

# Chapter 744

1991 EDITION

## Agents, Adjusters, Consultants and Third Party Administrators

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**GENERAL PROVISIONS**

**744.001 License application.** (1) An applicant for a license as agent, adjuster or insurance consultant shall apply for the license to the director. The applicant shall include the following information:

(a) The applicant's name, business address, residence address, present occupation, occupation for the last 12 months, the portion of time to be devoted to the insurance business, previous insurance experience and the names of employers during the preceding five years. The applicant shall include the business address of the principal place of business and the business address of each additional location at which the applicant will transact business under the license.

(b) All assumed business names and other names under which the applicant will engage in business under the license.

(c) Whether the applicant has ever been convicted of or is under indictment for a crime, whether the applicant has ever had a judgment entered against the applicant for fraud, whether any insurer or agent claims the applicant is indebted to it and the details of any such indebtedness, and whether any license of the applicant to act in any occupational or professional capacity has ever been refused, revoked or suspended in this or any other state.

(d) The applicant's fingerprints.

(e) The class or classes of insurance to be transacted under the license. If the application is for a license as an agent, the application shall also include any subclasses of a class of insurance to be transacted under the license.

(f) Any other information that the director requires by rule.

(2) If the applicant for a license under this section is a firm or corporation, the application shall show, in addition, the names of all members, officers and directors. If the application is a corporation, the application shall state the names of all stockholders who own, directly or indirectly, more than 10 percent of any class of any equity security of the corporation, and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation.

(3) Each application shall be accompanied by the applicable fees established by the director. [1989 c.701 §13, 81g]

**744.002 License categories.** (1) The director may issue a license authorizing a person to act as an insurance agent, an insurance adjuster or an insurance consultant. A person licensed to act in one capacity may also be licensed to act in other capacities if the person meets the appropriate qualifications. For purposes

of this chapter, the capacity in which a person is licensed to act constitutes a "license category" or a "category of insurance business."

(2) A license issued under this section shall set forth each license category in which the licensee may engage. For each license category, the license shall also set forth the class or classes of insurance in which the licensee may engage, as provided in:

(a) ORS 744.115, for the license category of agent.

(b) ORS 744.531, for the license category of adjuster.

(c) ORS 744.626, for the license category of insurance consultant.

(3) The director may issue resident and nonresident licenses under this section as follows:

(a) The director may issue a resident license to a person if the person is a resident of this state or, if not a resident of this state, the person has a place of transacting insurance in this state.

(b) The director may issue a nonresident license to a person if the person is not a resident of this state and the person does not have a place of transacting insurance in this state.

(4) The director shall issue a license under this section:

(a) If the applicant has completed and submitted to the director an application for the license and has submitted all applicable fees, including any examination fees, as established by the director with the application;

(b) If the director determines that no ground for denial of the license exists under ORS 744.013; and

(c) If the director determines that the applicant has met the applicable qualifications and requirements for each license category, and for each class of insurance for which application is made. [1989 c.701 §32, 81e]

**744.003 Amendment to license.** (1) The director may add a category of insurance business to a license upon application by the licensee for amendment of the license.

(2) The director may add a class or classes of insurance to a license upon application by the licensee for amendment of the license.

(3) The director may require that applications under this section be made in the same manner as applications for the initial license, or the director may establish other application procedures. [1989 c.701 §3]

**744.004 Firm or corporation license.** (1) The director may issue or amend a firm or corporation license under ORS 744.002 only if the firm or corporation, for each category of

insurance business that the firm or corporation applies for on its license, employs an individual whose license under ORS 744.002 authorizes the individual to engage in that category of insurance business.

(2) When a firm or corporation applies for a license or applies to amend the license, the director may issue or amend the license only if the firm or corporation, for each class of insurance that the firm applies to transact, employs an individual whose license under ORS 744.002 authorizes the individual to transact that class of insurance. [1989 c.701 §4]

**744.005** [1967 c.359 §525; repealed by 1989 c.701 §81]

**744.007 Time of expiration of license; renewal fee.** (1) A license issued under ORS 744.002 expires on its expiration date unless it is renewed on or before its expiration date.

(2) A license expires on the last day of the month in which the first anniversary of the initial issuance date of the license occurs, unless the director designates another date. Thereafter, the license shall expire on the second anniversary following each renewal.

(3) When a category of insurance business is added to a license, the expiration date for the license shall be the last day of the month in which the second anniversary of the issuance date of the amended license occurs, unless the director establishes another expiration date.

(4) The fee for renewal of a license shall be the fee established by the director, which shall include the fee established for each category of insurance business on the license.

(5) The director by rule may establish procedures for renewal of licenses.

(6) A suspended license is subject to renewal and to all requirements applicable to renewal if the license expires during the suspension period. [1989 c.701 §§5, 81f]

**744.008 Renewal of license.** A licensee may renew a license subject to the following requirements:

(1) The licensee must pay the applicable fee established by the director.

(2) The licensee must satisfy all applicable continuing education requirements and all other applicable conditions and requirements specified by statute.

(3) If the licensee holds a nonresident license, the licensee must submit proof to the director, with respect to each category of insurance business and class of insurance set forth on the license, that the licensee continues to hold a valid license or other evidence of authority issued by the state of residence of the licensee for the same category of insurance business.

(4) If the licensee is an insurance consultant, the licensee must provide satisfactory evidence that the insurance required under ORS 744.635 is in effect.

(5) The licensee must satisfy any other requirements established by the director by rule. [1989 c.701 §§14, 81h; 1991 c.810 §2]

**744.009 Renewal of expired license.** (1) The director may renew an expired license of a person upon application if the license expired within two years prior to the application and if:

(a) The license was not suspended or revoked by the director, or not renewed, on any ground under ORS 744.013;

(b) The director is satisfied, by examination or otherwise, that the person is knowledgeable about the portions of the Insurance Code applicable to the license;

(c) The person pays twice the amount of the regular renewal fee; and

(d) The person satisfies all requirements for renewal.

(2) A person who does not renew an expired license as provided in this section may obtain a license only if the person applies and qualifies for and is issued the license in the same manner as a person who initially applies for the license. [1989 c.701 §6]

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

**744.011 Director's authority to investigate licensee; qualification for license by person who voluntarily surrendered license.** (1) The expiration of a license or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of, or any action or disciplinary proceedings against, the licensee or to revise or render void an order suspending or revoking the license.

(2) As provided in this subsection, a person who has voluntarily surrendered a license may qualify for a license conferring the same authority as the surrendered license without having to take an examination that is otherwise required. In order to qualify without examination, the person must apply for the license within two years after the date on which the person surrendered the prior license. The person must apply and otherwise qualify for the license in the same manner as a person who initially applies for the license. If the person is required to satisfy continuing education requirements for renewal of the license, the person must show satisfaction of continuing education requirements for each renewal date occurring during the period following the surrender in which the person did not hold a license. [1989 c.701 §11; 1991 c.810 §3]

**744.012** [1979 c.501 §1; 1989 c.701 §41; renumbered 744.240 in 1989]

**744.013 Disciplinary actions against applicant or licensee.** (1) If the director finds with respect to a licensee or an applicant for a license that one or more of the grounds set forth in subsection (2) of this section exist, the director may take the following disciplinary actions:

(a) The director may refuse to renew or may suspend or revoke a license issued under ORS 744.002 or the authority under a license to engage in any category of insurance business or any class of insurance.

(b) The director may refuse to issue a license under ORS 744.002 or refuse to grant authority under a license to engage in any category of insurance business or any class of insurance.

(2) The director may take any disciplinary action under subsection (1) of this section on one or more of the following grounds:

(a) Incompetence or untrustworthiness of the applicant or licensee.

(b) Falsification by the applicant or licensee of the application for the license or an amendment thereto, or engagement in any dishonest act in relation to the application or examination therefor.

(c) Violation of or noncompliance with any applicable provision of the Insurance Code or any rule or order of the director.

(d) Misappropriation or conversion to the licensee's own use, or illegal withholding, of money or property belonging to policyholders, insurers, beneficiaries or others, and received by the licensee in the conduct of business under the license.

(e) Conviction, by final judgment, in any jurisdiction, of an offense which if committed in this state, constitutes a misdemeanor involving moral turpitude or a felony, or is punishable by death or imprisonment under the laws of the United States. The record of the conviction shall be conclusive evidence of the conviction.

(f) Material misrepresentation of the terms of any insurance policy or proposed insurance policy.

(g) Use of a fraudulent or dishonest practice by the licensee in the conduct of business under the license, or demonstration therein that the licensee is incompetent, untrustworthy or a source of injury and loss to the public or others.

(h) Error by the director in issuing or renewing a license.

(i) Failure to pay a civil penalty assessed by the director that has become final by operation of law or upon appeal.

(j) Failure to pay any fee or charge to the director.

(k) Use of the license principally to effect insurance on property or against liability of the applicant or licensee, or to evade the provisions of ORS chapter 746.

(L) Cancellation, revocation, suspension or refusal to renew by any state of a license or other evidence of authority to act as an agent, adjuster or insurance consultant. The record of the cancellation, revocation, suspension or refusal to renew shall be conclusive evidence of the action taken.

(m) Cancellation, revocation, suspension or refusal to renew by any state or federal agency of the authority to practice law or to practice under any other regulatory authority if the cancellation, revocation, suspension or refusal to renew was related to the business of an agent, adjuster or insurance consultant or if dishonesty, fraud or deception was involved. The record of the cancellation, revocation, suspension or refusal to renew shall be conclusive evidence of the action taken.

(n) Failure to comply with continuing education requirements applicable to the license or any category of insurance authorized under the license, unless the director has waived the requirements.

(o) Dishonesty, fraud or misrepresentation not related to the business of an agent, adjuster or insurance consultant.

(3) The director may refuse to issue or renew or may revoke or suspend the license of a firm or corporation or may take any such action with respect to any authority applied for by or granted to the firm or corporation to engage under the license in any category of insurance business or class of insurance if the director finds that any ground set forth in subsection (2) of this section exists:

(a) With respect to any individual licensee employed by or under contract with the firm or corporation.

(b) With respect to a director or officer of the firm or corporation. [Formerly 744.255; 1991 c.810 §4]

**744.014 Condition of probation on license or category of insurance business; disciplinary action during probationary period.** (1) The director may place a condition of probation on a license or on a category of insurance business authorized by a license or on a class of insurance if any ground for disciplinary action under ORS 744.013 exists, as follows:

(a) When the license is initially issued.

(b) When the license is renewed, amended or reinstated, or when a new license is issued for the purpose of adding a category of insurance business or class of insurance.

(c) At any time during the effective period of the license.

(2) During a probationary period under this section, the director may take any action authorized under ORS 744.013.

(3) A license applicant or licensee has the same right to a hearing on the placing of a condition of probation as the license applicant or licensee has with respect to any action taken by the director under ORS 744.013. [Formerly 744.260]

**744.015** [1967 c.359 §526; 1989 c.701 §22; renumbered 744.054 in 1989]

**744.016 Return of license to director.** (1) All licenses shall be at all times the property of this state. Not later than the 10th day after the suspension or revocation of a license, or if otherwise requested by the director, the licensee or other person having possession or custody of the license immediately shall deliver it to the director either by personal delivery or by mail.

(2) The director may accept, in lieu of return of any license lost, stolen or destroyed, the affidavits of the licensee and all other persons responsible for or involved in the safekeeping of such license, concerning the facts of such loss, theft or destruction. [Formerly 744.265]

**744.017** [1971 c.231 §8; 1989 c.701 §42; renumbered 744.245 in 1989]

**744.018 Reinstatement of license; modification of suspension.** (1) The director may reinstate a revoked license, any revoked category of insurance business or any revoked class of insurance. The director may grant reinstatement upon fulfillment by the former holder of the license of conditions set by the director.

(2) The director may modify the suspension of a license, a category of insurance business or a class of insurance and reinstate the license, category or class:

(a) At a time certain; or

(b) When the person subject to the suspension fulfills conditions set by the director for reinstatement. [1989 c.701 §12]

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

**744.022 Authorized activities.** (1) A firm or corporate licensee may engage in a category of insurance business or a class of insurance authorized on its license only through an individual licensee who is authorized to engage in insurance business in that same category or class.

(2) An individual licensee who is employed by or under contract with a firm or corporate licensee may engage in insurance business only to the extent authorized by the license of the individual. [1989 c.701 §15]

**744.024 Places of business for resident licensee; records.** (1) Each resident licensee shall maintain in this state a place of business

in which the licensee principally engages in insurance business under the license.

(2) The principal place of business under subsection (1) of this section of an agent and an insurance consultant must be accessible to the public.

(3) A licensee shall keep at the place of business of the licensee the usual and customary records pertaining to the business under the license. All such records as to any particular transactions shall be kept available and open to the inspection of the director during business hours. An agent shall keep records of insurance transacted by the agent under the license for three years following expiration of the policy. An insurance consultant shall keep records of a particular transaction by the insurance consultant for three years following the conclusion of the transaction.

(4) This section does not prohibit maintenance of a place of business under a license in the licensee's place of residence in this state. [1989 c.701 §16]

**744.025** [1967 c.359 §527; 1971 c.385 §6; 1979 c.501 §3; 1979 c.829 §9a; 1981 c.247 §18; 1983 c.464 §1; 1985 c.762 §188; 1989 c.701 §23; renumbered 744.057 in 1989]

**744.026 Place of business for nonresident licensee; records.** A nonresident licensee shall keep at the principal place of business of the licensee the usual and customary records pertaining to the business under the nonresident license. All such records as to any particular transaction shall be kept available and open to the inspection of the director during business hours. A nonresident agent shall keep records of insurance transacted by the agent under the license for three years following expiration of the policy. A nonresident insurance consultant shall keep records of a particular transaction by the nonresident insurance consultant for three years following conclusion of the transaction. [1989 c.701 §17]

**744.028 Notice of change of address or telephone number.** (1) Not later than the 30th day after a change of address or telephone number of the principal place of business or the residence of a licensee, or any other location at which the licensee transacts business under the license, the licensee shall notify the director of the change. The licensee also shall so notify the director not later than the 30th day after the licensee opens or closes a location at which the licensee transacts business under the license.

(2) Not later than the 30th day after a change in or deletion or addition of an assumed business name under which a licensee transacts business under a license as an agent, adjuster or insurance consultant, the licensee shall notify the director of the change. [1989 c.701 §18]

**744.030** [Amended by 1965 c.610 §12; repealed by 1967 c.359 §704]

**744.031 Notice of personnel changes from firm or corporate licensee to director.** (1) Not later than the 30th day after the authority of an individual licensee to act for a firm or corporate licensee has commenced or terminated, the firm or corporate licensee shall notify the director of the commencement or termination.

(2) A firm or corporate licensee shall notify the director annually of all changes in its officers and directors during the immediately previous calendar year. If the licensee is a corporation, the licensee shall include in the notice any changes in its stockholders who own, directly or indirectly, more than 10 percent of any class of any equity security of the licensee.

(3) The director may establish by rule a different period within which a firm or corporate licensee must notify the director under subsection (1) or (2) of this section. [1989 c.701 §19]

**744.033 Forms.** Any application or notice to the director under this chapter must be made on a form provided by the director. [1989 c.701 §20]

**744.035** [1967 c.359 §528; 1985 c.697 §18; repealed by 1989 c.701 §81]

**744.037 Fees; refunds.** A fee paid under this chapter is not refundable unless the director provides otherwise by rule. [1989 c.701 §7]

**744.039 Conditions under which person licensed as agent and consultant may accept commission or fee; rules.** (1) The director shall establish by rule the conditions under which a licensee licensed both as an agent and an insurance consultant may accept a commission or a fee, or both, in a transaction or in related transactions. The director may establish different conditions for such products as employee benefit plans, insurance for personal, family or household purposes and insurance for commercial purposes, and for any other insurance product as determined appropriate by the director. In developing rules under this subsection, the director shall take into account the requirements and characteristics of the different insurance products and the varying degrees of trade practice regulation needed.

(2) Except as otherwise provided by rule, an agent not licensed as an insurance consultant may receive only commission. [1991 c.810 §22]

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

**744.045** [1967 c.359 §529; 1983 c.76 §2; 1987 c.916 §8; 1989 c.331 §33; 1989 c.701 §25; renumbered 744.066 in 1989]

**744.050** [Repealed by 1953 c.93 §2]

**744.051 Requirements for acting as agent; permissible activities; rules.** (1) Except as otherwise provided in this section, a person shall not act as an agent in this state with respect to a domestic risk unless the person:

(a) Holds a valid license or a temporary license issued by the director that authorizes the person to act as an agent; and

(b) Is appointed by the insurer for whom the agent acts as an agent.

(2) An agent may act as an agent only with respect to those classes of insurance indorsed on the license of the agent.

(3) The director by rule may establish conditions and limitations:

(a) Under which an agent may transact insurance that is otherwise authorized by the license of the agent with an insurer with whom the agent does not hold an appointment.

(b) Under which a person may transact insurance on a domestic risk without a license as an agent in this state.

(4) An agent who is a surplus lines licensee may place insurance with an eligible surplus lines insurer as provided in ORS 735.400 to 735.495 without being appointed by the insurer.

(5) The provisions of this section are subject to exemptions stated in ORS 744.057. [1989 c.701 §21; 1991 c.810 §5]

**744.054 Prohibition on appointing unlicensed person to be agent.** (1) An insurer or agent, with respect to domestic risks, shall not authorize or appoint a person to act as an agent for the insurer or agent if the person, while transacting insurance, does not hold a valid license as agent issued by the director.

(2) The provisions of this section are subject to exemptions stated in ORS 744.057. [Formerly 744.015; 1991 c.810 §6]

**744.055** [1967 c.359 §530; 1971 c.231 §27; 1987 c.222 §1; 1989 c.701 §27; renumbered 744.071 in 1989]

**744.057 Exemptions from agent licensing requirements.** The following persons are exempt from the provisions of ORS 744.051 and ORS 744.054:

(1) Employees or representatives of insurers or agents, not receiving a commission, who perform administrative, clerical or technical services and who do not solicit insurance.

(2) Salaried employees of insurers who solicit, negotiate or effect insurance only through licensed resident agents.

(3) An attorney in fact of an authorized reciprocal insurer, or the salaried representatives of the insurer or attorney who receive no commissions.

(4) Salaried employees of the holder of a master group insurance policy or salaried em-

ployees of a participant in an institutional retirement program, who, in the performance of ministerial duties on behalf of such holder or participant, secure and forward information for the purpose of group life and health insurance or institutional retirement programs or for enrolling individuals under such group coverages or issuing certificates thereunder, when no commission is paid for such services and the compensation, if any, paid is reasonably related to the services performed.

(5) A person engaging in the lawful transaction of reinsurance.

(6) Salaried employees of title insurance agents or insurers, except for the individual or individuals designated as exercising the powers conferred by a title insurance agent's license.

(7) Any agent or representative of persons exempt from the Insurance Code under ORS 731.032 and 731.036, with respect to the exempted transactions.

(8) Any agent or representative of a fraternal benefit society who devotes, or intends to devote, less than 50 percent of the agent's or representative's time to the solicitation and procurement of insurance policies for such society. Any person who in the preceding calendar year has solicited and procured life insurance policies on behalf of any society in an amount of insurance in excess of \$50,000 or, in the case of any other class or classes of insurance which the society might write, on the persons of more than 25 individuals, and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, 50 percent of the person's time to the solicitation or procurement of insurance policies for such society.

(9) A person engaging in the lawful transaction of home protection insurance if the person is a real estate licensee as defined by ORS 696.010, and if the transaction of this insurance by the person is subject to a written contract, to which the insurer is a party, governing the person's activities in the transaction.

(10) Salaried employees of a banking institution or a national bank as defined in ORS 706.005, a savings association or a federal association as defined in ORS 722.004, a state credit union as defined in ORS 723.006 or a federal credit union, who, in the regular course of business with the customers of the banking institution, national bank, savings association, federal association or federal or state credit union, present the customers with written information about savings account annuities issued by an authorized insurer. Any person who purchases such an annuity may rescind the transaction within 10 days after

the issuance of the contract. For purposes of this subsection, savings account annuities are annuities purchased with the proceeds of a savings account, certificate or share in a banking institution, national bank, savings association, federal association or federal or state credit union. [Formerly 744.025]

**744.060** [Repealed by 1953 c.93 §2]

**744.061 Banking institution as agent.** Nothing in the Insurance Code shall be construed to limit or prohibit the licensing of a banking institution, as defined in ORS 706.005, a corporation owned in whole or part by a banking institution under ORS 708.430, 716.588 or 716.594, or a corporation owned in whole or part by a bank holding company, as defined in ORS 715.010, as an agent to transact one or more of the classes of insurance described in ORS 744.115, except for title insurance. [1989 c.701 §24]

**744.065** [1967 c.359 §531; 1969 c.336 §14; 1973 c.89 §1; 1983 c.76 §3; 1989 c.413 §10; repealed by 1989 c. 701 §81]

**744.066 Resident agent license.** An applicant for a license as a resident agent shall apply for the license under ORS 744.001 and must meet the following requirements:

(1) The applicant shall establish a residence or place of transacting insurance business in this state prior to filing an application.

(2) The applicant must take and pass a written examination specified by the director under ORS 744.075 with respect to the authority to transact the class or classes of insurance for which the applicant has applied. The requirement of an examination does not apply to an applicant that is a firm or corporation.

(3) If the applicant is a firm or corporation, the applicant must have an office in this state that employs or is managed by an individual licensed as an agent for the class or each of the classes of insurance for which the firm or corporation has applied.

(4) The applicant must satisfy all other requirements established by the director by rule. [Formerly 744.045]

**744.069 Nonresident agent license.** (1) A person who resides in another state or a province of Canada and is licensed in that state or province as an agent or insurance broker may be licensed to transact insurance as a nonresident agent in this state as provided in this section if the state or province in which the person resides gives the same privilege to a resident agent of this state. A person who is licensed by this state to transact insurance as a nonresident agent may negotiate any policy of insurance upon domestic risks to the same extent and upon the same terms as provided by the other state or province for residents of this state transacting a like business in such other state or province.

(2) An applicant for a license as a nonresident agent shall:

(a) Meet the qualifications under subsection (3) of this section;

(b) Apply for the license under ORS 744.001; and

(c) File with the director in writing an appointment of the director to be the attorney of the applicant upon whom all legal process in any action or proceeding against the applicant may be served. In the appointment, the applicant shall agree that any lawful process against the applicant that is served upon the director shall be of the same legal force and validity as if served upon the applicant, and that the authority shall continue in force so long as any liability remains outstanding in this state. An appointment under this paragraph becomes effective on the date that the director issues the license to the applicant.

(3) The following qualifications apply to a person applying for a license as a nonresident agent:

(a) The applicant must take and pass a written examination specified by the director under ORS 744.075 with respect to the authority to transact the class or classes of insurance for which the applicant has applied. The requirement of an examination does not apply to an applicant that is a firm or corporation.

(b) The applicant must hold a currently valid license as an agent or insurance broker in the state or province in which the applicant resides.

(c) The applicant must satisfy any other qualifications established by the director by rule.

(4) Any of the requirements under subsection (3) of this section are subject to waiver with respect to an applicant if the director has entered a reciprocal agreement as provided in ORS 744.071 with the state or province in which the applicant resides. [1989 c.701 §26]

**744.070** [Amended by 1967 c.359 §480; renumbered 743.603]

**744.071 Reciprocal agreements.** The director may enter into a reciprocal agreement with the appropriate official of any other state or a province of Canada that waives any or all of the requirements for issuance of a license to transact insurance to any nonresident applicant who resides in the other state or province if:

(1) A written examination is required of applicants for an agent's license in the other state or province;

(2) The appropriate official of the other state or province certifies that the applicant holds a valid license as an agent or insurance broker in the other state or province and ei-

ther passed the written examination or was the holder of an agent's or insurance broker's license prior to the time the written examination was first required; and

(3) In the other state or province, a resident of this state is privileged to procure an agent's or insurance broker's license upon conditions no less favorable than the conditions stated in this section. [Formerly 744.055]

**744.075 Examination.** (1) The director shall give an examination to each applicant for a license as an agent or for an amendment to the license. The examination must test the applicant's knowledge of the class or classes of insurance or subclasses of any class to be transacted by the applicant, and the applicant's knowledge of the legal responsibilities of an agent.

(2) The director shall determine rules of procedure for the conduct of examinations. [1967 c.359 §532; 1983 c.76 §4; 1989 c.701 §28; 1991 c.810 §7]

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

**744.085 Exemption from examination.** An examination for issuance or amendment of a license to transact insurance as an agent shall not be required of any of the following applicants:

(1) Any applicant who held a valid license of resident agent when ordered into active duty in the Armed Forces of the United States and who applies for the reissuance of the license within six months after being relieved under honorable conditions from active duty in the Armed Forces.

(2) Transportation ticket agents of common carriers applying for a license authorizing them, as provided in ORS 744.115, to solicit and sell, as incidental to their duties as transportation ticket agents, only:

(a) Travel ticket health insurance policies;

(b) Insurance of personal effects while being carried as baggage on the common carriers; or

(c) Trip cancellation insurance policies.

(3) Any applicant for a license authorizing the applicant to transact general lines insurance, upon whom the American Institute of Property and Liability Underwriters, Inc. has conferred the Chartered Property and Casualty Underwriter (C.P.C.U.) designation, or any applicant for a license authorizing the applicant to transact life or health insurance, or both, upon whom the American College of Life Underwriters has conferred the Chartered Life Underwriter (C.L.U.) designation, if the director is satisfied, by examination or otherwise, that the applicant is knowledgeable in the particulars of the applicable provisions of the Insurance Code.

(4) Any applicant for a license authorizing the applicant to transact credit life insurance,

credit health insurance, livestock insurance, mortgage insurance, motor vehicle mechanical breakdown insurance or motor vehicle physical damage insurance, or for any combination of such classes permitted by the Insurance Code.

(5) Any applicant for a license authorizing the applicant to transact title insurance.

(6) Any applicant for a license authorizing the applicant to transact lender's property insurance.

(7) Any applicant who holds a valid license issued by another state, if the state requires an examination for the license that is comparable to the examination administered in this state and if the state exempts from the examination requirement any applicant who holds a valid license issued by this state for which an examination is required. However, the director may require the applicant to be examined on the Insurance Code and rules adopted under the Insurance Code.

(8) A firm or corporation applying for a license authorizing it to transact insurance as an agent. [1967 c.359 §533; 1971 c.231 §28; 1977 c.174 §1; 1977 c.820 §1; 1979 c.501 §4; 1981 c.817 §1; 1983 c.76 §5; 1989 c.701 §29; 1991 c.810 §8]

744.090 [Amended by 1967 c.359 §370; renumbered 743.111]

744.095 [1967 c.359 §534; repealed by 1989 c.701 §81]

744.100 [Repealed by 1967 c.359 §704]

744.105 [1967 c.359 §535; 1971 c.231 §29; repealed by 1989 c.701 §81]

744.110 [Repealed by 1967 c.359 §704]

**744.115 Classes of insurance authorized by license.** (1) When the director issues a license authorizing a person to transact insurance as an agent, the director shall indorse on the license the class or classes of insurance or subclasses thereof, as described in this section, that the person is authorized to transact as an agent. The classes and subclasses of insurance are as follows:

(a) General lines insurance. Under this class, an agent may transact casualty, property, marine and transportation and surety insurance.

(b) Life insurance.

(c) Health insurance, whether provided by an insurer or a health care service contractor as defined in ORS 750.005.

(d) Surplus line insurance. Under this class, an agent may place insurance with eligible surplus line insurers as provided in ORS 735.400 to 735.495.

(e) Livestock insurance. Under this class, an agent may transact insurance against loss of, damage to or death of domestic animals.

(f) Mortgage insurance.

(g) Motor vehicle physical damage insurance. Under this class, an agent may transact insurance against only the loss of or damage to any motor vehicle designed primarily for use upon a highway.

(h) Travel ticket health insurance. Under this class, an agent may transact personal accident insurance covering the risks of travel. This indorsement may be made only on the license of an agent who is a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, either of whom is engaged in the sale of transportation tickets, or to a full-time salaried employee of an agent holding a license authorizing the agent to transact health insurance. The indorsement shall authorize sale of such policies only in connection with the sale of transportation tickets. No such policy shall be for a duration of more than 48 hours or for the duration of a specified one-way trip or round trip, as applicable. A resident agent authorized under this paragraph to transact travel health insurance may obtain a further indorsement to transact such insurance with vending machines as authorized under ORS 744.235.

(i) Baggage insurance and trip cancellation and trip interruption insurance. Under this class, an agent may transact insurance of personal effects in connection with travel and for reimbursement of trip travel expense resulting from some emergency in connection with travel. This indorsement may be made only on the license of an agent who is a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency, either of whom is engaged in the sale or handling of transportation of personal effects as baggage of travelers, or to a full-time salaried employee of an agent holding a license authorizing the agent to transact general lines insurance.

(j) Credit life insurance.

(k) Credit health insurance.

(L) Credit insurance. Under this class, an agent may transact insurance against loss or damage from failure of debtors to pay their obligations to the insured. This class does not include mortgage insurance.

(m) Title insurance.

(n) Lender's property insurance. Under this class, an agent may transact property insurance on the personal property of a debtor to secure the repayment of the amount borrowed from a lender.

(o) Motor vehicle mechanical breakdown insurance. Under this class, an agent may transact insurance against loss arising from the mechanical failure or breakdown of a motor vehicle part or component.

(2) The director may require that indorsements under this section state particular qualifications for the transaction of a class or subclass of insurance as determined by the director to be necessary for the protection of the insurance-buying public. [1967 c.359 §536; 1971 c.231 §30; 1973 c.515 §3; 1977 c.174 §2; 1979 c.501 §5; 1981 c.817 §2; 1987 c.774 §138; 1987 c.916 §9; 1989 c.331 §25; 1989 c.701 §30; 1991 c.810 §9]

**744.119 Conditions for renewal of license.** (1) As a condition of or in connection with the renewal of a license as an agent the director may require the agent to file information with the director relative to use made of the license during the previous year or two years, and especially showing whether the license has been used principally for the writing of personal or controlled insurance, as defined in ORS 746.065.

(2) The director may require an agent, as a condition for renewal of the license of the agent, to fulfill any or all of the requirements then applicable to the original issuance of the license.

(3) The director by rule may establish requirements for continuing education that each resident agent must satisfy as a condition for renewing the license as a resident agent. The hours of education so required shall not exceed 45 hours annually during the first five years an individual is licensed, 24 hours annually during the next five years an individual is licensed, and 12 hours annually for individuals licensed for more than 10 years or for individuals who have received the designation C.P.C.U., C.L.U., or comparable degree recognized by the director. Continuing education shall not be required for:

(a) Any person to whom a license is issued without examination pursuant to ORS 744.085 (2), (4), (5) or (6); or

(b) Any retired person, if the person is 65 years of age or more, has 15 years' experience as a licensed agent and requests exemption from the requirement. [Formerly 744.205; 1991 c.810 §10]

744.120 [Repealed by 1967 c.359 §704]

**744.123 Temporary licenses.** (1) In the event of the death, disability, refusal to act or induction into active duty in the Armed Forces of the United States of an agent holding an appointment from an insurer, if no other agent in the agency is authorized to represent the insurer, the insurer may appoint another person who is otherwise qualified except for passing a written examination and the director may issue a temporary license to the person, enabling the person to represent the insurer as agent. The person or insurer shall pay the applicable fee established by the director.

(2) Each temporary license shall authorize the licensee to act as agent for the appointing insurer for a period of not more than 90 days, subject to extension by the director in the discretion of the director for an additional period of not more than 90 days. The license shall expire at the end of the period for which it was issued, and any extension thereof. [Formerly 744.195]

744.125 [1959 c.367 §1; 1967 c.359 §501; renumbered 743.666]

**744.127 Written contract of appointment.** (1) An insurer appointing an agent must enter a written contract of appointment with the agent.

(2) An agent may transact insurance for an insurer under a written contract of appointment with the insurer on and after the effective date of the appointment. An appointment under a written contract becomes effective on the date specified in the contract, but the specified date may not be earlier than the date on which the contract of appointment is entered by the insurer and the agent. [1989 c.701 §33; 1991 c.810 §11]

744.130 [Amended by 1955 c.226 §1; 1967 c.359 §502; renumbered 743.669]

744.135 [1967 c.359 §537; 1973 c.89 §2; repealed by 1989 c.701 §81]

744.140 [Repealed by 1967 c.359 §704]

**744.145 Number of appointments under one agent's license.** An agent may represent as agent under one license as many insurers as may appoint the agent in accordance with ORS 744.155. [1967 c.359 §538; 1989 c.701 §35]

744.150 [Repealed by 1967 c.359 §704]

**744.155 Appointment of agents.** (1) Each insurer appointing an agent in this state shall file written notice of the appointment with the director not later than the 30th day after the effective date of the appointment. The notice shall include the name and address of the agent and the class or classes of insurance or subclasses thereof to be transacted by the agent for the insurer. The insurer also shall pay the applicable fee established by the director.

(2) If the appointment includes any class of insurance, other than surety insurance, that is transacted under the general lines insurance class as provided in ORS 744.115, the insurer shall state thereon, with respect to such class, that the agent so appointed has authority to solicit, negotiate and effect policies of insurance on behalf of the insurer.

(3) A filing of notice of an agent's appointment with the director under this section shall not be construed to be constructive notice to the general public of the scope of the authority of such agent.

(4) Each such appointment shall remain in effect until the agent's license is revoked, has

expired or has otherwise terminated, unless written notice of earlier termination of the appointment is filed with the director or unless the appointment is not renewed under subsection (5) of this section.

(5) An insurer shall renew the appointment of an agent every two years after the date of appointment or according to a renewal cycle of a lesser period established by the director. An insurer shall pay the applicable fee established by the director for each agent holding an appointment on the renewal date assigned the agents of such insurer.

(6) The director may stagger the dates for renewal of appointments of agents by various insurers. The director shall notify each such insurer in writing of the date being assigned its agents and make appropriate adjustment in the fee for renewal of appointment. [1967 c.359 §539; 1971 c.231 §31; 1975 c.769 §6; 1989 c.413 §11; 1989 c.701 §§34, 81c]

744.160 [Repealed by 1967 c.359 §704]

**744.165 Insurance agent as agent of insurer; exception for group policies.** (1) Except as provided in a group contract of insurance under subsection (2) of this section, any person who solicits or procures an application for insurance shall in all matters relating to the application for insurance and the policy issued in consequence of the application be regarded as the agent of the insurer issuing the policy and not the agent of the insured. Any provisions in the application and policy to the contrary are invalid and of no effect whatever.

(2) A group contract of insurance and the individual certificate issued pursuant to the group contract may contain provisions stating whether the group policyholder acts as the agent of the individual insured or whether the group policyholder acts as the agent of the insurer. [Formerly 739.520; 1971 c.231 §32; 1983 c.265 §1]

744.170 [Repealed by 1967 c.359 §704]

**744.175 Termination of appointment.**

(1) An insurer may terminate an agency appointment at any time as provided in this section. Termination shall be without prejudice to the contract rights, if any, of the agent so terminated. The insurer shall give written notice of the termination and the date thereof to the agent at least 90 days prior to the effective date of the termination. The notice must specify the reasons for the termination. The insurer shall deliver the notice either in person or by mail at the address last provided by the agent to the insurer. The agent shall not have a cause of action against the insurer as a result of any statement in the notice unless the statement is false and the insurer knew the statement was false when made. The insurer shall also notify the director of the termination not later than the 30th day after

the effective date of the termination. The director may require of the insurer reasonable proof that the insurer has given such notice to the agent.

(2) An insurer may terminate an agency appointment without giving the notice required by subsection (1) of this section on any of the grounds specified in this subsection. The insurer shall notify the director of any termination under this subsection and the date thereof not later than the 30th day after the effective date of the termination and shall notify the agent when reasonably possible. The director may require the insurer to give proof that the insurer has notified the agent. The following are grounds for termination under this subsection:

(a) The agent's insurance license is denied, restricted, revoked, suspended or canceled by any public authority;

(b) The agent's business is sold, transferred or merged and the insurer has not appointed the successor;

(c) The agent is insolvent or fails to remit balances to the insurer in accordance with the agreement;

(d) The agent commits fraud or engages in intentional misconduct;

(e) The insurer amends its certificate of authority in order to discontinue a line of insurance;

(f) The insurer ceases selling insurance in this state; or

(g) The insurer and agent mutually agree to terminate the agency appointment.

(3) An agent may terminate an agency appointment at any time, but the termination shall be without prejudice to the contract rights, if any, of the appointing insurer. The agent shall give written notice of the termination and the date thereof to the director not later than the 30th day after the effective date of the termination, and to the insurer. The director may require reasonable proof from the agent that the agent has given such notice to the insurer. [1967 c.359 §541; 1975 c.769 §6; 1989 c.692 §§1, 2; 1989 c.701 §36]

744.180 [Repealed by 1967 c.359 §704]

**744.182 Change of circumstances of nonresident agent.** (1) A nonresident agent shall not transact insurance as an agent in this state when the agent no longer holds a valid license as an agent or insurance broker in the state or province in which the agent resides. If the license of the agent in the state in which the agent resides is reinstated, and if the nonresident agent license has not expired, the agent may apply to the director for reinstatement of the nonresident agent license.

(2) A nonresident agent who establishes residence in this state or a place of business in this state in which the agent transacts insurance shall not transact insurance in this state under the nonresident license following the 30th day after the agent establishes the residence or place of business. An agent under this subsection may thereafter transact insurance in this state only under a license as a resident agent.

(3) A nonresident agent who changes residence to another state other than this state or to a province must apply to the director for a license as a nonresident agent as if the agent were initially applying for such a license. [1989 c.701 §37]

744.185 [1967 c.359 §542; repealed by 1989 c.701 §81]

744.190 [Repealed by 1967 c.359 §704]

744.195 [1967 c.359 §543; 1989 c.413 §12; 1989 c.701 §§32, 81d; renumbered 744.123 in 1989]

744.200 [Repealed by 1967 c.359 §704]

744.205 [1967 c.359 §544; 1977 c.820 §2; 1979 c.501 §6; 1981 c.817 §3; 1983 c.76 §6; 1989 c.701 §31; renumbered 744.119 in 1989]

744.215 [1967 c.359 §545; 1989 c.413 §13; 1989 c.701 §40; renumbered 744.235 in 1989]

**744.225 Trust account for premium funds; commingling; exceptions.** (1) All premium funds received by an agent shall be accounted for and maintained in a trust account separate from all other business and personal funds.

(2) Except as provided in subsection (3) of this section, an agent shall not commingle or otherwise combine premiums with any other moneys.

(3) An agent may commingle with premium funds in the trust account required by subsection (1) of this section any additional funds the agent deems prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies that may arise in the course of receiving and transmitting premium or return premium funds.

(4) This section does not apply to:

(a) Any state-chartered bank, banking institution, national bank, savings bank or stock savings bank as defined in ORS 706.005; savings association as defined in ORS 722.004; credit union as defined in ORS 723.006 and federally-chartered credit union or any entity licensed under ORS chapter 725 or 726.

(b) Any class of agents that the director designates by rule. The director may exempt a class of agent from this section if the director determines that the requirements of this section are unduly burdensome to the agents in relation to the public good served. [1987 c.569 §2; 1989 c.701 §38]

Note: 744.225 was added to and made a part of ORS chapter 744 but was not added to any smaller series

therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**744.227 Certificate of deposit in lieu of trust account.** (1) In lieu of the trust account required by ORS 744.225, an agent may keep a certificate of deposit from an institution insured by the Federal Government or an instrumentality thereof if the agent has an average monthly balance of premium funds received and held for the last 12 months of at least \$2 million. An agent who keeps a certificate of deposit shall have satisfactory evidence of the certificate available at all times for inspection by the director.

(2) A certificate of deposit authorized under subsection (1) of this section shall be for an amount at least equal to the average monthly balance of premium funds received and held by the agent for the last 12 months. Nothing in this subsection requires that the required amount of the certificate of deposit be calculated, or the amount changed, more often than once a month.

(3) The director may adopt rules specifying what constitutes satisfactory evidence for purposes of subsection (1) of this section.

(4) Authorization to use a certificate of deposit may be revoked by the director at any time upon a determination that the agent has failed to comply with the provisions of this section or rules adopted under subsection (3) of this section. Upon revocation, the agent shall comply immediately with the provisions of ORS 744.225. [1989 c.680 §2]

**744.231 Countersigning by resident agent.** A nonresident agent or insurance broker from a jurisdiction that requires countersigning of a policy sold in that jurisdiction by an Oregon resident agent shall have any policy sold to an Oregon resident countersigned by an Oregon agent. [1989 c.701 §39]

**744.235 Insurance vending machines.** (1) A resident agent authorized to issue policies of personal travel accident insurance may solicit applications for and issue such policies by means of mechanical vending machines supervised by the agent and placed at airports, railroad stations, bus stations and similar places where transportation tickets are sold, if the director finds:

(a) That the policy provides reasonable coverage and benefits and is reasonably suited for sale and issuance through vending machines, and that such use of a vending machine in the particular proposed location would be of material convenience to the traveling public;

(b) That the type of vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) That reasonable means are provided for informing the prospective purchaser of the coverage and restrictions of the policy; and

(d) That reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective machine and for which no insurance, or a lesser amount than paid for, is actually received.

(2) As to each machine so approved by the director for use, the director shall issue to the agent a vending machine license. The license shall specify the name and address of the insurer and agent, the identification of the policy to be sold, the serial number of the machine and the place where it is to be in operation. The license shall be subject to annual continuation and to suspension, revocation or expiry coincidentally with that of the agent. The director shall also revoke the license for any machine as to which the director finds the conditions upon which it was licensed, as set forth in subsection (1) of this section, no longer exist. The license fee shall be as established by the director for each license year or part thereof for each vending machine. Proof of the existence of a subsisting license shall be displayed on or about each such vending machine in use, in such manner as the director reasonably may require. [Formerly 744.215]

**744.240 Applicability of Insurance Code to title insurance agents.** The Legislative Assembly finds that it is in the interest of the insurance-buying public that agents authorized to transact title insurance be subject to the Insurance Code. It is declared to be the intent of the Legislative Assembly that the Insurance Code shall apply to such agents only to the extent necessary for the regulation of title insurance ratemaking and unfair trade practices. [Formerly 744.012]

**744.245 Filing agents compensation agreements; filing not public record.** The director may require the filing by an insurer of any compensation agreements for agents. No such filing shall be deemed a "public record" or a "public writing" as defined in ORS 192.005 or a "public record" as defined in ORS 192.410. [Formerly 744.017]

**744.255** [1967 c.359 §546; 1969 c.336 §15; 1983 c.76 §7; 1985 c.697 §15; 1987 c.774 §141; 1989 c.701 §8; renumbered 744.013 in 1989]

**744.260** [1971 c.231 §9; 1983 c.76 §8; 1985 c.697 §16; 1989 c.701 §9; renumbered 744.014 in 1989]

**744.265** [1967 c.359 §547; 1983 c.76 §9; 1989 c.701 §10; renumbered 744.016 in 1989]

## MANAGING GENERAL AGENTS

**744.300 License and indorsement; managing general agent described.** (1) A person shall not act as a managing general agent with respect to risks located in this state for an authorized insurer unless the person holds a

license issued under this chapter authorizing the person to transact insurance as an agent and indorsed to authorize the person to act as a managing general agent.

(2) A person shall not act as a managing general agent representing a domestic insurer with respect to risks located outside this state unless the person holds a license issued under this chapter authorizing the person to transact insurance as an agent and indorsed to authorize the person to act as a managing general agent.

(3) For purposes of ORS 744.300 to 744.314, a person acts as a managing general agent when the person:

(a) Negotiates and binds ceding reinsurance contracts on behalf of an authorized insurer or manages all or part of the insurance business of an authorized insurer, including the management of a separate division, department or underwriting office, and acts as an agent for the insurer, whether the person is known as a managing general agent, manager or other similar term; and

(b) With or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year, together with either or both of the following activities:

(A) Adjusting or paying claims in excess of an amount determined by the director.

(B) Negotiating reinsurance on behalf of the insurer.

(4) The provisions of this chapter governing application for amendment of a license apply to the indorsement of the license of an agent for authority to act as a managing general agent, except that an examination is not required for the indorsement.

(5) The provisions of this section are subject to exemptions stated in ORS 744.301. [1991 c.495 §2]

**744.301 Exemptions from license requirement.** The following persons are exempt from ORS 744.300:

(1) An employee of an insurer, when the employee is acting as a managing general agent for the insurer.

(2) A United States manager of the United States branch of an alien insurer.

(3) An underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer and is subject to ORS 732.605 to 732.705, and whose compensation is not based on the volume of premiums written.

(4) The attorney or attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(5) Any person designated by the director by rule. [1991 c.495 §3]

**744.303 Certificate of errors and omissions insurance.** (1) A managing general agent must maintain with the director at all times a current certificate of errors and omissions insurance, in an amount established by the director by rule, from an insurer authorized to transact insurance in this state or from any other insurer acceptable to the director according to standards established by rule. The insurance must cover errors and omissions of and any violation of fiduciary responsibility by the managing general agent or its employees, or both.

(2) If the director determines that insurance required under this section is not generally available at a reasonable cost, the director by rule may suspend the requirement of insurance, but must reimpose the requirement when the insurance once again becomes generally available. [1991 c.495 §4]

**744.305** [Formerly 750.010; repealed by 1987 c.774 §154]

**744.306 Contract between insurer and managing general agent.** A person acting as a managing general agent shall not place business with an insurer unless a written contract is in force between the parties. The following requirements apply to such a contract:

(1) The contract must set forth the responsibilities of each party.

(2) The contract must specify the division of responsibility for a particular function, when both parties share responsibility for the function.

(3) The contract must include at least the following provisions:

(a) That the insurer may terminate the contract for cause upon written notice to the managing general agent, and may suspend the underwriting authority of the managing general agent while any dispute regarding the cause for termination is pending.

(b) That at least monthly, the managing general agent shall report all transactions and remit all funds due under the contract to the insurer.

(c) That with respect to all funds collected by a managing general agent for the account of an insurer, the managing general agent must comply with ORS 744.225, except that the managing general agent may retain in the account an amount not exceeding three months' estimated claims payments and allocated loss adjustment expenses.

(d) That the managing general agent shall maintain separate records of business written by the managing general agent. Further, that the managing general agent shall allow the insurer access to all accounts and records related to its business, shall keep all such accounts and records in a form usable by the insurer and shall allow the insurer to copy all such accounts and records.

(e) That the managing general agent shall not assign the contract either in whole or part.

(f) Appropriate underwriting guidelines, including:

(A) The maximum annual premium volume;

(B) The basis of the rates to be charged;

(C) The types of risks that may be written;

(D) Maximum limits of liability;

(E) Applicable exclusions;

(F) Territorial limitations;

(G) Policy cancellation provisions; and

(H) The maximum policy period.

(g) That the insurer may cancel or not renew any policy of insurance, subject to applicable statutes and rules governing cancellation and non-renewal of insurance policies.

(h) Provisions addressing the timely transmission of the data, when electronic claims files exist.

(i) That if the contract provides for a sharing of interim profits of the managing general agent and if the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property or surety insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to ORS 744.313.

(j) That a managing general agent shall not do any of the following:

(A) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines that include, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverage and amounts or percentages that may be reinsured and commission schedules.

(B) Commit the insurer to participate in insurance or reinsurance syndicates.

(C) Appoint any agent without assuring that the agent is licensed in this state to transact the type of insurance for which the agent is appointed.

(D) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. The contract must also provide that if prior approval is given, the managing general agent must forward a report to the insurer promptly.

(E) Appoint a submanaging general agent.

(k) Provisions establishing which disputes, if any, arising under the contract shall be decided by arbitration, mediation or other means of dispute resolution.

(L) If the managing general agent will calculate the loss reserves or a portion thereof, provisions:

(A) That the insurer is ultimately responsible for reporting the loss reserves; and

(B) That the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves calculated for losses incurred and outstanding on business produced by the managing general agent, in addition to any other required loss reserve actuarial opinion, as provided in ORS 744.313.

(4) In addition to the requirements of subsection (3) of this section, if the contract permits the managing general agent to settle claims on behalf of the insurer, the contract must also include at least the following provisions:

(a) The time requirements within which the managing general agent must report claims to the insurer.

(b) A requirement that the managing general agent must send a copy of the claim file or report of claim to the insurer at its request or as soon as it becomes known to the managing general agent that the claim:

(A) Has the potential of exceeding an amount determined by the director or the limit set by the insurer, whichever is less;

(B) Involves a coverage dispute;

(C) May exceed the claim settlement authority of the managing general agent; or

(D) Is of a serious nature as predetermined by the insurer by written guidelines.

(c) A provision establishing the settlement authority granted the managing general agent for claims in general and specific guidelines for handling claims that exceed the amount established by the director or the insurer, whichever is less.

(d) A provision that all claim files are the joint property of the insurer and managing general agent, except upon an order of liqui-

dation of the insurer, and that in the event of such an order:

(A) The files become the sole property of the insurer or its estate; and

(B) The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(e) A provision that the insurer may terminate for cause any settlement authority granted to the managing general agent upon written notice by the insurer to the managing general agent or upon the termination of the contract, and that the insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(5) The contract must provide that the insurer may not allow the managing general agent to pay or commit the insurer to pay a claim in excess of a specified amount, net of reinsurance, without approval by the insurer. The amount shall not exceed the amount established in ORS 744.308. [1991 c.495 §5]

**744.308 Limitations on authority of insurer and managing general agent.** (1) An insurer shall not allow a managing general agent, without prior approval of the insurer, to pay or commit the insurer to pay a claim over the amount, net of reinsurance, specified in the contract under ORS 744.306. The amount established in the contract shall not exceed one percent of the insurer's policyholder surplus as of December 31 of the last completed calendar year.

(2) Neither an insurer nor a managing general agent may allow a subagent of the managing general agent to serve on the board of directors of the insurer.

(3) An insurer and a managing general agent may not jointly employ any individual. [1991 c.495 §6]

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

**744.311 Books, bank accounts and records.** A managing general agent shall maintain all of its books, bank accounts and records in a form usable by the director. The managing general agent shall allow the director access to all of its books, bank accounts and records. [1991 c.495 §7]

**744.313 Financial examination; loss reserves; notification of appointment and termination; acts of managing general agent attributed to insurer.** (1) An insurer shall have on file an independently performed financial examination of each managing general agent with which it has done business, in a form prescribed by the director.

(2) An insurer is ultimately responsible for reporting the loss reserves. If a managing general agent calculates the loss reserves or a portion thereof, the insurer shall annually

obtain the opinion of an actuary attesting to the adequacy of loss reserves calculated for losses incurred and outstanding on business produced by the managing general agent. The requirement under this subsection is in addition to any other required loss reserve actuarial opinion. The actuary must be a member in good standing of an association of actuaries determined by the director to have established adequate professional standards for membership.

(3) Periodically, but not less frequently than annually, an insurer shall conduct an onsite review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer. The officer must not be affiliated with the managing general agent.

(5) Not later than the 30th day after entering into a contract with a managing general agent, and not later than the 30th day after terminating such a contract, an insurer shall provide written notification of the appointment or termination to the director. A notice of appointment shall include any information required by the director.

(6) An insurer shall review its books and records each calendar quarter to determine if any agent who previously had not produced and underwritten sufficient gross direct written premium to meet the description of a managing general agent in ORS 744.300 has become a managing general agent subject to ORS 744.300 to 744.314. When an insurer determines that an agent has become a managing general agent:

(a) The insurer shall promptly notify the agent and the director of its determination.

(b) The insurer and agent must fully comply with ORS 744.300 to 744.314 not later than the 60th day after the date of notification under paragraph (a) of this subsection.

(7) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of any of its managing general agents. This subsection does not apply to relationships governed by ORS 732.605 to 732.705.

(8) The acts of a managing general agent shall be regarded as the acts of the insurer on whose behalf the managing general agent is acting. The director may examine a managing general agent as if it were the insurer. [1991 c.495 §§8, 9]

**744.314 Rules.** The director may adopt rules to carry out ORS 744.300 to 744.314. [1991 c.495 §10]

**744.315** [Formerly 750.020; 1981 c.455 §1; repealed by 1987 c.774 §154]

**744.320** [Amended by 1959 c.369 §5; repealed by 1967 c.359 §704]

**744.325** [1967 c.359 §550; repealed by 1987 c.774 §154]

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

**744.335** [1967 c.359 §551; 1981 c.455 §2; repealed by 1987 c.774 §154]

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

**744.345** [Formerly 750.040; repealed by 1987 c.774 §154]

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

**744.355** [Formerly 750.050; repealed by 1987 c.774 §154]

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

**744.365** [1967 c.359 §554; repealed by 1987 c.774 §154]

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

**744.375** [Formerly 750.060; repealed by 1987 c.774 §154]

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

**744.385** [Formerly 750.100; repealed by 1987 c.774 §154]

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

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

**744.396** [Formerly 750.080; repealed by 1987 c.774 §154]

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

**744.405** [Formerly 750.090; 1979 c.870 §7; repealed by 1987 c.774 §154]

**744.410** [Amended by 1963 c.463 §1; repealed by 1967 c.359 §704]

**744.420** [Amended by 1953 c.322 §2; 1963 c.463 §2; repealed by 1967 c.359 §704]

**744.430** [Amended by 1955 c.226 §2; 1963 c.463 §3; 1967 c.359 §503; renumbered 743.672]

**744.440** [Amended by 1967 c.359 §504; renumbered 743.675]

**744.450** [Amended by 1967 c.359 §505; renumbered 743.678]

**744.460** [Amended by 1967 c.359 §506; renumbered 743.681]

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

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

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

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

**ADJUSTERS**

**744.505 Adjuster license required.** (1) Except as provided in ORS 744.515, a person shall not act or attempt to act as an adjuster of losses claimed under insurance policies, whether acting for the insurer or the insured, unless the person holds a valid license issued by the director that authorizes the person to act as an adjuster. A license under this section authorizes an adjuster to adjust losses for or against authorized insurers or insurers with which policies were placed under a surplus line insurance license as provided in ORS 735.400 to 735.495.

(2) A license under this section does not authorize a person to act as an adjuster for any person other than the insurer or insured. [Formerly 736.485; 1983 c.76 §10; 1987 c.774 §139; 1989 c.413 §14; 1989 c.701 §43; 1991 c.810 §12]

744.510 [Repealed by 1967 c.359 §704]

**744.515 Exemptions from adjuster licensing requirement.** (1) A licensed resident agent or salaried employee or officer of an authorized insurer may adjust and settle losses for the insurer that the agent, employee or officer represents, without obtaining an adjuster's license.

(2) A person may make one adjustment before obtaining an adjuster's license if the person applies for the license within two days after entering upon the adjustment, and in all other respects complies with the provisions of this chapter governing adjusters.

(3) A person holding a temporary permit under ORS 744.555 may perform acts authorized under ORS 744.555 without obtaining an adjuster's license.

(4) Any average adjuster or adjuster of maritime losses may adjust maritime losses without obtaining an adjuster's license.

(5) A person may perform or provide repair or replacement service under home protection insurance without obtaining an adjuster's license. [1967 c.359 §560; 1971 c.231 §33; 1981 c.247 §19; 1983 c.76 §11; 1989 c.701 §44]

744.520 [Repealed by 1967 c.359 §704]

**744.525 Adjuster qualifications.** An applicant for a license as a resident adjuster shall apply for the license as provided in ORS 744.001 and must meet the following requirements:

(1) If the applicant is an individual, the applicant must establish a residence or place of transacting insurance business in this state prior to filing an application. If the applicant is a firm or corporation, the applicant must establish an office in this state that employs an individual licensed under ORS 744.002 as an adjuster.

(2) If the applicant is an individual, the applicant must pass any examination required by ORS 744.535.

(3) The applicant must satisfy all other requirements established by the director by rule. [1967 c.359 §561; 1971 c.231 §34; 1973 c.827 §81; 1983 c.76 §12; 1989 c.701 §45]

**744.528 Nonresident adjuster license.**

(1) A person who resides in another state or a province of Canada and is licensed in that state or province as an adjuster may be licensed to act as a nonresident adjuster in this state as provided in this section if the state or province in which the person resides gives the same privilege to a resident adjuster of this state.

(2) An applicant for a license to act as a nonresident adjuster must do the following:

(a) Apply for the license on forms designed and furnished by the director as provided in ORS 744.001.

(b) If the applicant is an individual, pass an examination required by ORS 744.535. [1989 c.701 §46; 1991 c.810 §13]

744.530 [1957 c.247 §1; repealed by 1967 c.359 §704]

**744.531 Classes of insurance for adjusters.** When the director issues a license authorizing a person to act as an adjuster, the director shall indorse on the license the class or classes of insurance described in this section with respect to which the person is authorized to adjust losses. The classes of insurance are as follows:

(1) General lines insurance. Under this class, an adjuster may adjust losses with respect to casualty, property, marine and transportation and surety insurance.

(2) Health insurance, whether provided by an insurer or a health care service contractor as defined in ORS 750.005.

(3) Any class of insurance designated by the director by rule. [1989 c.701 §47]

**Note:** 744.531 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 744 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**744.535 Adjuster licensing examination.** (1) The director shall give an examination to each individual applicant for a license as an adjuster. The examination must test the qualifications and competence of the applicant and the knowledge of the applicant with respect to the classes of insurance that may be dealt with under the license and with respect to the duties and responsibilities of an adjuster under the laws of this state.

(2) The requirement of an examination under subsection (1) of this section shall not apply to an applicant who is licensed as an independent adjuster in another state that licenses adjusters of this state without examination.

(3) The director shall give examinations at such times and places within the state as the director deems necessary to reasonably serve the best interests of all concerned, provided that the director shall give an examination at least once every six months if applications for licenses are then pending. [1967 c.359 §562; 1989 c.413 §15; 1989 c.701 §48; 1991 c.810 §14]

**744.538 Change of circumstance of nonresident adjuster.** (1) A nonresident adjuster shall not act as an adjuster in this state when the adjuster no longer holds a valid license as an adjuster in the state or province in which the adjuster resides. If the license of the adjuster in the state in which the adjuster resides is reinstated, and if the nonresident adjuster's license has not expired, the adjuster may apply to the director for reinstatement of the nonresident license.

(2) A nonresident adjuster who establishes residence in this state or a place of business in this state in which the adjuster transacts business as an adjuster shall not transact such business in this state under the nonresident license following the 30th day after the adjuster establishes the residence or place of business. An adjuster under this subsection may thereafter act as an adjuster in this state only under a license to act as a resident adjuster.

(3) A nonresident adjuster who changes residence to another state other than this state or to a province must apply to the director for a license as a nonresident adjuster as if the adjuster were initially applying for such a license. [1989 c.701 §49]

**744.540** [1957 c.247 §2; repealed by 1967 c.359 §704]

**744.541 Adjustment of claim under policy issued by unauthorized insurer.** An adjuster may adjust a loss claimed under an insurance policy issued by an unauthorized insurer other than a surplus line insurer. The adjuster shall notify the director thereof not later than the 20th day after adjusting the loss. [1989 c.701 §50]

**744.545** [1967 c.359 §563; 1983 c.76 §13; 1989 c.413 §16; repealed by 1989 c.701 §81]

**744.550** [1957 c.247 §3; repealed by 1967 c.359 §704]

**744.555 Temporary adjuster permit.** (1) To facilitate the settlement of claims under insurance policies when there is widespread property loss in this state arising out of a catastrophe, the director may issue a temporary permit to any person authorized in another state to adjust losses claimed under insurance policies to act as an adjuster in the catastrophe area for or against an authorized insurer. A temporary permit issued pursuant to this section shall be effective for such time as the director determines necessary and shall be in lieu of the license and fee requirements otherwise applicable.

(2) A temporary permit may be obtained by filing with the director a written application therefor in the form prescribed by the director. The application shall contain the name and address of the applicant, the name of the state in which the applicant is authorized to adjust losses claimed under insurance policies and any other information the director may require.

(3) Such a permit may also be issued in respect to any adjuster who is licensed or permitted to act as such in the state of domicile of the adjuster and who is sent into this state on behalf of an authorized insurer or insured for the purpose of investigating or making adjustment of a particular loss under policies of insurance. [Formerly 736.490; 1989 c.701 §51]

**744.560** [1957 c.247 §4; repealed by 1967 c.359 §704]

**744.565** [1957 c.247 §5; repealed by 1967 c.359 §704]

**744.566** [1967 c.359 §565; repealed by 1969 c.336 §21]

**744.570** [1957 c.247 §6; repealed by 1967 c.359 §704]

**744.575 Adjusting claims involving credit life or credit health insurance.** No plan or arrangement shall be used with respect to credit life or credit health insurance whereby any person other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims, except that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer. [Formerly 741.455; 1989 c.701 §52]

**744.580** [1957 c.247 §7; repealed by 1967 c.359 §704]

**744.590** [1957 c.247 §8; repealed by 1967 c.359 §704]

**744.600** [1957 c.247 §9; repealed by 1967 c.359 §704]

### INSURANCE CONSULTANTS

**744.605 Insurance consultant's license required.** A person shall not act as an insurance consultant unless the person holds a valid license issued by the director that authorizes the person to act as an insurance consultant. For purposes of this section, a person acts as an insurance consultant if:

(1) The person purports or offers to engage in any of the activities described in subsection (2) of this section by using, in conjunction with the person's name, the title or designation of insurance planner, consultant, adviser or counselor, or financial and insurance planner, consultant, adviser or counselor, or any similar title or designation; or

(2) The person, in exchange for any form of compensation other than commission from the sale of insurance, engages, attempts to engage or offers to engage in any of the following activities:

(a) Acting as a consultant regarding insurance.

(b) Giving advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages of insurance that may be issued in this state.

(c) In any other manner providing information about insurance. [1985 c.697 §2; 1989 c.701 §53; 1991 c.810 §15]

**744.609 Exemptions.** The following persons are not insurance consultants for the purposes of this chapter, and the prohibition in ORS 744.605 does not apply to them:

(1) Any attorney-at-law rendering services in the performance of duties of an attorney-at-law.

(2) Any certified public accountant or public accountant rendering services in the

performance of the duties of a certified public accountant or public accountant, as authorized by law.

(3) Any person who, while conducting an educational seminar, performs any of the activities described in ORS 744.605 (2).

(4) Any bank, national bank, state or federally chartered mutual savings bank, state or federally chartered savings and loan association, state or federally chartered credit union or consumer finance licensee under ORS chapter 725.

(5) Any actuary who is a member of an organization determined by the director as establishing standards for the actuarial profession.

(6) A person who provides or offers or purports to provide any of the services described in ORS 744.605 only to an agent or an authorized insurer. [1985 c.697 §3; 1989 c.701 §54; 1991 c.810 §16]

744.610 [1957 c.247 §10; repealed by 1967 c.359 §704]

744.615 [1985 c.697 §4; repealed by 1989 c.701 §81]

**744.619 Qualifications for resident insurance consultant's license.** An applicant for a license as a resident insurance consultant shall apply for the license as provided in ORS 744.001 and must meet the following requirements:

(1) The applicant must provide satisfactory evidence to the director that the insurance required under ORS 744.635 has been procured and is in effect.

(2) The applicant, if an individual, must establish a residence or place of transacting insurance business in this state prior to filing an application. If the application is a firm or corporation, the applicant must establish an office in this state that is managed by an individual licensed as an insurance consultant.

(3) The applicant, if an individual, must have had at least five years' experience in the insurance business relating to the class or classes of insurance for which the applicant is applying to be an insurance consultant or have equivalent educational qualifications as prescribed by the director.

(4) The applicant, if an individual, must pass a written examination given by the director. The examination requirement does not apply to an applicant who is licensed as a resident agent to transact the class or classes of insurance for which the applicant is applying to be an insurance consultant.

(5) The applicant must satisfy any other requirements established by the director by rule. [1985 c.697 §5; 1989 c.701 §57; 1991 c.810 §17]

744.620 [1957 c.247 §11; repealed by 1967 c.359 §704]

**744.621 Nonresident insurance consultant license.** (1) A person who resides in an-

other state or province of Canada and is licensed in that state or province as an insurance consultant or is registered under a regulatory program of the other state or province similar to the regulatory program for insurance consultants under this chapter, as determined by the director, may be licensed to act as a nonresident insurance consultant in this state as provided in this section if the state or province in which the person resides gives the same privilege to a resident insurance consultant of this state.

(2) An applicant for a license to act as a nonresident insurance consultant shall apply for the license as provided in ORS 744.001 and must meet the following requirements:

(a) The applicant must provide satisfactory evidence to the director that the insurance required under ORS 744.635 has been procured and is in effect.

(b) If the applicant is an individual, the applicant must have had at least five years' experience in the insurance business relating to the class or classes of insurance for which the applicant is applying to be an insurance consultant or have equivalent educational qualifications as prescribed by the director.

(c) If the applicant is an individual, the applicant must take and pass a written examination given by the director, unless the state or province in which the applicant resides licenses or registers insurance consultants of this state without examination. The examination requirement does not apply to an applicant who is licensed as a nonresident agent to transact the class or classes of insurance for which the applicant is applying to be an insurance consultant.

(d) The applicant must satisfy any other requirements established by the director by rule. [1989 c.701 §58; 1991 c.810 §18]

**Note:** 744.621 was added to and made a part of ORS chapter 744 by legislative action but was not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

744.625 [1985 c.697 §6; 1987 c.774 §142; repealed by 1989 c.701 §81]

**744.626 Classes of insurance for consultants.** When the director issues a license authorizing a person to act as an insurance consultant, the director shall indorse on the license the class or classes of insurance described in this section with respect to which the person is authorized to act as an insurance consultant. The classes of insurance are as follows:

(1) Life insurance.

(2) Health insurance.

(3) General lines insurance. Under this class, an insurance consultant may act as insurance consultant with respect to casualty,

property, marine and transportation and surety insurance.

(4) Any class of insurance designated by the director by rule. [1989 c.701 §62]

**Note:** 744.626 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 744 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

~~744.629~~ [1985 c.697 §7; repealed by 1989 c.701 §81]

~~744.630~~ [1957 c.247 §12; repealed by 1967 c.359 §704]

**744.631 Change of circumstance of nonresident insurance consultant.** (1) A nonresident insurance consultant shall not act as an insurance consultant in this state when the insurance consultant no longer holds a valid license as an insurance consultant in the state or province in which the insurance consultant resides. If the license of the insurance consultant in the state in which the insurance consultant resides is reinstated and if the nonresident license has not expired, the insurance consultant may apply to the director for reinstatement of the nonresident license.

(2) A nonresident insurance consultant who establishes residence in this state or a place of business in this state in which the insurance consultant transacts business as an insurance consultant shall not transact such business in this state under the nonresident license following the 30th day after the insurance consultant establishes the residence or place of business. An insurance consultant under this paragraph may act as a resident insurance consultant in this state if the insurance consultant obtains the appropriate license.

(3) A nonresident insurance consultant who changes residence to another state other than this state or to a province must apply to the director for a license as a nonresident insurance consultant as if the insurance consultant were initially applying for such a license. [1989 c.701 §61]

**Note:** 744.631 was added to and made a part of ORS chapter 744 by legislative action but was not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

**744.635 Errors and omissions insurance.** (1) An insurance consultant shall maintain with the director a current certificate of errors and omissions insurance in an amount established by the director by rule from an insurer authorized to do business in this state or from any other insurer acceptable to the director according to standards established by rule.

(2) If the director determines that errors and omissions insurance required under this section is not generally available at a reasonable cost, the director by rule may suspend the

requirement of insurance, but must reimpose the requirement when the insurance becomes available once again. [1985 c.697 §8; 1989 c.701 §63; 1991 c.331 §131; 1991 c.810 §19]

~~744.639~~ [1985 c.697 §9; repealed by 1989 c.701 §81]

~~744.640~~ [1957 c.247 §13; repealed by 1967 c.359 §704]

~~744.645~~ [1985 c.697 §10; repealed by 1989 c.701 §81]

**744.650 Disclosure by insurance consultants.** (1) An insurance consultant shall furnish to each client and prospective client a written disclosure statement containing the following information:

(a) A description of the nature of the work to be performed by the insurance consultant.

(b) The applicable occupational and educational background of the insurance consultant.

(c) The area or areas of insurance in which the insurance consultant has particular expertise.

(d) The fee schedule and any other expenses that the insurance consultant charges, and whether fees may be negotiated.

(e) The name of any person, other than clients, that the insurance consultant represents.

(f) Whether the insurance consultant will receive any commission or obtain any other compensation for services provided the client in addition to fees and other expenses paid by the client.

(g) Any other information required by the director by rule.

(2) An insurance consultant shall disclose information required under this subsection to each client in the course of providing insurance consultant services to the client and before the insurance consultant makes any final insurance recommendation to the client. The insurance consultant shall disclose at least the following information as applicable to the line of insurance for which the insurance consultant is providing services:

(a) Other business activities of the insurance consultant relating to financial planning.

(b) The method of investment analysis and comparison used.

(c) Assumptions contributing to insurance recommendations for the client.

(d) Any other information required by the director by rule.

(3) The director may establish additional disclosure requirements for licensees who are licensed both as agents and insurance consultants.

(4) The director may design the form of disclosure statement to be used under subsection (1) of this section. [1985 c.697 §11; 1991 c.810 §20]

**744.655 Rebates prohibited.** An insurance consultant may not give or receive or offer to give or receive a rebate of all or a part of any fee or other expenses charged for services or any earnings, profit, dividends or other benefit accruing to the insurance consultant from the services provided by the insurance consultant. [1985 c.697 §12; 1991 c.810 §23]

**744.660** [1985 c.697 §13; repealed by 1989 c.701 §81]

**744.665 Continuing education.** The director by rule may establish requirements for continuing education that each insurance consultant must satisfy as a condition for continuation of the license. [1985 c.697 §14]

### THIRD PARTY ADMINISTRATORS

**744.700 Definitions for 744.700 to 744.740.** As used in ORS 744.700 to 744.740:

(1) "Affiliate" of, or person "affiliated" with, a specific person means any person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person.

(2) "Control" has the meaning given that term in ORS 732.605.

(3) "Insurer" includes a health care service contractor, a multiple employer welfare arrangement or any other person providing a plan of insurance subject to state insurance regulation. "Insurer" does not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974.

(4) "Underwrite" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer, the overall planning and coordinating of an insurance program and the ability to procure bonds and excess insurance. [1991 c.812 §2]

**744.702 Third party administrator license; description of transacting business as third party administrator.** (1) Subject to ORS 744.704, a person shall not transact business or purport or offer to transact business as a third party administrator in this state on and after January 1, 1992, unless the person holds a third party administrator license issued by the Director of the Department of Insurance and Finance.

(2) For purposes of ORS 744.700 to 744.740, a person transacts or purports or offers to transact business as a third party administrator when the person directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on, residents of this state or

residents of another state from offices in this state, in connection with life insurance or health insurance coverage.

(3) Nothing in ORS 744.700 to 744.740 exempts a third party administrator from any other applicable licensing requirement when the third party administrator performs the functions of an agent, adjuster or insurance consultant. [1991 c.812 §3]

**744.704 Exemptions from license requirement.** (1) The following persons are exempt from the licensing requirement for third party administrators in ORS 744.702 and from all other provisions of ORS 744.700 to 744.740 applicable to third party administrators:

(a) A person licensed under ORS 744.002 as an adjuster, whose activities are limited to adjustment of claims and whose activities do not include the activities of a third party administrator.

(b) A person licensed under ORS 744.002 as an agent and authorized to transact life or health insurance in this state, whose activities are limited exclusively to the sale of insurance and whose activities do not include the activities of a third party administrator.

(c) An employer acting as a third party administrator on behalf of:

(A) Its employees;

(B) The employees of one or more subsidiary or affiliated corporations of the employer; or

(C) The employees of one or more persons with a dealership, franchise, distributorship or other similar arrangement with the employers.

(d) A union, or an affiliate thereof, acting as a third party administrator on behalf of its members.

(e) An insurer that is authorized to transact insurance in this state with respect to a policy issued and delivered in and pursuant to the laws of this state or another state.

(f) A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

(g) A trust and the trustees, agents and employees of the trust, when acting pursuant to the trust, if the trust is established in conformity with 29 U.S.C. 186.

(h) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a voluntary employees beneficiary association described in section 501(c) of the Internal Revenue Code, its agents and employees and a custodian and the custodian's agents and employees acting pursuant to a custodian account meeting the requirements of Section 401(f) of the Internal Revenue Code.

(i) A financial institution that is subject to supervision or examination by federal or state financial institution regulatory authorities, or a mortgage lender, to the extent the financial institution or mortgage lender collects and remits premiums to licensed agents or authorized insurers in connection with loan payments.

(j) A company that issues credit cards and advances for and collects premiums or charges from its credit card holders who have authorized collection. The exemption under this paragraph applies only if the company does not adjust or settle claims.

(k) A person who adjusts or settles claims in the normal course of practice or employment as an attorney at law. The exemption under this subsection applies only if the person does not collect charges or premiums in connection with life insurance or health insurance coverage.

(L) A person who acts solely as an administrator of one or more bona fide employee benefit plans established by an employer or an employee organization, or both, for which the Insurance Code is preempted pursuant to the Employee Retirement Income Security Act of 1974. A person to whom this paragraph applies must comply with the requirements of ORS 744.714.

(m) The Oregon Medical Insurance Pool Board, established under ORS 735.600 to 735.650, and the administering insurer or insurers for the board, for services provided pursuant to ORS 735.600 to 735.650.

(n) An entity or association owned by or composed of like employers who administer partially or fully self-insured plans for employees of the employers or association members.

(o) A trust established by a cooperative body formed between cities, counties, districts or other political subdivisions of this state, or between any combination of such entities, and the trustees, agents and employees acting pursuant to the trust.

(p) Any person designated by the Director of the Department of Insurance and Finance by rule.

(2) A third party administrator is not required to be licensed as a third party administrator in this state if the following conditions are met:

(a) The third party administrator has its principal place of business in another state;

(b) The third party administrator is not soliciting business as a third party administrator in this state; and

(c) In the case of any group policy or plan of insurance serviced by the third party administrator, the lesser of five percent or 100

certificate holders reside in this state. [1991 c.812 §4]

**744.706 Application for license.** (1) In order to obtain a license to transact business as a third party administrator, an applicant shall apply for the license on a form prescribed by the Director of the Department of Insurance and Finance, with payment of any fee required for the application.

(2) The director may request biographical, organizational, locational, financial, employment and any other information on the application form that the director determines to be relevant to the evaluation of applications and to the granting of the license, including satisfactory evidence that the insurance required under ORS 744.726 has been procured and is in effect. The director may also require a statement of the business plan of the applicant. [1991 c.812 §5]

**744.708 Waiver of information requirement.** Upon request from a third party administrator, the Director of the Department of Insurance and Finance may waive requirements established pursuant to ORS 744.706 for information to be included in or with the application if the third party administrator has a valid license or other document of authority as a third party administrator issued in a state having requirements for third party administrators that the director determines to be sufficiently similar to the requirements established under ORS 744.706 so that the filing of the information would serve little or no regulatory purpose. [1991 c.812 §6]

**744.710 Issuance or denial of license.** (1) If the Director of the Department of Insurance and Finance determines that an applicant has satisfied all requirements for a license as a third party administrator, the director shall issue the license to the applicant. The director shall not issue a license if the director determines that the third party administrator, or any individual responsible for the conduct of affairs of the third party administrator, as required to be set forth in the application for the license, is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had a license or other document of authority to transact insurance as an insurer, agent or third party administrator denied or revoked for cause by any state.

(2) If the director denies an application, the director shall so inform the applicant, stating the grounds for the denial. [1991 c.812 §7]

**744.712 Expiration and renewal of license.** (1) A license of a third party administrator expires on its expiration date unless it is renewed on or before its expiration date.

(2) Unless the Director of the Department of Insurance and Finance designates another

date, a license expires on the last day of the month in which the second anniversary of the initial issuance date of the license occurs, and on the second anniversary following each renewal.

(3) The director by rule may establish requirements for renewing licenses of third party administrators. [1991 c.812 §8]

**744.714 Registration of persons exempt from licensure.** A person who is exempt from the requirement of a license as a third party administrator under ORS 744.704 because the person acts solely as an administrator of one or more bona fide employee benefit plans established by an employer or an employee organization, or both, for which the Insurance Code is preempted pursuant to the Employee Retirement Income Security Act of 1974, shall register with the Director of the Department of Insurance and Finance annually, verifying the status of the person as qualifying for the exemption. [1991 c.812 §9]

**744.716 Notification of change in ownership or control.** A third party administrator shall immediately notify the Director of the Department of Insurance and Finance of any material change in ownership or control or in any other matter affecting the qualification of the third party administrator for a license as a third party administrator in this state. [1991 c.812 §10]

**744.718 Suspension, revocation or refusal of issuance or renewal of license.** (1) The Director of the Department of Insurance and Finance shall suspend, revoke or refuse to renew a license of a third party administrator if the director finds that the third party administrator:

- (a) Is in an unsound financial condition;
- (b) Is using such methods or practices in the conduct of business so as to render further transaction of business by the third party administrator in this state hazardous or injurious to insured persons or to the public; or
- (c) Has failed to pay any judgment rendered against the third party administrator in this state within 60 days after the judgment has become final.

(2) The director may suspend, revoke, refuse to issue or refuse to renew a license of a third party administrator if the director finds one or more of the following with respect to a third party administrator or an applicant for a license therefor:

- (a) Falsification by the applicant or licensee of an application for the license or renewal thereof, or engagement in any dishonest act in relation to the application;
- (b) Dishonesty, fraud or gross negligence in the transaction of insurance or in the con-

duct of business as a third party administrator;

(c) Conduct resulting in a conviction of a felony under the laws of any state or of the United States, to the extent that such conduct may be considered under ORS 670.280;

(d) Conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;

(e) Refusal to renew or cancellation, revocation or suspension of authority to transact insurance or business as a third party administrator or similar entity in another state;

(f) Failure to pay a civil penalty imposed by final order of the director or to carry out terms of probation set by the director;

(g) Refusal to be examined or to produce accounts, records or files for examination, refusal by any officers to give information with respect to the affairs of the third party administrator or refusal to perform any other legal obligation as to the examination when required by the director;

(h) Affiliation with or under the same general management or interlocking directorate or ownership as another administrator or insurer that unlawfully transacts business in this state;

(i) Failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the director; or

(j) Violation of any rule or order of the director or any provision of the Insurance Code.

(3) The director may suspend or refuse to renew a license immediately and without hearing if the director determines that one or more of the following circumstances exist:

- (a) The third party administrator is insolvent;
- (b) A proceeding for receivership, conservatorship or rehabilitation or other delinquency proceeding regarding the third party administrator has been commenced in any state; or

(c) The financial condition or business practices of the third party administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

(4) A third party administrator holding a license that has not been renewed or has been revoked shall surrender the license to the director at the director's request.

(5) The director may take any other administrative action authorized under the Insurance Code in addition to or in lieu of the actions authorized under this section. [1991 c.812 §11]

**744.720 Agreement between insurer and third party administrator.** (1) A third party administrator licensed under ORS 744.702 may transact business as a third party administrator only pursuant to a written agreement between the third party administrator and the insurer. The agreement shall contain all provisions required by this section. However, any provision that does not apply to the functions to be performed by the third party administrator need not be included.

(2) An insurer and a third party administrator transacting business under an agreement required in subsection (1) of this section shall each retain the agreement with its records for the duration of the agreement and for five years following the date of its termination.

(3) An agreement required by this section shall include at least the following, in addition to any other requirements of ORS 744.700 to 744.740:

(a) A statement of duties that the third party administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance for which the third party administrator is to be authorized to administer;

(b) Provisions with respect to underwriting or other standards pertaining to the business underwritten by the insurer. The agreement shall also state the responsibilities of the third party administrator for determining the benefits, premium rates, underwriting criteria and claims payment procedures, and for securing any reinsurance, subject to the responsibilities of the insurer established in ORS 744.740;

(c) Provisions for the third party administrator to periodically render an accounting to the insurer detailing all transactions performed by the administrator pertaining to the business underwritten by the insurer;

(d) Provisions governing withdrawals from the fiduciary account required under ORS 744.730, and provisions otherwise relating to the fiduciary account, addressing at least the following matters:

(A) Remittance to an insurer entitled to the remittance;

(B) Deposit in an account maintained in the name of the insurer;

(C) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in ORS 744.730;

(D) Payment to a group policyholder for remittance to the insurer entitled to the remittance;

(E) Payment to the third party administrator of its commission fees or charges; and

(F) Remittance of return premiums to the person entitled to the return premium; and

(e) Provisions establishing which disputes, if any, arising under the contract shall be decided by arbitration, mediation or other means of dispute resolution.

(4) Upon written notice, the insurer or third party administrator may terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the third party administrator during any dispute regarding the cause for termination of the written agreement. The insurer must fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the insurer and the third party administrator.

(5) A third party administrator shall make available for inspection to the Director of the Department of Insurance and Finance copies of all contracts, and amendments thereto, with insurers or other persons using its services. [1991 c.812 §12]

**744.722 Relationship of insurer and third party administrator regarding payments.** (1) When an insurer uses the services of a third party administrator:

(a) Payment to the third party administrator of any premiums or charges for insurance by or on behalf of the insured party shall be considered to have been received by the insurer.

(b) Payment of return premiums or claim payments forwarded by the insurer to the third party administrator shall not be considered to have been paid to the insured party or claimant until the payment is received by the insured party or claimant.

(2) Nothing in this section limits any right of the insurer against the third party administrator resulting from failure by the third party administrator to make payments to the insurer, insured parties or claimants. [1991 c.812 §13]

**744.724 Books and records.** (1) Except as provided in subsection (4) of this section, a third party administrator shall maintain and make available to the insurer complete books and records of each transaction performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping and must be maintained for a period of not less than five years from the date of their creation.

(2) The Director of the Department of Insurance and Finance shall have access to the books and records maintained under subsection (1) of this section for the purpose of examination, audit and inspection. The director shall keep confidential any trade secrets contained in the books and records, including

the identity and addresses of policyholders and certificate holders, except that the director may use any such information in any proceedings instituted against the third party administrator.

(3) An insurer that has entered into an agreement with a third party administrator shall own the records generated by the third party administrator pertaining to the insurer. However, the third party administrator has the right to continuing access to the books and records to permit the third party administrator to fulfill all of its contractual obligations to insured parties, claimants and the insurer.

(4) If an insurer and third party administrator cancel their agreement, the third party administrator may agree in writing with the insurer to transfer all records to a successor third party administrator. If the agreement includes provisions to transfer the records, the third party administrator is no longer responsible for retaining the records for the five-year period. The successor third party administrator shall acknowledge in writing as part of its agreement with the insurer that it is responsible for retaining the records of the prior third party administrator as required in subsection (1) of this section. [1991 c.812 §14]

**744.726 Errors and omissions insurance.** (1) A third party administrator must maintain with the Director of the Department of Insurance and Finance at all times a current certificate of errors and omissions insurance, in an amount established by the director by rule, from an insurer authorized to transact insurance in this state or from any other insurer acceptable to the director according to standards established by rule. The insurance must cover errors and omissions of and any violation of fiduciary responsibility by the third party administrator or its employees, or both.

(2) If the director determines that insurance required under this section is not generally available at a reasonable cost, the director by rule may suspend the requirement of insurance, but must reimpose the requirement when the insurance becomes available. [1991 c.812 §15]

**744.728 Advertising.** A third party administrator may use only such advertising pertaining to the business underwritten by an insurer that the insurer has approved in advance of its use. [1991 c.812 §16]

**744.730 Disposition of charges and premiums.** (1) A third party administrator shall hold in a fiduciary capacity all insurance charges or premiums collected by the third party administrator on behalf of or for an insurer, and all return premiums received

from the insurer. The third party administrator shall immediately remit all charges, premiums or return premiums to the person entitled to them or shall deposit them promptly in a fiduciary account established and maintained by the third party administrator in a federally or state insured financial institution. The fiduciary account may be used only for deposits authorized under this subsection.

(2) If the charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more insurers, a third party administrator shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The third party administrator shall keep copies of all such records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to such deposits and withdrawals.

(3) A third party administrator shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited.

(4) All claims by a third party administrator from funds collected on behalf of the insurer shall be paid only on drafts of and as authorized by the insurer.

(5) A third party administrator that is an agent licensed under this chapter need not comply with this section if the third party administrator is in compliance with ORS 744.225 with respect to the premiums, charges and return premiums referred to in this section. [1991 c.812 §17]

**744.732 Contingent fee agreements.** (1) A third party administrator shall not enter into any agreement or understanding with an insurer the effect of which is to make the amount of the third party administrator's commissions, fees or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the obligations of the insurer.

(2) This section does not prohibit:

(a) A third party administrator from receiving performance-based compensation for providing hospital or other auditing services; or

(b) A third party administrator from receiving compensation based on premiums or charges collected or on the number of claims processed.

(3) The third party administrator shall disclose to the insurer all charges, fees and commissions received from all sources in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance. [1991 c.812 §18]

**744.734 Notice to insureds regarding third party administrator.** (1) When an insurer uses the services of a third party administrator, the third party administrator shall provide to covered individuals a written notice approved by the insurer that advises them of the identity of and relationship among the third party administrator, the policyholder and the insurer.

(2) When a third party administrator collects funds, the reason for collection of each item must be identified to the insured party and each item must be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the insurer. [1991 c.812 §19]

**744.736 Delivery from insurer to insured.** When the third party administrator receives policies, certificates, booklets, termination notices or other written communications from the insurer for delivery to insured parties or covered individuals, the third party administrator shall promptly make the delivery after receiving instructions from the insurer. [1991 c.812 §20]

**744.738 Annual report.** (1) Each third party administrator shall file an annual report for the preceding calendar year with the Director of the Department of Insurance and Finance on or before March 1 of each year, or within such extension of time therefor as the director may grant. The report shall be in the

form and contain such information as the director prescribes and shall be verified by at least two officers of the third party administrator if the third party administrator is a corporation, and by two partners if the third party administrator is a partnership.

(2) The annual report shall include the complete names and addresses of all insurers with which the third party administrator had an agreement during the preceding fiscal year. [1991 c.812 §21]

**744.740 Responsibility of insurer using third party administrator.** (1) An insurer who uses the services of a third party administrator is responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to the coverage and for securing any reinsurance. The rules pertaining to such matters must be provided in writing by the insurer to the third party administrator.

(2) An insurer is solely responsible for providing competent administration of its programs.

(3) When a third party administrator administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall conduct a review of the operations of the third party administrator at least annually. [1991 c.812 §22]

~~744.990~~ [Repealed by 1967 c.359 §704]

## **INSURANCE**

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