chapter and ORS 30.260 to 30.300 and 30.880, or such other insurance or reinsurance as may be desirable to insure the state, participating local public bodies or their officers, employees or agents against liability.

(2) The premium for such insurance shall be paid from the Insurance Fund as either an administrative expense or charged to the benefiting state agency, agencies or participating local public bodies.

(3) The department shall not implement any plan of self-insurance insuring any part of the liability of the state or its officers, employees or agents under ORS 30.260 to 30.300 until after the plan has been submitted to and approved by the Joint Ways and Means Committee of the Legislative Assembly, if the legislature is in session, or the Emergency Board. [1975 c.609 §7; 1981 c.109 §17; 1985 c.731 §15]

278.130 Employment of staff assistance; payment for services by Attorney General. The Department of General Services may employ such professional services and other personnel deemed necessary, other than defense counsel, to carry out the administration of this chapter and ORS 30.260 to 30.290 and 30.880. The Attorney General may employ defense counsel and shall charge

the Department of General Services for the cost of the services of the defense counsel and the Attorney General required under these statutes, and such costs and the costs incurred by the Department of General Services in the administration of these statutes shall be paid out of the Insurance Fund. [1975 c.609 §8; 1981 c.109 §18; 1985 c.731 §16]

278.135 [1975 c.609 §9; repealed by 1985 c.731 §32]

278.140 [1979 c.669 §3, repealed by 1981 c.109 §24]

278.145 [1981 c.109 §21; repealed by 1985 c.731 §32]

278.150 Special Liability Revolving Fund; accounting for moneys disbursed.

(1) The Executive Department may draw a warrant on the State Treasury for the sum of \$75,000 in favor of the Department of General Services payable out of the Insurance Fund. The amount drawn shall be credited to a Special Liability Revolving Fund which shall be carried with the State Treasury, separate and distinct from the General Fund, and shall be used by the Department of General Services when it is necessary or desirable to make immediate payments on liability claims. Interest earned by the fund shall be credited to the fund.

(2) The department shall file with the Executive Department at least once each month a verified voucher covering current disbursements from the Special Liability Revolving Fund. The voucher shall be accompanied by an itemized statement showing the names of the persons, firms or corporations to whom and the purposes for which the disbursements were made.

(3) Upon receipt of the voucher, the Executive Department shall draw a warrant on the State Treasury in favor of the department payable out of the Insurance Fund. The amount drawn shall be deposited in the Special Liability Revolving Fund and shall be for a sum sufficient only to replenish the Special Liability Revolving Fund. [1981 c.109 §20; 1985 c.731 §17; 1989 c.966 §12]

Note: 278.150 was added to and made a part of ORS chapter 278 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

INSURANCE FOR MOTOR VEHICLES OWNED BY GOVERNMENT

278.200 "Motor vehicle" defined for ORS 278.205. As used in ORS 30.880 and 278.205, "motor vehicles" includes commercial buses, as defined in ORS 801.200. [1979 c.842 §5; 1983 c.338 §905; 1985 c.16 §454; 1987 c.158 §37]

278.205 Department of General Services to issue certificates of insurance; coverage; personal injury protection benefits. (1) The Department of General Services may issue a certificate of motor vehicle

liability insurance and make assessments therefor.

(2) When issued on vehicles owned by local public bodies, such insurance shall also include uninsured motorist coverage and may include personal injury protection benefits and shall provide at least the minimum coverages and amounts set forth in ORS 742.500 to 742.542. However, at the request of a local public body, the department may provide uninsured motorist coverage or personal injury protection benefits for the motor vehicles owned by the local public body in amounts greater than those required under ORS 742.500 to 742.542.

(3) When issued on state-owned vehicles furnished for public use including, but not limited to, use authorized under ORS 276.598, such insurance shall include uninsured motorist coverage and personal injury protection benefits and shall provide at least the minimum coverages and amounts set forth in ORS 742.500 to 742.542.

(4) The Department of General Services by rule may provide personal injury protection benefits in excess of those specified in this section. [1979 c.842 §2; 1981 c.490 §2]

278.210 State has rights and duties of insurer. The state shall have all of the rights and obligations of an insurer provided in ORS 742.500 to 742.542 and 742.560 to 742.572 as to any certificate issued pursuant to ORS 278.205. [1979 c.842 §3]

278.215 Uninsured motorist coverage requirements. (1) Any insurance or self-insurance provided by moneys from the Insurance Fund for or on account of the operation of motor vehicles within the state's or public body's control, shall provide the uninsured motorist coverage required under ORS 742.500 to 742.504 and, except as specified in ORS 278.205, may provide the personal injury protection benefits required under ORS 742.520 to 742.542.

(2) Any local public body, as defined in ORS 30.260, which establishes a self-insurance fund under ORS 30.282 for or on account of the operation of motor vehicles within the local public body's control, shall provide the uninsured motorist coverage required under ORS 742.500 to 742.504 and may provide the personal injury protection benefits required under ORS 742.520 to 742.542.

(3) The uninsured motorist coverage provided under this section shall be excess over any other collateral benefits to which an injured person is entitled, including, but not limited to, other uninsured motorist coverage, insurance benefits, governmental benefits or gratuitous benefits. [1979 c.842 §4; 1981 c.490 §3; 1985 c.731 §19]

LIABILITY INSURANCE

278.305 Liability insurance for health care providers, facilities and maintenance organizations. (1) The State Board of Higher Education, as the governing body for the Oregon Health Sciences University, may procure supplemental or additional liability insurance for the purpose of insuring that health care facilities and health maintenance organizations, as defined in ORS 442.015, and their officers, participating physicians, agents and employees, are insured by a private insurance policy or policies against disproportionate liability in the event of claims arising from contracts for health care services involving the Oregon Health Sciences University and such health care providers in which recovery is sought both from the Oregon Health Sciences University, its officers, agents or employees, and from such health care providers, their officers, participating physicians, agents or employees.

(2) The purchase of the supplemental or additional liability insurance authorized by this section is subject to approval of the Department of General Services. The Department of Higher Education shall consult with the Department of General Services in the development of an insurance program designed to fulfill the purposes of this section. The amount of supplemental or additional liability coverage to be procured shall be determined according to the applicable insurance industry standards. [1983 c.431 §1; 1985 c.731 §24]

RISK MANAGEMENT

278.405 Department to manage risk management and insurance programs; conditions. The Department of General Services shall direct and manage all risk management and insurance programs of state government except for employee benefit insurance programs as otherwise provided in ORS chapter 243. Authority granted the department in this section includes but is not limited to the following authority:

(1) To provide all insurance coverages including coverage of related legal expenses required by law, requisitioned by individual agencies, or which the department determines necessary or desirable for the efficient operation of state government, including but not limited to casualty insurance, property insurance, workers' compensation insurance and surety insurance.

(2) To purchase insurance policies, develop and administer self-insurance programs, or any combinations thereof, as may be in the best interest of the state in carry-

ing out the authorities granted in subsection (1) of this section.

(3) To consolidate and combine state insurance coverages.

(4) To purchase such risk management, actuarial and other professional services as may be required.

(5) To provide technical services in risk management and insurance to state agencies.

(6) To adopt rules and policies governing the administration of the state's insurance and risk management activities and to carry into full force and effect the provisions of this chapter, ORS 30.260 to 30.290, 30.880 and 655.505 to 655.550. The department, by rule or policy, may determine the Insurance Fund's contribution to the cost of defense, settlements and judgments in actions or proceedings. The department may condition payment of all or part of any loss covered by the Insurance Fund on compliance with the rules and policies adopted under this chapter. [1985 c.731 §2; 1991 c.566 §6]

278.415 Department to authorize agency insurance purchases; exceptions. No state agency shall purchase insurance, other than for employee benefits, except as authorized by the Department of General Services and in accordance with the terms, conditions and procurement methods as may be established by the department except for the transaction of workers' compensation insurance and reinsurance business by the State Accident Insurance Fund Corporation. However, nothing in this section applies to professional liability insurance acquired under ORS 9.080 (2). [1985 c.731 §3]

INSURANCE FUND

278.425 Insurance Fund; uses. (1) There is established an Insurance Fund as a separate fund in the State Treasury, separate and distinct from the General Fund, which shall be used to provide insurance and self-insurance for the State of Oregon under this chapter, and for participating local public bodies under ORS 30.282 and 278.125 to 278.215. The moneys in the Insurance Fund may be invested as provided in ORS 293.701 to 293.776, 293.810 and 293.820 in "investment funds" as defined in ORS 293.701 which includes the Insurance Fund. Interest earned by the fund shall be credited to the fund.

(2) The Insurance Fund shall be administratively separated to assure individual accountability of the state and local public body liability insurance programs under ORS 30.282 and 278.125 to 278.215 and the state property insurance program under this chapter.

(3) All moneys arising from the operation of this section and ORS 278.405, 278.415 and 278.435 and the provisions of this chapter and ORS 30.260 to 30.300 and 30.880 shall be set aside by the State Treasurer and credited to the Insurance Fund. The moneys in the Insurance Fund are continuously appropriated to the department to administer the provisions of this chapter and ORS 30.260 to 30.300 and 30.880. [1985 c.731 §4; 1989 c.966 §13]

278.435 Fund to operate on actuarially sound basis; apportionment; assessment; advances; repayment. (1) It is the intent of the Legislative Assembly that the individual components of the Insurance Fund, as well as the total fund, operate on an actuarially sound basis and that the assessments and charges shall reflect this policy.

(2) The Department of General Services may apportion to and collect from each state agency, officer, board or commission or any participating local public body, its contribution as determined by the department to purchase insurance or administer self-insurance programs, including administrative expenses, for coverages authorized by this chapter.

(3) The apportionment shall be based, to the extent possible, upon the factors which reflect the relative risk and loss experience of each state agency, officer, board or commission or participating local public body.

(4) The department may assess a state agency, officer, board or commission the cost of providing specific risk management ser-

VICES requested by a state agency, officer, board or commission.

(5) In any year when the moneys in the Insurance Fund are not sufficient to keep the fund or any of its components actuarially sound and to make all payments required in carrying out the provisions of this chapter, funds may be advanced from other funds in the State Treasury under the provisions of ORS 293.205 to 293.225. Prior to any advance to the Insurance Fund under the provisions of ORS 293.205 to 293.225, approval shall be obtained from the Joint Ways and Means Committee of the Legislative Assembly, if the Legislative Assembly is in session, or the Emergency Board.

(6) Moneys advanced to the Insurance Fund as provided in this section shall be repaid from the Insurance Fund in annual instalments, with interest as provided in ORS 293.220. The amount of the instalments shall be fixed by the Department of General Services at such amount as can be reasonably expected to liquidate the indebtedness of the Insurance Fund in not more than 10 years.

(7) In order to assure that the moneys advanced to the Insurance Fund are repaid as specified in subsection (6) of this section, the department may make such assessments to state agencies or participating local public bodies or their legal successors. [1985 c.731 §5; 1989 c.40 §2]

278.990 [Repealed by 1975 c.609 §25]