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Chapter 731

1993 EDITION

Administration and General Provisions

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SHORT TITLE; PURPOSE AND CONSTRUCTION

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

731.010 [Repealed by 1965 c.241 §3]

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

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

731.020 [Repealed by 1965 c.241 §3]

APPLICATION OF INSURANCE CODE

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

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

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

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

(3) A health care service contractor complying with ORS 750.005 to 750.095, only as provided in such sections.

(4) A legal expense organization complying with ORS 750.505 to 750.715, only as provided in such sections.

(5) A multiple employer welfare arrangement complying with ORS 750.301 to 750.341, only as provided in such sections. [1967 c.359 §6; 1971 c.425 §1; 1973 c.97 §2; 1975 c.769 §2; 1989 c.331 §23; 1993 c.265 §2; 1993 c.615 §26]

731.028 Applicability of certain Insurance Code provisions to State Accident Insurance Fund Corporation. The State Accident Insurance Fund Corporation is subject as a domestic insurer to ORS 731.248, 731.252, 731.256, 731.258, 731.260, 731.296 to 731.316, 731.488, 731.574, 731.730, 731.731, 731.735, 731.737, 731.988, 731.992, 733.010 to 733.060, 733.140 to 733.170, 733.210, 737.205 to 737.225, 737.235 to 737.340, 737.505, 737.560, ORS chapters 742, 743 and 744, ORS 746.015, 746.075, 746.110, 746.145 to 746.155, 746.230 and 746.240 to the extent that such provisions are not inconsistent with the express provisions of ORS chapter 656. However:

(1) The requirements of the Director of the Department of Consumer and Business Services under ORS 733.010 to 733.060, 733.140 to 733.170 and 733.210 govern in the case of a conflict between those requirements and the requirements of any accounting system prescribed by the Oregon Department of Administrative Services.

(2) The filing requirements of ORS 737.205 to 737.340, 737.505 and 737.560 are in lieu of any similar filing requirements prescribed by any other law of this state.

(3) The requirements of ORS chapter 743 are applicable only with respect to excess workers' compensation insurance furnished by the corporation.

(4) The provisions of ORS chapter 744 apply only with respect to the regulation of agents.

(5) For each year that the Secretary of State conducts an audit of the State Accident Insurance Fund Corporation under ORS 297.210, the director may accept the audit and a copy of the Secretary of State's audit report in lieu of the requirements of ORS 731.488 if the director determines that the purposes of ORS 731.488 are adequately served by the Secretary of State's audit and report. The Secretary of State shall file a copy of its audit report of the State Accident Insurance Fund Corporation with the director. [1971 c.385 §2; 1977 c.405 §5; 1979 c.815 §7; 1979 c.829 §7; 1987 c.884 §4; 1989 c.701 §69; 1991 c.340 §1; 1991 c.401 §31; 1993 c.447 §116]

731.030 [Repealed by 1965 c.241 §3]

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

(1) An association of employees that:

(a) Does not provide benefits to its members for accidents and illness of more than $500 in any one year on behalf of any one member. This limitation does not apply to an association of employees that was contin-

uously active in this state for at least one year prior to June 8, 1967;

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

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

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

(2) A doctor contracting to furnish health care services to an association of employees described in subsection (1) of this section.

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

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

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

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

(5) A fraternal benefit society that:

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

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

(6) An association of the members of a workers' productive cooperative, which cooperative has been organized under ORS chapter 62 and is engaged primarily in reforestation, if the association insures only the members of the cooperative and their families for health insurance. [1967 c.359 §7; 1971 c.69 §1; 1971 c.538 §1; 1979 c.848 §1; 1993 c.265 §3]

731.036 Persons completely exempt from application of Insurance Code. The Insurance Code does not apply to any of the following to the extent of the subject matter of the exemption:

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

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

(3) A religious organization providing insurance benefits only to its employees, which organization is in existence and exempt from taxation under section 501 (c) (3) of the federal Internal Revenue Code on September 13, 1975;

(4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance fund for tort liability in accordance with ORS 30.282;

(5) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance fund for property damage;

(6) Cities and counties that either individually or jointly insure for health insurance coverage, excluding disability insurance, their employees or retired employees, or their dependents, or combination of employees and dependents, with or without employee contributions, if all of the following conditions are met:

(a) The scope of the program meets the following minimum requirement:

(A) In the case of an individual public body program, the number of covered employees and retired employees aggregates at least 1,000 individuals; and

(B) In the case of a joint program of two or more public bodies, the number of covered employees and retired employees aggregates at least 1,000 individuals, or the annual contributions to the program aggregate at least $500,000;

(b) The health insurance includes all coverages and benefits required of group health insurance policies under ORS chapter 743;

(c) The public body, or the program administrator in the case of a joint insurance program of two or more public bodies, files with the Director of the Department of Consumer and Business Services copies of all documents creating and governing the program, all forms used to communicate the coverage to beneficiaries, the schedule of payments established to support the program and, annually, a financial report showing the total incurred cost of the program for the preceding year. A copy of the annual audit required by ORS 297.425 may be used to satisfy the financial report filing requirement; and

(d) Each public body in a joint insurance program is liable only to its own employees and no others for benefits under the program in the event, and to the extent, that no further funds, including funds from insurance policies obtained by the pool, are available in the joint insurance pool; or

(7) All ambulance services.

(8) A person providing either or both of the services described in this subsection in connection with motor vehicles. The exemption under this subsection does not apply to an authorized insurer providing such services under an insurance policy. This subsection applies to the following services:

(a) Towing service.

(b) Emergency road service, which means adjustment, repair or replacement of the equipment, tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be operated under its own power. [1967 c.359 §8; 1975 c.314 §1; 1977 c.428 §4; 1981 c.891 §1; 1985 c.811 §1; 1987 c.97 §1; 1987 c.288 §1; 1991 c.958 §2; 1993 c.265 §4]

731.040 [Repealed by 1965 c.241 §3]

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

(2) No certificate of exemption shall be issued to any such person by the director except upon receipt of an application to act as an exempt insurer. Such application shall set forth the details of the insurance to be provided, the names and addresses of the responsible parties, officers and agents, and proof of solvency of the insurer.

(3) Upon receipt of a satisfactory application and payment of the fees established by the director, the director shall issue a certificate of exemption authorizing the applicant to act as an exempt insurer until the succeeding April 1.

(4) An exempt insurer shall be subject to ORS 731.296 to 731.316, 731.414, 731.418, 731.574, 731.988, 731.992, 733.010 to 733.115, 733.140 to 733.210, 743.703, 746.075 and 746.110. [Formerly 736.020; 1979 c.870 §1; 1981 c.752 §15; 1989 c.413 §2]

731.046 Exemption of policies from Securities Law. Any policy whose form has been filed with and approved by the director shall be exempt from the application of ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995, and the marketing of such policy shall be likewise exempt. [1967 c.359 §10]

731.050 [Repealed by 1965 c.241 §3]

DEFINITIONS GENERALLY

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

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

731.060 [Repealed by 1965 c.241 §3]

731.062 "Agent." "Agent" means a person authorized by an insurer to solicit applications for insurance or to negotiate insurance on its behalf, and, if authorized so to do by the insurer, to effect and countersign insurance policies. [1967 c.359 §13; 1991 c.810 §1]

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

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

731.069 "Certificate," "certificate holder." (1) "Certificate" means a written statement evidencing the coverage of a person insured under a group insurance policy.

(2) "Certificate holder" means an employee or member of a group insured under a group insurance policy. [1981 c.752 §11]

731.070 [Repealed by 1965 c.241 §3]

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

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

731.074 "Commercial liability insurance." (1) "Commercial liability insurance" means insurance for a business, professional, nonprofit or governmental entity against legal, contractual or assumed liability for death, injury or disability of any human, or for damage to property, arising out of acts or omissions in the course of the conduct of the entity.

(2) "Commercial liability insurance" does not include the following lines of insurance or classes of business:

(a) Marine and transportation insurance;

(b) Wet marine and transportation insurance;

(c) FAIR plans and automobile assigned risk insurance;

(d) Workers' compensation and employers' liability insurance;

(e) Nuclear liability insurance;

(f) Fidelity and surety insurance;

(g) Hazardous waste and environmental impairment insurance;

(h) Aviation insurance; or

(i) Commercial automobile insurance.

(3) As used in this section, "commercial automobile" means a four wheel passenger or station wagon type of vehicle used as a public or private conveyance, including a motor vehicle of the utility, pickup, sedan delivery or panel truck type used for wholesale or retail delivery, and a farm truck. [1987 c.774 §32]

Note: 731.074 was added to and made a part of the Insurance Code but was not added to any chapter or smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

731.076 "Department," "director." (1) "Department" means the Department of Consumer and Business Services.

(2) "Director" means the Director of the Department of Consumer and Business Services. [1967 c.359 §16; 1987 c.373 §76; 1993 c.744 §28]

731.080 [Repealed by 1965 c.241 §3]

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

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

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

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

731.090 [Repealed by 1965 c.241 §3]

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

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

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

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

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

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

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

(c) The state in which is held the largest deposit of assets of the insurer in trust for the protection of its policyholders and creditors in the United States.

(2) If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of business in the United States. [Formerly 736.240]

731.100 [Repealed by 1965 c.241 §3]

731.102 "Insurance." (1) "Insurance" means a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies.

(2) "Insurance" so defined includes annuities.

(3) "Insurance" so defined includes a contract under which one other than a manufacturer, builder, seller or lessor of the subject property undertakes to perform or provide, for a fixed term and consideration, repair or replacement service or indemnification therefor for the operational or structural failure of specified real or personal property or property components. Insurance does not include contracts with a telecommunications utility as defined in ORS 759.005, for repair, replacement or maintenance of customer-owned inside wiring. [1967 c.359 §21; 1981 c.247 §1; 1985 c.633 §5; 1987 c.447 §111]

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

731.110 [Repealed by 1965 c.241 §3]

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

731.116 "Person." "Person," as defined in ORS 174.100, includes individuals, corporations, associations, firms, partnerships and joint stock companies. [1967 c.359 §24; 1983 c.327 §12]

731.120 [Repealed by 1965 c.241 §3]

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

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

731.130 [Repealed by 1965 c.241 §3]

731.132 "Required capitalization." "Required capitalization" means the minimum

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

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

731.140 [Repealed by 1965 c.241 §3]

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

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

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

731.144 "Surplus lines insurance." "Surplus lines insurance" means any insurance in this state of risks resident, located or to be performed in this state, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, wet marine and transportation insurance, independently procured insurance and life and health insurance and annuities. [1987 c.774 §113; 1991 c.810 §24]

Note: 731.144 was added to and made a part of ORS chapter 731 but was not added to any smaller series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

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

(b) Taking or receiving any application for insurance.

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

(d) Issuing or delivering policies of insurance.

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

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

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

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

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

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

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

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

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

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

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

(d) Transactions within a state under a policy subsequent to its issuance if the policy was lawfully solicited, written and delivered

outside the state and did not cover a subject of insurance resident, located or to be performed in the state when issued.

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

(3) If mail is used, an act shall be deemed to take place at the point where the matter transmitted by mail is delivered and takes effect. [1967 c.359 §30; 1971 c.231 §10; 1989 c.784 §4]

CLASSES OF INSURANCE DEFINED

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

731.154 "Annuity." (1) "Annuity" or "annuity policy" means any agreement to make periodic payments, whether fixed or variable in amount, where the making of all or some of such payments, or the amount of any such payment, is dependent upon the continuance of human life, except payments made pursuant to the settlement provisions of a life insurance policy, and includes additional benefits operating to safeguard the policy from lapse or to provide a special surrender value or special benefit or annuity in the event of total and permanent disability of the annuitant.

(2) "Annuity" does not include a charitable remainder annuity trust or a charitable remainder unitrust as defined in section 664(d) of the Internal Revenue Code. [1967 c.359 §33; 1993 c.377 §1]

731.156 "Variable life insurance"; "variable annuity." "Variable life insurance" and "variable annuity" mean those forms of life insurance or annuity benefits, respectively, which vary according to the investment experience of a separate account or accounts maintained by the insurer with respect to policies providing such benefits. For convenience, reference to "variable life insurance" in the Insurance Code includes variable life insurance and variable annuities as defined in this section, except if the inclusion of variable annuities obviously is inapplicable or if the context requires, or the Insurance Code provides, otherwise. [1973 c.435 §2]

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

(1) Insurance against legal, contractual or assumed liability for death, injury or disability of any human, or for damage to property; and provision for medical, hospital, surgical and disability benefits to injured persons including insurance against the risk of economic loss assumed under a less than fully insured employee health benefit plan and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as coverage for personal injury protection benefits under a motor vehicle liability policy or as an incidental coverage with or supplemental to liability insurance;

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

(3) Insurance of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement or occupational diseases of employees, including issuing guaranty contracts in connection therewith;

(4) Insurance which undertakes to perform or provide repair or replacement service or indemnification therefor for the operational or structural failure of specified real or personal property or property components; and

(5) Insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other class of insurance otherwise defined, if such insurance is not disapproved by the director as being contrary to law or public policy. [1967 c.359 §34; 1981 c.247 §2; 1993 c.649 §5]

731.162 "Health insurance." "Health insurance" means insurance of humans against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness or childbirth, or against expense incurred in prevention of sickness, in dental care or optometrical service, and every insurance appertaining thereto, including insurance against the risk of economic loss assumed under a less than fully insured employee health benefit plan. "Health insurance" does not include workers' compensation coverages. [1967 c.359 §35; 1993 c.649 §6]

731.164 "Home protection insurance." (1) "Home protection insurance" is that part of casualty insurance that includes only insurance which undertakes to perform or provide repair or replacement service or indemnification therefor for the operational or structural failure of the insured home, components of the home or personal property relating to the home or its components, and

does not include protection against consequential damage from the operational or structural failure. For the purpose of this subsection, "home" means a single living unit or multiple living units, including manufactured dwellings, used primarily as residences.

(2) "Home protection insurer" means an insurer under policies of home protection insurance, other than an insurer transacting other forms of casualty insurance or any form of reinsurance. [1981 c.247 §4]

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

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

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

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

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

(a) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builders' risks, and all personal property floater risks including bailees' customers risks;

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

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

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

(2) Marine protection and indemnity insurance meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person. [Formerly 745.005]

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

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

(2) Nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real property, such insurance also being referred to in the Insurance Code as "lease insurance." [1967 c.359 §39; 1969 c.692 §1]

731.182 "Property insurance." "Property insurance" means insurance on real or personal property of every kind and of every interest therein, whether on land, water or in the air, against loss or damage from any and all hazard or cause, and against consequential loss from such loss or damage, other than noncontractual legal liability for loss or damage. "Property insurance" does not include title insurance. [1967 c.359 §40]

731.186 "Surety insurance." "Surety insurance" means insurance guaranteeing the fidelity of persons holding places of trust, the performance of duties, contracts, bonds and undertakings, including the signing thereof as surety, and insuring the performance of obligations of employers under workers' compensation laws by surety bond. [1967 c.359 §41]

731.190 "Title insurance." "Title insurance" means insurance of owners of property or others having an interest therein or liens or encumbrances thereon, against loss by encumbrance, defective titles, invalidity or adverse claim to title. [1967 c.359 §42]

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

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

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

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

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

(5) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations; and

(6) Insurance of aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against this liability other than workers' compensation and employers' liability arising out of the ownership, maintenance or use of such aircraft. [1967 c.359 §43; 1987 c.774 §114]

731.204 [Formerly 736.495; repealed by 1987 c.373 §85]

731.208 [Formerly 736.500; repealed by 1987 c.373 §85]

731.212 [1967 c.359 §46; repealed by 1987 c.373 §85]

INSURANCE ADMINISTRATION

731.216 Administrative power of director. The director shall have the power to:

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

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

(3) Establish within the division a workers' compensation rating bureau to provide rating information that is based upon and relevant to activities conducted in this state, to enable the director to carry out the provisions of ORS chapter 737. In lieu of creating a rating bureau within the division, the director may contract with any rating organization in other states if the director finds that such a contract would provide the information required by this section. [Formerly 736.503; 1987 c.373 §77; 1987 c.884 §50]

731.220 [Formerly 736.507; repealed by 1987 c.373 §85]

731.224 [1967 c.359 §49; repealed by 1987 c.373 §85]

731.228 Prohibited interests and rewards. (1) No officer or employee of the department delegated responsibilities in the enforcement of the Insurance Code shall:

(a) Be a director, officer, or employee of or be financially interested in any person regulated by the department or office of the department that is delegated responsibility in the enforcement of the Insurance Code, except as a policyholder or claimant under an insurance policy or by reason of rights vested in commissions, fees, or retirement benefits related to services performed prior to affiliation with the department; or

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

(2) No person shall directly or indirectly give or pay, or offer to give or pay, to the director, or any officer or employee of the

department, and the director or such officer or employee shall not directly or indirectly solicit, receive or accept any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by law, for:

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

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

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

(d) Any cause whatsoever related to any person regulated by the department or office of the department that is delegated responsibility in the enforcement of the Insurance Code.

(3) This section does not permit any conduct, affiliation or interest that is otherwise prohibited by public policy. [1967 c.359 §50; 1987 c.373 §78]

731.232 Subpoena power. (1) For the purpose of an investigation or proceeding under the Insurance Code, the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records which the director considers relevant or material to the inquiry. Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court for any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1967 c.359 §51; 1989 c.980 §22]

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

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

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

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

731.240 Hearings in general. (1) The director shall hold a hearing upon written demand for a hearing by a person aggrieved by any act, threatened act or failure of the director to act. The demand must state the grounds therefor.

(2) To the extent applicable and not inconsistent with subsection (1) of this section, the provisions of ORS 183.310 to 183.550 shall govern the hearing procedure and any judicial review thereof. [1967 c.359 §53; 1991 c.401 §1]

731.244 Rules. In accordance with the applicable provisions of ORS 183.310 to 183.550, the director may make reasonable rules necessary for or as an aid to the effectuation of the Insurance Code. No such rule shall extend, modify or conflict with the Insurance Code or the reasonable implications thereof. [1967 c.359 §54]

731.248 Orders. (1) Orders of the director shall be effective only when in writing and signed by the director or by the authority of the director. Orders shall be filed in the Department of Consumer and Business Services.

(2) Every such order shall state:

(a) Its effective date;

(b) Its intent or purpose;

(c) The grounds on which based; and

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

(3) Except as may be provided in the Insurance Code respecting particular procedures, an order or notice may be given by delivery to the person to be ordered or notified or by mailing it by certified or registered mail, return receipt requested, postage prepaid, addressed to the person at the residence or principal place of business of the person as last of record in the department. Notice so mailed shall be deemed to have been given when deposited in a letter depository of a United States post office. [1967 c.359 §55]

731.252 Cease and desist orders. (1) Whenever the director has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the director may issue an order, directed to such person, to discontinue or desist from such violation or threatened violation. The copy of the order forwarded to the person involved shall set

forth a statement of the specific charges and the fact that the person may request a hearing within 20 days of the date of mailing. Where a hearing is requested, the director shall set a date for the hearing to be held within 30 days after receipt of the request, and shall give the person involved written notice of the hearing date at least seven days prior thereto. The person requesting the hearing must establish to the satisfaction of the director that such order should not be complied with. The order shall become final 20 days after the date of mailing unless within such 20-day period the person to whom it is directed files with the director a written request for a hearing. To the extent applicable and not inconsistent with the foregoing, the provisions of ORS 183.310 to 183.550 shall govern the hearing procedure and any judicial review thereof. Where the hearing has been requested, the director's order shall become final at such time as the right to further hearing or review has expired or been exhausted.

(2) No order of the director under this section or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

(3) The powers vested in the director pursuant to this section are supplementary and not in lieu of any other powers to suspend or revoke certificates of authority or licenses or to enforce any penalties, fines or forfeitures, authorized by law with respect to any violation for which an order of discontinuance has been issued. [Formerly 736.835]

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

(2) If the director has reason to believe that any person has violated any provision of the Insurance Code or other law applicable to insurance operations, for which criminal prosecution is provided and in the opinion of the director would be in order, the director shall give the information relative thereto to the Attorney General or district attorney having jurisdiction of any such violation. The Attorney General or district attorney promptly shall institute such action or proceedings against such person as the information requires or justifies. [1967 c.359 §57]

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

(2) As used in this section:

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

(b) "Foreign decree" means any decree or order in equity of a court located in a reciprocal state, including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

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

(3) The Director of the Department of Consumer and Business Services of this state shall determine which states qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

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

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

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

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

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

(b) If the defendant shows the circuit court any ground upon which enforcement of a decree of any circuit court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state. [1969 c.336 §5]

731.260 False or misleading filings. No person shall file or cause to be filed with the director any article, certificate, report, statement, application or any other information required or permitted to be so filed under the Insurance Code and known to such person to be false or misleading in any material respect. [Formerly 736.650]

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

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

(3) Notwithstanding subsections (1) and (2) of this section, the director shall establish by rule a method for publishing an annual statistical report containing the insurer's name and the number, percentage, type and disposition of complaints received by the department against each insurer transacting insurance within this state. [1967 c.359 §59; 1971 c.231 §11; 1987 c.481 §1; 1987 c.774 §149]

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

(2) Upon request of any person and payment of the applicable fee, the director shall furnish a certified copy of any record in the office of the director which is then subject to public inspection.

(3) Copies of original records or documents in the office of the director certified by the director shall have the same force and effect and be received in evidence in all courts equally and in like manner as if they were originals. [1967 c.359 §60]

731.272 Director's annual reports. The director shall prepare annually, as soon after March 1 as is consistent with full and accurate preparation, a report of the official transactions of the director under the Insurance Code containing:

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

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

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

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

(5) A detailed statement of the moneys, fees and taxes received by the department under the Insurance Code and from what source.

(6) Such other pertinent information and matters as the director considers to be in the public interest. [Formerly 736.520; 1987 c.373 §79]

731.276 Recommendations for changes in Insurance Code. The director shall continuously review the Insurance Code and may, from time to time, make recommendations for changes therein. [1967 c.359 §62]

731.280 Publications authorized. The director shall publish:

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

(2) The director's annual report;

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

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

(5) Such other material as the director may compile and consider relevant and suitable for the effective administration of the Insurance Code. [1967 c.359 §63]

731.282 Authority to sell publications. The director may sell, at a price reasonably calculated to cover the costs of preparation, any of the copies, compilations or materials described in ORS 731.280. [1971 c.231 §2; 1982 s.s.1 c.17 §3]

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

(1) Authorized insurers and licensed rating organizations;

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

(3) Insurance departments of other states; and

(4) Public agencies. However, the director may distribute such quantities to public agencies as the director determines. [1967 c.359 §64]

731.288 Recording complaints; director to consider complaints before issuing licenses. Each written and signed complaint received by the department shall be recorded by the department, including the subsequent disposition thereof, and maintained for a period of not less than seven years. The records of such complaints shall be indexed whenever applicable both by the name of the insurer and by the name of the agent involved. The director shall consider such complaints before issuing or continuing any certificate of authority or license of an insurer or agent named in such complaints. [Formerly 736.580]

731.292 Disposition of fees, charges, taxes, penalties and other moneys. (1) Except as provided in subsections (2) and (3) of this section, all fees, charges and other moneys received by the department or the director under the Insurance Code shall be deposited in the fund created by ORS 705.145 and are continuously appropriated to the department for the payment of the expenses of the department in carrying out the Insurance Code.

(2) All taxes, fines and penalties paid pursuant to the Insurance Code shall be paid to the director and after deductions of refunds shall be paid by the director to the State Treasurer, at the end of every calendar month or more often in the director's discretion, for deposit in the General Fund to become available for general governmental expenses.

(3) All premium taxes received by the director pursuant to ORS 731.820 shall be paid by the director to the State Treasurer for deposit in the State Fire Marshal Fund. [Formerly 736.525; 1981 c.652 §3; 1982 s.s.1 c.17 §1; 1987 c.373 §80; 1991 c.67 §193]

731.296 Director's inquiries. The director may address any proper inquiries to any insurer, licensee or its officers in relation to its activities or condition or any other matter connected with its transactions. Any such person so addressed shall promptly and truthfully reply to such inquiries using the form of communication requested by the director. The reply shall be verified by an officer of such person, if the director so requires. A reply is subject to the provisions of ORS 731.260. [Formerly 736.542; 1975 c.298 §1]

731.300 Examination of insurers; when required. (1) The director shall examine every authorized insurer, including an audit of the financial affairs of such insurer, as often as the director determines an examination to be necessary but at least once each five years. An examination shall be conducted for the purpose of determining the financial condition of the insurer, its ability to fulfill its obligations and its manner of fulfillment, the nature of its operations and its compliance with the Insurance Code. The director may also make such an examination of any surplus line agent or any person holding the capital stock of an authorized insurer or surplus lines agent for the purpose of controlling the management thereof as a voting trustee or otherwise, or both.

(2) Instead of conducting an examination of an authorized foreign or alien insurer, the director may accept an examination report on the insurer that is prepared by the insurance department for the state of domicile or state of entry of the insurer if:

(a) At the time of the examination the insurance department of the state was accredited under the Financial Regulation Standards and Accreditation Program or successor program of the National Association of Insurance Commissioners; or

(b) The examination was performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by such an accredited insurance department and

who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(3) Examination of an alien insurer shall be limited to its insurance transactions, assets, trust deposits and affairs in the United States except as otherwise required by the director. [Formerly 736.545; 1979 c.870 §2; 1981 c.874 §18; 1990 c.2 §46; 1993 c.447 §1]

731.302 Appointment of examiners; retaining of appraisers, actuaries and others; evidentiary status of facts and conclusions. (1) When the director determines that an examination should be conducted, the director shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, each examiner shall consider the guidelines and procedures in the examiner handbook, or its successor publication, adopted by the National Association of Insurance Commissioners. The director may prescribe the examiner handbook or its successor publication and employ other guidelines and procedures that the director determines to be appropriate.

(2) When making an examination, the director may retain appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as needed. The cost of retaining such professionals and specialists shall be borne by the person that is the subject of the examination.

(3) At any time during the course of an examination, the director may take other action pursuant to the Insurance Code.

(4) Facts determined and conclusions made pursuant to an examination shall be presumptive evidence of the relevant facts and conclusions in any judicial or administrative action. [1993 c.447 §2]

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

(1) Transacting insurance in this state;

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

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

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

(2) Every person being examined or investigated shall produce all books, records, accounts, papers, documents and computer and other recordings in its possession or control relating to the matter under examination or investigation, including, in the case of an examination, the property, assets, business and affairs of the person.

(3) With regard to an examination, the officers, directors and agents of the person being examined shall provide timely, convenient and free access at all reasonable hours at the offices of the person being examined to all books, records, accounts, papers, documents and computer and other recordings. The officers, directors, employees and agents of the person must facilitate the examination. [Formerly 736.555; 1993 c.447 §3]

731.312 Report of examination; review by person examined; hearing; public inspection of report. (1) Not later than the 60th day after completion of an examination, the examiner in charge of the examination shall submit to the director a full and true report of the examination, verified by the oath of the examiner. The report shall comprise only facts appearing upon the books, papers, records, accounts, documents or computer and other recordings of the person, its agents or other persons being examined or facts ascertained from testimony of individuals under oath concerning the affairs of such person, together with such conclusions and recommendations as reasonably may be warranted from such facts.

(2) The director shall make a copy of the report submitted under subsection (1) of this section available to the person who is the subject of the examination and shall give the person an opportunity to review and comment on the report. The director may request additional information or meet with the person for the purpose of resolving questions or obtaining additional information, and may direct the examiner to consider the additional information for inclusion in the report.

(3) Before the director files the examination report as a final examination report or makes the report or any matters relating thereto public, the person being examined shall have an opportunity for a hearing. A copy of the report must be mailed by certified mail to the person being examined. The person may request a hearing not later than the 30th day after the date on which the re-

port was mailed. This subsection does not limit the authority of the director to disclose a preliminary or final examination report as otherwise provided in this section.

(4) The director shall consider comments presented at a hearing requested under subsection (3) of this section and may direct the examiner to consider the comments or direct that the comments be included in documentation relating to the report, although not as part of the report itself. The director may file the report as a final examination report at any time after consideration of the comments or at any time after the period for requesting a hearing has passed if a hearing is not requested.

(5) A report filed as a final examination report is subject to public inspection. The director, after filing any report, if the director considers it for the interest of the public to do so, may publish any report or the result of any examination as contained therein in one or more newspapers of the state without expense to the person examined.

(6) Prior to the filing of a final examination report, except as provided in subsections (7) and (8) of this section, all work papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the director or any other person in the course of the examination are exempt from public inspection. After a final examination report is released, all such work papers, recorded information, documents and copies thereof are subject to public inspection unless otherwise exempt from disclosure under ORS 192.410 to 192.505.

(7) In the furtherance of any judicial or administrative action, the director may use and disclose any facts determined and conclusions made pursuant to an examination, including but not limited to disclosure of any final examination report or any preliminary examination report not otherwise disclosed to the public, any work papers, recorded information, documents and copies thereof described in subsection (6) of this section and any other information discovered or developed during the course of the examination.

(8) The director may disclose the content of an examination report that has not yet otherwise been disclosed or may disclose any of the materials described in subsection (6) of this section to any entity described in this subsection if the entity, prior to receiving the report or materials, agrees in writing to hold the report or materials confidential and in a manner consistent with this section. This subsection does not require the director to disclose any information or records revealing the existence or content of any investigation by or activity of a criminal justice agency. The entities to whom a report or other materials may be disclosed are as follows:

(a) The insurance department of any other state or country.

(b) Law enforcement officials of this or any other state or agency of the Federal Government.

(c) The National Association of Insurance Commissioners. [Formerly 736.560; 1993 c.447 §4]

731.314 Immunity for director, examiner and others. (1) No cause of action may arise and no liability may be imposed against the director, an authorized representative of the director or any examiner appointed by the director for any statements made or conduct performed in good faith pursuant to an examination or investigation.

(2) No cause of action may arise and no liability may be imposed against any person for communicating or delivering information or data to the director or an authorized representative of the director or examiner pursuant to an examination or investigation if the communication or delivery was performed in good faith and without fraudulent intent or an intent to deceive.

(3) This section does not abrogate or modify in any way any common law or statutory privilege or immunity otherwise enjoyed by any person to which subsection (1) or (2) of this section applies.

(4) A person to whom subsection (1) or (2) of this section applies is entitled to an award of attorney fees and costs if the person is the prevailing party in a cause of action arising out of activities in carrying out an examination or investigation and if the action that was brought did not have a reasonable basis in law or fact at the time that it was initiated. [1993 c.447 §5]

731.316 Expenses of examination of insurer. Any person examined under ORS 731.300 shall pay to the director the just and legitimate costs of the examination as determined by the director, including actual necessary transportation and traveling expenses. [Formerly 736.565; 1969 c.336 §6]

731.324 Service of process on Secretary of State; notice to unauthorized insurer. (1) Any act set forth in ORS 731.146 by an unauthorized insurer is equivalent to and shall constitute an irrevocable appointment by such insurer, binding upon the insurer, the executor of the insurer or administrator, or successor in interest if a corporation, of the Secretary of State or the successor in office, to be the true and lawful attorney of such insurer. All lawful process in any action in any court by the director or by the state and any notice, order, pleading

or process in any proceeding before the director which arises out of transacting insurance in this state by such insurer may be served upon the Secretary of State or the successor in office. Transacting insurance in this state by an unauthorized insurer shall be signification of its agreement that lawful process in a court action and any notice, order, pleading, or process in an administrative proceeding before the director so served shall be of the same legal force and validity as personal service of process in this state upon such insurer.

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

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

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

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

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

(5) Nothing in this section shall limit or affect the right to serve any process, notice, order, or demand upon any person or insurer in any other manner now or hereafter permitted by law. [1969 c.336 §3]

731.328 Deposits by unauthorized insurers in actions or proceedings. (1) Before an unauthorized insurer files or causes to be filed any pleading in any court action or any notice, order, pleading, or process in an administrative proceeding before the director instituted against such person or insurer, by services made as provided in ORS 731.324, such insurer shall deposit with the clerk of the court in which such action is pending, or with the director in administrative proceedings before the director, cash or securities. The insurer may also file with such clerk or director a bond with good and sufficient sureties, to be approved by the clerk or director, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in an amount to be fixed by the court or director sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.

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

(3) Nothing in subsection (1) of this section shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in ORS 731.324. [1969 c.336 §4; 1991 c.331 §126]

AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

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

731.356 Unauthorized insurance transaction enforcement. When the director believes, from evidence satisfactory to the director, that any insurer is violating or about to violate the provisions of ORS 731.354, the director may cause a complaint to be filed in the Circuit Court of Marion County to enjoin and restrain such insurer from continuing such violation. The court

shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper. [1969 c.336 §2]

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

731.362 Requirements of foreign or alien insurers generally. (1) A foreign or alien insurer may be authorized to transact insurance in this state when it has complied with the following requirements:

(a) It shall file with the director a certified copy of its charter, articles of incorporation or deed of settlement and a statement of its financial condition and business in all states in such form and detail as the director may require, signed and sworn to by at least two of its executive officers or the United States manager.

(b) It shall satisfy the director that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact.

(c) It shall satisfy the director that it is possessed of and will maintain at all times its required capitalization.

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

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

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

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

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

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

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

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

(f) That applications have been made for insurance in the amounts required by subsection (2) of this section, and that such applications will be concurrently effective when the reciprocal insurer is authorized to commence business by the director.

(g) If a foreign or alien reciprocal insurer, that there has been deposited and shall be maintained at all times with the State Treasurer or other proper official of the state in which the insurer is domiciled $50,000 in cash or securities, as a general deposit for the benefit of subscribers wherever located. Where the laws of the home state do not provide for the acceptance of such a deposit, the deposit may be made with a bank or trust company in escrow subject to the control of the insurance commissioner of the home state, and such deposit shall be released only upon the written order of such insurance commissioner. A certification from the insurance director or other proper state official of the state in which the reciprocal insurer is domiciled shall be attached to the application for the certificate of authority.

(2) The reciprocal insurer must have bona fide applications for insurance aggregating not less than $3 million upon at least 200 risks, except in the case of wet marine hull insurance written by a domestic reciprocal insurer for persons whose earned income, in whole or in part, is derived from taking and selling food resources living in an ocean, bay or river, the applications must cover at least 25 hulls and the insurance must aggregate at least $125,000.

(3) The applicant shall furnish any other relevant information required by the director, except no reciprocal insurer shall be required to furnish or file the names or addresses of its policyholders or subscribers. [Formerly 749.040; 1971 c.231 §42; 1977 c.651 §1; 1993 c.709 §4]

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

(2) Concurrently with the filing of the declaration provided for by the terms of ORS 731.366, the attorney shall file with the director an instrument in writing executed for the subscribers conditioned that upon the issuance of certificate of authority, action may be brought in the county in which the property insured thereunder is situated or where the injured person resides, and service of process may be had as provided in ORS 731.434 in all actions in this state arising out

of policies issued by the reciprocal insurer, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Actions may be brought against or defended in the name of the reciprocal insurer adopted by the subscribers. [Formerly 749.050]

731.371 Powers of reciprocal insurer regarding real estate. Except where inconsistent with other provisions of the Insurance Code, a reciprocal insurer in its own name, as in the case of an individual, may purchase, receive, own, hold, lease, mortgage, pledge or encumber by deed of trust or otherwise, manage and sell real estate for the purposes and objects of the insurer including, but not limited to, investment for the production of income or for its accommodation in the convenient transaction of its business. Any contract, including but not limited to a deed, lease, mortgage, deed of trust, purchase or sale agreement or any other contract to be executed in the name of the insurer, may be executed by the attorney in fact designated by the insurer's subscribers. [1991 c.401 §35]

Note: 731.371 was added to the Insurance Code by the Legislative Assembly but was not added to or made a part of ORS chapter 731 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

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

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

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

731.380 Authority of foreign insurers to take, acquire, hold and enforce notes secured by mortgages; statement; fees. (1) Subject to subsection (2) of this section, any foreign or alien insurer, without being authorized to transact business in this state, may take, acquire, hold and enforce notes secured by real estate mortgages or trust deeds and make commitments to purchase such notes. A foreign or alien insurer may foreclose the mortgages and trust deeds in the courts of this state, acquire the mortgaged property, hold, own and operate the property for a period not exceeding five years and dispose of the property. The activities authorized under this subsection by such a foreign or alien insurer shall not constitute transacting business in this state for the purposes of ORS chapter 60.

(2) Before a foreign or alien insurer engages in any of the activities described in subsection (1) of this section, the foreign or alien insurer shall first file with the department a statement signed by its president, secretary, treasurer or general manager that it constitutes the director its attorney for service of process, and shall pay an initial filing fee of $200 and an annual license fee of $200. The statement shall include the address of the principal place of business of the foreign or alien insurer.

(3) The director, upon receiving service of process as authorized by subsection (2) of this section, immediately shall forward by registered mail or by certified mail with return receipt all documents served upon the director to the principal place of business of the foreign or alien insurer.

(4) A foreign or alien insurer that indirectly engages in the activities described in subsection (1) of this section because of its beneficial interest in a pool of notes secured by real estate mortgages or trust deeds need not comply with subsection (2) of this section. [1987 c.94 §118; 1991 c.249 §70]

731.381 Exemption from taxes for foreign insurers engaging in activities authorized by ORS 731.380. Engaging in the activities authorized by ORS 731.380 by a foreign or alien insurer shall not subject the foreign or alien insurer to any tax, license fee or charge, except as provided in ORS 731.380, for the privilege of doing business within the State of Oregon or to any tax measured by net or gross income. However, if the foreign or alien insurer acquires any property given as security for such a mortgage or trust deed, all income accruing to the foreign or alien insurer solely from the ownership, sale or other disposal of such property is subject to taxation in the same manner and on the same basis as income of corporations doing business in this state. [1987 c.94 §119]

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

731.385 Standards for determining whether continued operation of insurer is hazardous; order; hearing. (1) The director shall establish standards by rule for

determining whether the continued operation of an authorized insurer may be hazardous to the policyholders or to the insurance-buying public generally, for the purpose of carrying out ORS chapter 734 and other provisions of the Insurance Code that authorize the director to take action against such an insurer. If the director makes such a determination, the director may order the insurer to take one or more of the following actions:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance.

(b) Reduce, suspend or limit the volume of business being accepted or renewed.

(c) Reduce general insurance and commission expenses by methods specified by the director.

(d) Increase the capital and surplus of the insurer.

(e) Suspend or limit the declaration and payment of dividends by the insurer to its stockholders or to its policyholders.

(f) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the director determines such action to be necessary.

(2) The director may exercise authority under subsection (1) of this section in addition to or instead of any other authority that the director may exercise under the Insurance Code.

(3) The director may issue an order under this section with or without a hearing. An insurer subject to an order issued without a hearing may file a written request for a hearing to review the order. Such a request shall not stay the effect of the order. The hearing shall be held within 30 days after the filing of the request. The director shall complete the review within 30 days after the record for the hearing is closed, and shall discontinue the action taken under subsection (1) of this section if the director determines that none of the conditions giving rise to the action exists. [1993 c.447 §14]

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

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

(2) That the director has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business transactions, with any person whose business operations are or have been marked to the detriment of policyholders, stockholders, investors, creditors or the public, by manipulation or dissipation of assets, manipulation of accounts or reinsurance, or by similar injurious actions. [1967 c.359 §81; 1993 c.447 §15]

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

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

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

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

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

731.396 Certificate of authority and good financial condition required to issue variable life insurance or variable annuity policies. No domestic, foreign or alien insurer shall deliver or issue for delivery in this state variable life insurance or variable annuity policies unless the insurer is authorized to transact life insurance in this state and the director is satisfied that its condition and method of operation in connection with the issuance of such policies will not render its operation hazardous to its policyholders or the public in this state. In making the determination the director shall consider, among other things:

(1) The history and financial condition of the insurer;

(2) The character, responsibility and fitness of the officers and directors of the insurer; and

(3) The laws and rules under which the insurer is authorized by its domicile to issue such policies. [1973 c.435 §4]

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

731.402 Issuance or refusal of certificate of authority. (1) The director shall issue to an insurer a certificate of authority if upon completion of the application for a certificate of authority by the insurer the director finds, from the application and such other investigation and information the director

may acquire, that the insurer is fully qualified and entitled thereto under the Insurance Code.

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

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

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

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

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

(a) Payment prior to April 1 of the continuation fee established by the director;

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

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

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

(3) The director, in the discretion of the director, upon the insurer's request made within three months after expiration, may reinstate a certificate of authority which the insurer has permitted to expire, after the insurer has cured all its failures which resulted in the expiration and has paid the fee for reinstatement established by the director. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state. [1967 c.359 §87; 1989 c.413 §3]

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

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

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

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

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

731.418 Grounds for suspension or revocation of certificate of authority. (1) The director may refuse to continue or may suspend or revoke an insurer's certificate of authority if the director finds after a hearing that:

(a) The insurer has violated or failed to comply with any lawful order of the director, or any provision of the Insurance Code other than those for which suspension or revocation is mandatory.

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

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

(d) The insurer is affiliated with and under the same general management, interlocking directorate or ownership as another

insurer that transacts direct insurance in this state without having a certificate of authority therefor, except as permitted under the Insurance Code.

(e) The insurer or an affiliate or holding company of the insurer refuses to be examined or any director, officer, employee or representative of the insurer, affiliate or holding company refuses to submit to examination relative to the affairs of the insurer, or to produce its accounts, records, and files for examination when required by the director or an examiner of the department, or refuse to perform any legal obligation relative to the examination.

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

(g) The insurer fails to comply with ORS 742.534 (1).

(h) The insurer has failed to comply with ORS 476.270 (1), (2) or (3) or 654.097 (1).

(2) Without advance notice or a hearing thereon, the director may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state. [1967 c.359 §89; 1971 c.321 §17; 1971 c.523 §10; 1975 c.585 §4; 1981 c.701 §3; 1993 c.447 §7]

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

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

(3) In the discretion of the director, the director may publish notice of such suspension, revocation or refusal in one or more newspapers of general circulation in this state. [1967 c.359 §90]

731.426 Duration of suspension; insurer's obligations during suspension period; reinstatement. (1) In an order suspending the certificate of authority of an insurer, the director may provide that the suspension expires at the end of a specified period or when the director determines that the cause or causes of the suspension have terminated. During the suspension the director may rescind or shorten the suspension by further order.

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

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

(4) When the director determines that a suspension should expire because the cause or causes have terminated, the director shall reinstate the certificate of authority of the insurer unless the certificate of authority has expired within the suspension period.

(5) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise reinstate. The director promptly shall notify the insurer and its agents in this state of record in the department, of such reinstatement. If pursuant to ORS 731.422 the director has published notice of suspension, in like manner the director shall publish notice of the reinstatement. [1967 c.359 §91; 1989 c.700 §1]

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

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

(A) Any other insurer so formed or authorized;

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

(C) Any name on file with the Secretary of State pursuant to ORS chapter 60, 65 or 648; or

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

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

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

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

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

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

(4) When an insurer is merged as provided in the Insurance Code, the surviving insurer may retain the use of the name for a period of five years after the effective date of merger. If such name is retained, use of the same or deceptively similar name by other insurers shall be prohibited as specified under this section during the five-year period. [1967 c.359 §92; 1987 c.414 §161a; 1987 c.846 §2; 1993 c.447 §104]

731.434 Registered office and agent. (1) The provisions, procedures and requirements of ORS chapter 60 relating to a registered office, registered agent and to service of process, notice and demand shall govern all insurers transacting insurance in this state, whether authorized or unauthorized, except that the Director of the Department of Consumer and Business Services shall be substituted for the Corporation Commissioner as the person with whom all filings shall be made and upon whom, in the circumstances specified by statute, such service may be effected.

(2) This section shall not apply to insurers for whom a certificate of authority is not required under ORS 731.374. [1967 c.359 §93; 1987 c.846 §3]

731.438 Title plant requirement for title insurers; posting of indexes; plant ownership and maintenance. (1) A title insurer, in order to receive and maintain a certificate of authority, shall own and maintain at all times a title plant covering a period of at least the immediately preceding 20 years and consisting of a general index, adequate maps and currently posted tract or geographic indexes for all the lands in the county in which title insurance policies or other title services are to be issued or provided. Either directly or through its agent, a title insurer also shall own and maintain for each additional county in which it shall be authorized to transact a title insurance business a comparable title plant or obtain from a person having a comparable title plant for such additional county or counties title evidence showing the status of the title.

(2) The means by which tract or geographic indexes may be currently posted for purposes of subsection (1) of this section include but are not limited to maintenance of the information on ledger sheets, separate cards or sheets of film, whether bound in books or contained in envelopes or storage files, or maintenance of the information on punch cards, computer tape, disc or similar machine compatible form. All title services by a title insurer must be provided in this state. The information upon which the title services are based must be maintained and must be capable of reproduction in this state at all times.

(3) Every title insurance transaction by a title insurer or agent involving the status of title of an Oregon title risk shall be based on one or more title plants which:

(a) Cover the location of the risk;

(b) Meet the requirements of this section; and

(c) Are owned and maintained by one or more title insurers or agents as provided in subsections (4), (5) and (6) of this section.

(4) For any county with a population of 500,000 or more, or any county with a population of 200,000 or more that is contiguous to a county with a population of 500,000 or more, ownership and maintenance of a title plant shall be as provided in this subsection:

(a) Until July 1, 2001, the title plant ownership and maintenance referred to in subsection (1) of this section shall be ownership and maintenance exclusively by the particular title insurer with respect to the portion of the required 20-year period which precedes January 1, 1980, and may be on either an exclusive basis or a joint ownership and maintenance basis as provided in paragraph (c) of this subsection, for the rest of the required 20-year period.

(b) On and after July 1, 2001, the title plant referred to in subsection (1) of this section may be owned and maintained either on an exclusive basis or on a joint basis for at least the required 20-year portion as provided in paragraph (c) of this subsection.

(c) A title plant is owned and maintained on a joint basis under this subsection if two or more persons own and maintain a portion of the title plant as joint venturers, partners, shareholders or participants in another form of joint, several or common property ownership recognized under the laws of this state. If ownership of a title plant is held by fewer than four title insurers or agents, each share of ownership shall be at least 25 percent. If ownership of a title plant is held by four or more insurers or agents, all shares shall be equal.

(5) A title insurer authorized to transact title insurance in this state and every agent of such an authorized title insurer shall own and maintain a title plant.

(6) In any county not described in subsection (4) of this section, a title insurer or its agents transacting title insurance business shall solely own and maintain a title plant for that county in conformance with subsections (1) and (2) of this section. [Formerly 748.084; 1983 c.322 §1]

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

(2) Insurers transacting a credit life insurance business, as defined in ORS 743.371, before September 2, 1963, may continue such business if such insurers:

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

(b) Maintain admitted assets in excess of actual liabilities by an amount equal to one percent of all insurance such insurer has in force or $5,000, whichever is the greater. Such assets shall consist of cash, money on deposit in banks or investments authorized by ORS 733.510 to 733.780 or the laws of the state in which the insurer is domiciled. [Formerly 739.105]

731.446 Policyholder deposits. An insurer may accept, from a holder of a life insurance policy, deposits in addition to current premium payments to provide a fund for payment of future premiums or to make possible the future acquisition of additional insurance, annuities or other benefits, whether the interest to be paid on such deposits be fixed or variable. Such deposits, or any portion thereof, not used for the purposes described in this section shall be refunded to the policyholder or, upon the death of the policyholder, to designated beneficiaries. [1967 c.359 §96]

731.450 Unrelated business prohibited; title insurer as escrow agent. No insurer shall engage in any business except the making of insurance or a kind of business related to the insurance business. However, a foreign or alien insurer may engage, outside this state, in any business permitted by its articles of incorporation and the laws of the state of its domicile; and a title insurer also may engage in business as an escrow agent; provided, however, that a title insurer engaging in business as an escrow agent shall be subject to the provisions of ORS 696.505 to 696.590 in respect to its escrow activities. [1967 c.359 §97; 1971 c.398 §5; 1977 c.351 §13]

731.454 Domestic insurers not to transact business in jurisdiction where not authorized. No domestic insurer, or any of the representatives thereof, shall transact insurance in any jurisdiction in which such insurer is not authorized in accordance with the laws of such jurisdiction. [Formerly 736.645]

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

(2) Any corporation now or hereafter organized under the laws of the state, in addition to the rights, powers and franchises specified in its articles of incorporation, may exchange insurance contracts of the kind and character described in subsection (1) of this section. The right to exchange such contracts is declared to be incidental to the purpose for which such corporations are organized and as much granted as the rights and powers expressly conferred. [Formerly 749.010]

731.462 Nonassessable policies of reciprocal insurer. A reciprocal insurer having a surplus of not less than $500,000 may issue nonassessable policies. [1967 c.359 §100]

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

(2) The power of attorney must set forth:

(a) The powers of the attorney;

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

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

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

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

(3) The power of attorney may:

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

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

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

(d) Contain other lawful provisions.

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

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

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

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

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

731.475 Records storage required of workers' compensation insurers; examination and audit of records. (1) Every insurer authorized to issue workers' compensation coverage to subject employers as required by ORS chapter 656 shall maintain a place of business in this state where the insurer shall:

(a) Process, and keep complete records of, claims for compensation made to the insurer under ORS chapter 656.

(b) Keep complete records of all guaranty contracts issued as required by ORS chapter 656.

(2) The records shall be retained in, and may be removed from, this state or disposed of, in accordance with the rules of the director. The records shall be available to the department for examination and audit at all reasonable times upon notice by the department to the insurer.

(3) In lieu of establishing a place of business in this state for the purpose required by this section, an insurer may keep such records in this state at places of business operated by service companies, if:

(a) Each service company is incorporated in or authorized to do business in this state;

(b) The agreement entered into between the insurer and the service company grants each service company a power of attorney to act for the insurer in workers' compensation coverage and claims proceedings under ORS chapter 656; and

(c) The agreement entered into between the insurer and each service company is approved by the director.

(4) Notwithstanding subsection (3) of this section, an insurer may not:

(a) Enter into a service agreement contract with one of its insureds unless the in-

sured has service contracts with other insurers; or

(b) Have more than eight locations at any one time where claims are processed or records are maintained. [1975 c.585 §2; 1981 c.874 §8; 1987 c.373 §80a; 1989 c.630 §1; 1991 c.67 §194]

731.480 Guaranty contracts issued by workers' compensation insurers. An insurer shall not issue guaranty contracts pursuant to ORS chapter 656 unless it furnishes occupational safety and health loss control consultative services to its insured employers consistent with the requirements of ORS 654.097. [1975 c.585 §3; 1981 c.874 §9; 1987 c.373 §80b; 1987 c.884 §61]

731.482 Withdrawal from, failure to renew or cancellation of line by commercial liability insurer. (1) Except as provided in subsection (5) of this section, an insurance company selling commercial liability insurance and authorized to do business in Oregon may not withdraw from, fail to renew or cancel any line of insurance or class of business without supplying appropriate written justification to the director.

(2) Justification for withdrawal, failure to renew or cancellation may include, but need not be limited to:

(a) Insufficient premium income;

(b) Loss experience or expectation of future loss in the particular line of insurance or class of business;

(c) Necessity for uncompetitive or uneconomic rate increases;

(d) Increased hazard in the risks assumed or material change in the line of insurance or class of business that could not have been reasonably contemplated by the insurance company at the time the company began selling the line of insurance or class of business in Oregon; or

(e) Change in the availability or costs of reinsurance.

(3) The director shall issue an order approving or disapproving the withdrawal from, failure to renew or cancellation of a line of insurance or class of business.

(4) An order issued under this section shall include a provision requiring the insurer to notify affected insureds at least 60 days before the effective date of any withdrawal, failure to renew or cancellation approved by the director.

(5) This section does not apply to a surplus lines insurer. [1987 c.774 §34]

731.484 Prohibition on certain sales related to group health and group life insurance. (1) No insurer or agent selling a policy of group life insurance or group health insurance subject to the exemption in ORS 731.146 (2)(b) is authorized to sell membership in a group for the purpose of qualifying an applicant who is an individual for the insurance.

(2) No insurer or agent selling membership in a group is authorized to offer a policy of group life insurance or group health insurance subject to the exemption in ORS 731.146 (2)(b) for the purpose of selling membership in the group. [1989 c.784 §2]

731.485 Conditions under which insurer may limit insured's choice of drug outlets and pharmacies. (1) An insurer may limit the drug outlets or pharmacists from which a person covered under a health insurance policy issued by the insurer is authorized by the insurer to obtain services only if the insurer first provides an opportunity to drug outlets and pharmacists to offer to participate as a provider of services as provided in this section. An insurer to which this section applies must provide notice of the opportunity by mailing a notice to the professional organization representing drug outlets and pharmacists in the service area of the insurer. The notice must be given at least 10 days before the deadline for receiving offers. The notice shall state the following:

(a) The date after which offers will not be considered.

(b) The services to be provided under the policy.

(c) That each offer must contain a statement that the drug outlet or pharmacist is in compliance with the requirements of the State Board of Pharmacy.

(d) The name and address of the person or office designated for receipt of the offers.

(2) The services to which this section applies are the services normally provided by drug outlets and pharmacists, including but not limited to prescription drugs.

(3) A professional organization that has received notice pursuant to subsection (1) of this section shall take reasonable steps to relay the notice to each drug outlet registered with the State Board of Pharmacy that is in the relevant service area.

(4) The following apply to an offer submitted by a drug outlet or pharmacist in response to a notice given under subsection (1) of this section:

(a) The offer must be in writing.

(b) The offer must be submitted to the person or office designated in the notice.

(c) The drug outlet or pharmacist must agree to provide services specified by the insurer.

(5) An insurer to which this section applies may select any drug outlet or pharmacist of its choice on whatever basis the insurer alone determines to be appropriate. Nothing in this section prohibits an insurer from contracting with one or more drug outlets or pharmacists exclusively for services to be provided to its insureds. [1993 c.391 §2]

731.486 Determination of application of exemption from definition of "transact insurance" for group health and life policies; rules. (1) The exemption in ORS 731.146 (2)(b) does not apply to an insurer that offers coverage under a group health insurance policy or a group life insurance policy in this state unless the Director of the Department of Consumer and Business Services determines that the exemption applies.

(2) The insurer shall submit evidence to the director that the exemption applies. When a master policy is delivered or issued for delivery outside this state to trustees of a fund for two or more employers, for one or more labor unions, for one or more employers and one or more labor unions or for an association, the insurer shall also submit evidence showing compliance with:

(a) ORS 743.526, for a policy of group health insurance; or

(b) ORS 743.354, for a policy of group life insurance.

(3) The director shall review the evidence submitted and may request additional evidence as needed.

(4) An insurer shall submit to the director any changes in the evidence submitted under subsection (2) of this section.

(5) The director may order an insurer to cease offering a policy or coverage under a policy if the director determines that the exemption under ORS 731.146 (2)(b) is no longer satisfied.

(6) This section does not apply to any master policy issued to a multistate employer or labor union.

(7) The director may adopt rules to carry out this section. [1989 c.784 §3]

731.488 Annual audit of insurer; rules. (1) Each insurer shall have an annual audit conducted by an independent certified public accountant and shall file an audited financial report annually with the director. The annual audited financial report shall disclose:

(a) The financial position of the insurer as of the end of the most recent calendar year; and

(b) The results of the insurer's operations, cash flows and changes in capital and surplus for the year then ended.

(2) The director shall adopt rules with respect to the following matters as needed for carrying out the requirements of this section:

(a) Required contents and format of the audited financial report.

(b) Requirements for filing the report.

(c) Requirements applicable to qualifications and designation of certified public accountants for purposes of audits under this section. The requirements may include limitations on length of service for certified public accountants and may permit recognition of accountants comparably qualified under the laws of another country.

(d) Requirements applicable to evaluation of the accounting procedures of an insurer and its system of internal control by a certified public accountant.

(e) Standards governing the scope and preparation of the audit.

(f) Requirements and procedures relating to the reporting of the adverse financial condition of an insurer by a certified public accountant.

(g) Requirements and procedures relating to the reporting of significant deficiencies for internal controls of an insurer.

(h) Exemptions.

(i) Any other matter that the director determines to be needed for preparation of or inclusion in the financial report. [1991 c.401 §15]

REPORTS BY PROPERTY AND CASUALTY INSURERS AND LIQUOR LIABILITY INSURERS

731.490 Rules for reports by property and casualty insurers. The Director of the Department of Consumer and Business Services shall adopt rules requiring insurers who are authorized to write property and casualty insurance in the State of Oregon to record and report their Oregon state loss and expense experiences and other data, as required by ORS 731.493. Failure to provide requested data or records within a reasonable time shall be grounds for assessment of civil penalties under ORS 731.988. [1987 c.774 §52]

731.493 Contents of reports. (1) The report required by ORS 731.490 shall distinguish the lines of insurance or classes of business written by the insurer for policies pertaining to:

(a) Negligence for physicians and surgeons, hospitals, other health care professions and other health care facilities individually;

(b) Products liability;

(c) Attorneys' negligence;

(d) Architects' and engineers' negligence;

(e) Accountants' negligence;

(f) Truckers' liability;

(g) Day care center liability;

(h) Liquor liability; and

(i) Such other lines of insurance or classes of business as the director may determine by rule.

(2) The report shall include the following data by the line of insurance or class of business for the year ending on December 31:

(a) Direct premiums written;

(b) Direct premiums earned;

(c) Net investment income, including net realized capital gain and losses, using appropriate estimates where necessary;

(d) Incurred claims, calculated as provided in the following:

(A) Dollar amount of claims closed with payments; plus

(B) Reserves for reported claims at the end of the year reported on; minus

(C) Reserves for reported claims at the end of the previous year; plus

(D) Reserves for incurred but not reported claims at the end of the year reported on; minus

(E) Reserves for incurred but not reported claims at the end of the previous year; plus

(F) Dollar amount of loss adjustment expense; plus

(G) Reserves for loss adjustment expense at the end of the year reported on; minus

(H) Reserves for loss adjustment expense at the end of the previous year;

(e) Actual incurred expenses allocated separately to commissions, other acquisition costs, advertising, general office expenses, taxes, licenses and fees, and all other expenses;

(f) Net underwriting gain or loss;

(g) Net operating gain or loss, including net investment income; and

(h) Other information requested by the commissioner.

(3) The director may substitute National Association of Insurance Commissioners model reporting provisions for the reporting provisions of this section.

(4) The report required by ORS 731.490 shall be made by May 31 for the preceding year. [1987 c.774 §53]

731.496 Report by director. The Director of the Department of Consumer and Business Services shall analyze the data provided in accordance with ORS 731.493 and publish an annual report summarizing the data and conclusions drawn from the division's analysis of the data. The report required by this section shall be made by May 31 and shall summarize data reported in the preceding year. [1987 c.774 §54]

731.498 Definitions for ORS 731.498 and 731.500. As used in this section and ORS 731.500:

(1) "Claim" means:

(a) A written request to an insurer by or on behalf of an injured person for payment for personal injury, death or property damage alleged to have been caused by a person allegedly served alcohol while visibly intoxicated by a licensee or permittee of the Oregon Liquor Control Commission insured under a liquor liability policy; or

(b) A written notification to an insurer by an insured that a person has requested payment from the insured for personal injury, death or property damage alleged to have been caused by a person served while visibly intoxicated by a licensee or permittee insured under the insured's liquor liability policy.

(2) "Liquor liability policy" means:

(a) Any policy of insurance insuring only the insured's legal obligation arising from liquor liability exposure of the insured;

(b) Any other policy of liability insurance in which the premium computation includes a specific premium charge for liquor liability exposures of the insured; and

(c) Any other insurance policy designated by the Director of the Department of Consumer and Business Services as providing liquor liability insurance. [1987 c.774 §58]

Note: 731.498 and 731.500 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 731 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

731.500 Reports by liquor liability insurers. (1) On or before the first day of May of each year, every insurer authorized to transact business in this state and providing liquor liability insurance shall file with the Oregon Liquor Control Commission a report containing the information specified in this section. The report shall be made upon forms prescribed by the commission and shall contain the name of the insurance company and the name of all other companies associated with the company submitting the report, whether as a holding company, parent company, wholly owned subsidiary, division or through interlocking directorates.

(2) An insurer filing the report required under subsection (1) of this section shall

provide, for the period January 1 to December 31 of the year next preceding the filing of the report, as much of the information required by subsection (3) of this section on claims under a liquor liability policy as is available at the time of the report. If a claim has not been adjudicated, settled or disposed of at the time of the report, information on adjudication, settlement or disposition of the claim shall be included in the next report following the adjudication, settlement or disposition of the claim. Every insurer authorized to transact business in this state shall be subject to the provisions of this subsection.

(3) When a claim has been made against an insurer, the report of that insurer required under subsection (1) of this section shall contain as much of the following as is available at the time of the report:

(a) The insurer's claim number or file number;

(b) The name and address of the insured;

(c) Location of the premises where the service occurred;

(d) The date of occurrence which created the claim;

(e) A summary of the occurrence that created the claim;

(f) Name of party who served the alcohol or liquor;

(g) Date of civil action, if filed;

(h) Date and amount of judgment or settlement, if any, the number of parties involved in the distribution of such judgment or settlement and the amount received by each, and the amount of any economic, noneconomic and punitive damages awarded, if known, stated separately;

(i) Date and reason for final disposition, if any, if no judgment or settlement; and

(j) Such other information as the commission may require.

(4) The report required under subsection (1) of this section shall also contain in summary form the following:

(a) Total number of claims;

(b) Total claims closed without payment;

(c) Total claims closed with payment and the total amount of such payments;

(d) Total number of civil actions filed;

(e) Total number of verdicts or judgments for defendants;

(f) Total number of verdicts or judgments for plaintiffs;

(g) Total amounts for plaintiffs; and

(h) Total reserves established at each calendar year end during the pendency of the claims separately by calendar year in which the claims were first reported to the insurer. However, claims first reported eight or more years previous to the end of the year being reported on may be aggregated.

(5) Except as provided in subsection (8) of this section, there shall be no liability on the part of, and no cause of action of any nature shall arise against, any insurer reporting under this section, its agents or employees, the commission or the commission employees for any action taken under this section.

(6) The commission shall make the reports required under this section available to the public in a manner that does not reveal the names of any person, server or seller involved.

(7) The reports required by this section shall not be admissible in evidence in any trial of a liquor liability civil action.

(8) Failure to file a report within the time required by this section subjects an insurer to a civil penalty as provided in ORS 731.988. [1987 c.774 §59]

Note: See note under 731.498.

LIMIT OF RISK; REINSURANCE

731.504 Limit of risk. (1) No insurer shall retain any risk on any one subject of insurance, whether a domestic risk or not, in an amount exceeding 10 percent of its surplus to policyholders, or in the case of title insurance, more than 50 percent of such surplus, except that an insurance company, including a reciprocal insurance company, comprised solely of 1,000 or more licensed Oregon physicians organized for the purpose of insuring for professional liability may consider aggregate insurance as surplus to policyholders for purposes of this section and shall not be allowed to retain the risk on any one subject of insurance in excess of two and one-half percent of such aggregate insurance.

(2) For purposes of this section, aggregate insurance is insurance which provides coverage in the event that the total fund of an insurance company, including a reciprocal insurance company, which is available to pay claims for occurrences of any one year, is exhausted. Aggregate insurance shall be in an amount equal to at least five times the annual premium collected by the insurance company.

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

(a) As to insurance against fire and hazards other than windstorm, earthquake and other catastrophic hazards, includes all properties insured by the same insurer that customarily are considered by underwriters

to be subject to loss or damage from the same fire or the same occurrence of any other hazard insured against;

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

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

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

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

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

(7) This section does not apply to wet marine and transportation insurance or to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy. [1967 c.359 §103; 1969 c.692 §3; 1975 c.796 §12]

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

(2) Except as provided in ORS 731.512 or 732.517 to 732.546, an insurer may reinsure risks with an insurer authorized to transact such insurance in this state, or in any other solvent insurer approved or accepted by the director for the purpose of such reinsurance. The director shall not approve or accept any such reinsurance by a ceding domestic insurer in an unauthorized insurer which the director finds for good cause would be contrary to the interests of the policyholders or stockholders of such domestic insurer.

(3) Credit shall not be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer according to the following conditions:

(a) The reinsurance must be payable on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

(b) The reinsurance must be payable only to the ceding insurer or to the statutory successor or receiver of the ceding insurer.

(4) Notwithstanding subsection (3)(b) of this section, when a reinsurance agreement contains a provision for issuance of an indorsement allowing payment to a payee other than a ceding insurer or the statutory successor or receiver, credit shall be allowed as an asset or as a deduction from liability to a ceding insurer with respect to policies for which such an indorsement has not been issued. With respect to policies for which such an indorsement has been issued, credit shall not be allowed for losses and loss adjustment expenses but shall be allowed for unearned premium reserves.

(5) An insurer must show compliance with the following requirements for policies with respect to which an indorsement described in subsection (4) of this section has been issued:

(a) The indorsement for payment to the other payee must be for the purpose of covering only property losses on real property or covering only losses owing to failure of performance, including fidelity of persons, guaranteed by a surety.

(b) The indorsement must be indicated on the declarations page of each policy or attached to each policy and must be made a part of the policy. If an indorsement is issued after issuance of the policy, the indorsement must be provided to the policyholder.

(c) The ceding insurer must have submitted its procedure for issuing and accounting for the indorsement form to the director and the procedure must have received the approval of the director.

(6) The director may disallow credit that would otherwise be allowed if the director determines that allowing credit would be contrary to accurate financial reporting or proper financial management, or may be hazardous to policyholders of the insurer or the insurance-buying public generally. The director may make such a determination only according to standards established by the director by rule. This subsection applies only to insurers who transact life insurance.

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

(8) This section does not apply to wet marine and transportation insurance. [1967 c.359 §104; 1993 c.447 §68]

731.509 Criteria for allowing credit for reinsurance. (1) The director shall not allow credit for reinsurance to a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded unless credit is allowed as provided under ORS 731.508 and unless the reinsurer meets the requirements of:

(a) Subsection (2) of this section;

(b) Subsection (3) of this section;

(c) Subsections (4) and (7) of this section;

(d) Subsections (5) and (7) of this section; or

(e) Subsection (6) of this section.

(2) Credit shall be allowed when the reinsurance is ceded to an authorized assuming insurer that accepts reinsurance of risks, and retains risk thereon within such limits, as the assuming insurer is otherwise authorized to insure in this state as provided in ORS 731.508.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state as provided in ORS 731.511. The director shall not allow credit to a domestic ceding insurer if the accreditation of the assuming insurer has been revoked by the director.

(4) Credit shall be allowed when the reinsurance is ceded to a foreign assuming insurer or a United States branch of an alien assuming insurer meeting all of the following requirements:

(a) The foreign assuming insurer must be domiciled in and licensed or authorized by a state employing standards regarding credit for reinsurance that equal or exceed the standards applicable under this section. The United States branch of an alien assuming insurer must be entered through a state employing such standards.

(b) The foreign assuming insurer or United States branch of an alien assuming insurer must maintain a combined capital and surplus in an amount not less than $20,000,000. The requirement of this paragraph does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(c) The foreign assuming insurer or United States branch of an alien assuming insurer must submit to the authority of the director to examine its books and records.

(5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund meeting the requirements of this subsection and additionally complies with other requirements of this subsection. The trust fund must be maintained in a qualified United States financial institution, as defined in ORS 731.510 (1), for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer must report annually to the director information substantially the same as that required to be reported on the annual statement form by ORS 731.574 by authorized insurers, in order to enable the director to determine the sufficiency of the trust fund. The following requirements apply to such a trust:

(a) In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming liabilities of the insurer attributable to business written in the United States. In addition, such an assuming insurer must maintain a trusteed surplus of not less than $20,000,000.

(b) In the case of a group of individual unincorporated underwriters, the trust must consist of a trusteed account representing the liabilities of the group attributable to business written in the United States. In addition, the group must maintain a trusteed surplus of which $100,000,000 must be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the director an annual certification of the solvency of each underwriter by the domiciliary regulator of the group and its independent certified public accountant.

(c) In the case of a group of incorporated insurers described in this paragraph, the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group. This paragraph applies to a group of incorporated insurers under common administration that complies with the annual reporting requirements contained in this subsection and that has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation. Such a group must have an aggregate policyholders' surplus of $10,000,000,000 and must submit to the authority of this state to examine its books and records and bear the expense of the examination. The group shall also maintain a joint trusteed surplus of which $100,000,000 must be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities. Each member of the group shall

make available to the director an annual certification of the member's solvency by the member's domiciliary regulator and its independent certified public accountant.

(d) The trust must be established in a form approved by the director. The trust instrument must provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The assets of the trust must be authorized as provided by ORS 733.510 and are subject to valuation requirements of ORS 733.160 and 733.165. The trust and the assuming insurer are subject to examination as determined by the director. The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(e) Not later than March 1 of each year, the trustees of each trust shall report to the director in writing, stating the balance of the trust and listing the trust's investments at the preceding calendar year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next December 31.

(6) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2), (3), (4) or (5) of this section, but only with respect to the insurance of risks located in jurisdictions in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) If the assuming insurer is not authorized to transact insurance in this state or accredited as a reinsurer in this state, the director shall not allow the credit permitted by subsections (4) and (5) of this section unless the assuming insurer agrees in the reinsurance agreement to the provisions stated in this subsection. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement. The assuming insurer must agree in the reinsurance agreement:

(a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

(b) To designate the director or a designated attorney as its true and lawful attorney upon whom any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company may be served. [1993 c.447 §65]

731.510 Criteria for allowing reduction from liability for reinsurance. (1) Subject to the provisions of ORS 731.508 relating to allowance of credit for reinsurance, the director shall allow a reduction from liability for the reinsurance ceded by a domestic insurer to a reinsurer not meeting the requirements of ORS 731.509 in an amount not exceeding the liabilities carried by the ceding insurer, as provided in this section. The reduction must not be greater than the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the reinsurer as security for the payment of obligations thereunder, if the security:

(a) Is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or

(b) In the case of a trust, is held in a qualified United States financial institution. For purposes of this paragraph, a qualified United States financial institution is an institution that:

(A) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(B) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(2) The security for purposes of subsection (1) of this section may be in any of the following forms:

(a) Cash.

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as allowed assets.

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States institution, as defined in this paragraph, not later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit issued or confirmed by an institution meeting applicable standards of issuer acceptability as of the

dates of their issuance or confirmation shall continue to be acceptable as security, notwithstanding the subsequent failure of the issuing or confirming institution to meet applicable standards of issuer acceptability, until their expiration, extension, renewal, modification or amendment, whichever occurs first. For purposes of this paragraph, a qualified United States institution is an institution that:

(A) Is organized or, in the case of a United States office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof;

(B) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(C) Has been determined by the director to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director. For the purpose of making a determination under this subparagraph, the director shall consider and may accept determinations made by the Securities Valuation Office of the National Association of Insurance Commissioners as to whether a financial institution meets its standards of financial conditions and standing.

(d) Any other form of security acceptable to the director. [1993 c.447 §66]

731.511 Criteria to be met by assuming insurer in order to be accredited as reinsurer. (1) For purposes of allowing credit to a ceding domestic insurer under ORS 731.509 when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state, an insurer may be accredited as a reinsurer in this state if the insurer:

(a) Files and maintains with the director evidence of its submission to the jurisdiction of this state;

(b) Submits to the authority of the director to examine its books and records;

(c) Is authorized or licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and authorized or licensed to transact insurance or reinsurance in at least one state;

(d) Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) Satisfies either of the following requirements:

(A) Maintains combined capital and surplus in an amount that is not less than $20,000,000. An application for accreditation by an insurer who maintains the amount of combined capital and surplus specified in this subparagraph is considered to be approved if the application is not disapproved on or before the 90th day after the application is complete and is filed with the director.

(B) Maintains combined capital and surplus in an amount less than $20,000,000. An insurer applying for accreditation who maintains the amount of combined capital and surplus specified in this subparagraph is not accredited until the application for accreditation is approved by the director.

(2) An insurer that is accredited as a reinsurer in this state may accept reinsurance only of those risks and retain the risk thereon within such limits as the accredited reinsurer is otherwise authorized to insure directly in a state in which the accredited reinsurer is authorized or licensed to transact insurance.

(3) The director may revoke the accreditation of an assuming insurer if the director determines that the assuming insurer has failed to continue to meet any of the requirements of subsection (1) of this section. [1993 c.447 §67]

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

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

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

(4) This section is in addition to the requirements of ORS 732.517 to 732.546. [1967 c.359 §105]

731.516 Mortgage insurance limitation. A mortgage insurer shall not have outstanding at any time mortgage insurance policies covering amounts of insured obligations and amounts of insured future lease payments aggregating more than 25 times the insurer's

"surplus to policyholders" as defined in ORS 731.504 (6). [1969 c.692 §5; 1977 c.600 §1]

CAPITAL AND SURPLUS

731.554 Capital and surplus requirements. (1) Except as provided in subsections (2) to (6) of this section and ORS 731.562 and 731.566, to qualify for authority to transact insurance in this state an insurer shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than $1 million.

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

(3) An insurer transacting mortgage insurance shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than $4 million.

(4) A home protection insurer shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than 10 percent of the aggregate of premiums charged on its policies currently in force, but the required amount shall not be less than $40,000 or more than $1 million.

(5) A domestic insurer applying for its original certificate of authority in this state shall possess, when first so authorized, additional capital or surplus, or any combination thereof, of not less than $500,000. However, the additional amount in the case of a home protection insurer shall be not less than $10,000.

(6) For the protection of the public, the director may require an insurer to possess and maintain capital or surplus, or any combination thereof, in excess of the amount otherwise required under this section, ORS 731.562 or 731.566, owing to the type, volume and nature of insurance business transacted by the insurer, if the director determines that the greater amount is necessary for maintaining the insurer's solvency according to standards established by rule. In developing such standards, the director shall consider model standards adopted by the National Association of Insurance Commissioners. For the purpose of determining the reasonableness and adequacy of an insurer's capital and surplus, the director must consider at least the following factors, as applicable:

(a) The size of the insurer, as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(b) The extent to which the business of the insurer is diversified among the several lines of insurance.

(c) The number and size of risks insured in each line of business.

(d) The extent of the geographical dispersion of the insured risks of the insurer.

(e) The nature and extent of the reinsurance program of the insurer.

(f) The quality, diversification and liquidity of the investment portfolio of the insurer.

(g) The recent past and projected future trend in the size of the investment portfolio of the insurer.

(h) The combined capital and surplus maintained by other comparable insurers.

(i) The adequacy of the reserves of the insurer.

(j) The quality and liquidity of investments in affiliates. The director may treat any such investment as a disallowed asset for purposes of determining the adequacy of combined capital and surplus whenever in the judgment of the director the investment so warrants.

(k) The quality of the earnings of the insurer and the extent to which the reported earnings include extraordinary items. [1967 c.359 §106; 1969 c.335 §1; 1969 c.692 §6; 1981 c.247 §5; 1987 c.483 §1; 1993 c.447 §9]

731.558 [1967 c.359 §107; repealed by 1993 c.447 §122]

731.562 Title insurer capital and surplus requirements. To qualify for authority to transact title insurance in this state, an insurer shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than $500,000. [Formerly 748.010; 1987 c.483 §2]

731.566 Reciprocal insurer surplus requirements. To qualify for authority to transact insurance in this state, a reciprocal insurer shall possess and thereafter maintain a surplus of not less than $1 million, and any reciprocal insurer that exchanges policies of insurance covering workers' compensation insurance shall possess and thereafter maintain a surplus of not less than $3 million. [1967 c.359 §109; 1975 c.274 §1; 1977 c.651 §2; 1987 c.483 §3; 1993 c.709 §3]

731.568 Surplus for specified reciprocal insurers transacting wet marine insurance. (1) On and after August 23, 1993, until January 1, 2000, a reciprocal insurer authorized to transact wet marine insurance in this state on August 23, 1993, and exchanging policies of insurance covering wet marine hull insurance for persons whose income, in whole or in part, is derived from taking and selling food resources living in an ocean, bay or river shall possess and maintain a surplus

of $500,000. On and after January 1, 2000, such an insurer shall possess and thereafter maintain a surplus in the amount required by ORS 731.566 for a reciprocal insurer that does not exchange policies of insurance covering workers' compensation insurance.

(2) A reciprocal insurer to which subsection (1) of this section applies who applies for a certificate of authority after having its certificate of authority revoked for any cause shall not be issued a new certificate of authority unless the reciprocal insurer complies with the surplus requirement applicable to the insurer under ORS 731.566. [1993 c.709 §2]

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

731.574 Annual financial statement. (1) Except as provided in subsection (4) of this section, every authorized insurer shall file with the director, on or before March 1 of each year, a financial statement for the year ending December 31 immediately preceding. This statement shall be on a form prescribed by the director. The statement shall contain such detailed exhibit of the condition and transactions of the insurer, in such form and otherwise, as the director prescribes. The director shall consider and may prescribe the annual statement blank or other form established by the National Association of Insurance Commissioners, including instructions prepared by the National Association of Insurance Commissioners for completing the blank or other form. If the director prescribes the blank or other form established by the National Association of Insurance Commissioners, including the instructions, an insurer submitting the annual statement blank or form established by the National Association of Insurance Commissioners must complete the blank or form according to the instructions. The director may require the filing of information in addition to the information required in the annual statement. The director may also require additional filings as the director determines necessary.

(2) The financial statement filed by an insurer under subsection (1) of this section shall be verified by the oaths of the president and secretary of the insurer or, in their absence, by two other principal officers. The statement of an alien company shall embrace only its condition and transactions in the United States, unless the director requires otherwise, and shall be verified by the oath of its resident manager or principal representatives in the United States. Facsimile signatures are acceptable and shall have the same force as original signatures.

(3) The director may grant an extension of time for filing the annual statement.

(4) A home protection insurer may adopt a fiscal year other than the calendar year for its financial statements filed with the director under subsection (1) of this section by declaring the fiscal year in its application for a certificate of authority. An adopted fiscal year may not be changed without the consent of the insurance supervisory official of the insurer's domicile. The financial statement of a home protection insurer on other than the calendar year basis shall be filed with the director on or before the first day of the third month which follows the end of the fiscal year.

(5) An insurer, subject to requirements set forth in rules made by the director, may publish financial statements, or information based on financial statements, prepared on a basis that is in accordance with requirements of a competent authority and differs from the basis of the statements required to be filed with the director.

(6) It is the intention of the Legislative Assembly that the director consider and follow the accounting, reporting and other standards, practices and procedures established by the National Association of Insurance Commissioners in order to:

(a) Strengthen and improve regulation of insurer solvency by the department;

(b) Promote uniform and consistent regulation of insurance by this state and the other states;

(c) Reduce regulatory costs owing to unnecessary differences in the laws of the various states; and

(d) Obtain and maintain accreditation of this state's insurance regulatory program by the National Association of Insurance Commissioners. [Formerly 736.120; 1975 c.231 §1; 1981 c.247 §6; 1993 c.447 §12]

DEPOSITS

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

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

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

731.608 Purpose of deposit. (1) Except as provided in subsection (2) of this section, deposits made in this state under ORS 731.624 shall be held for the faithful performance by the insurer of all insurance obligations, including claims for unearned premiums, with respect to domestic risks pertaining to the particular class of insurance for which the deposit was made. However, there shall be excluded from each such obligation the same amount as is excluded in determining the obligation of the Oregon Insurance Guaranty Association under ORS 734.510 to 734.710.

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

(3) Deposits made by insurers and reinsurers in this state under ORS 731.628 shall be held for the payment of compensation benefits to workers employed by insured employers other than those insured with the State Accident Insurance Fund Corporation to whom the insurer has issued a guaranty contract under ORS chapter 656. Deposits made by insurers and reinsurers under ORS 731.628 also shall be held to reimburse the Department of Consumer and Business Services, subject to approval by the director, for costs incurred by the department in processing workers' compensation claims of insurers which have been placed in liquidation, receivership, rehabilitation or other such status for the orderly conservation or distribution of assets, pursuant to the laws of this state or any other state.

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

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

(6) Deposits of domestic reciprocal insurers required pursuant to ORS 731.632 shall be held for the benefit of subscribers wherever located. [1967 c.359 §113; 1971 c.231 §12; 1977 c.793 §6; 1981 c.854 §57; 1987 c.236 §1; 1989 c.700 §2]

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

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

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

(3) At any reasonable time inspect such deposit. [1967 c.359 §114]

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

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

(3) If for any reason the current market value of such assets falls below the amount of deposit required of the insurer, the insurer shall promptly deposit other or additional assets eligible for deposit in an amount sufficient to cure the deficiency. The insurer has 30 days in which to cure the deficiency after notice thereof from the director. [1967 c.359 §115]

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

(2) Upon release to the insurer, or other person entitled thereto, of any such security the director shall reassign the security to such insurer or person; or, in the case of power of attorney given pursuant to subsection (1) of this section, the director shall deliver the power of attorney, together with the securities covered thereby, to the insurer or person entitled thereto. [1967 c.359 §116; 1979 c.870 §3; 1987 c.158 §154]

731.624 Special deposits; foreign and alien insurers. Every insurer, before transacting insurance in this state, shall make the following deposits with the State Treasurer:

(1) Foreign or alien insurers transacting surety insurance in this state, $250,000.

(2) Foreign or alien insurers transacting title insurance in this state, $100,000.

(3) Foreign or alien insurers transacting home protection insurance in this state, $100,000.

(4) Foreign or alien insurers transacting mortgage guaranty insurance in this state, $500,000. [1967 c.359 §117; 1981 c.247 §7; 1987 c.483 §4]

731.628 Deposit required of workers' compensation insurers. (1) In addition to any other requirement therefor under the Insurance Code, each insurer other than the State Accident Insurance Fund Corporation that issues guaranty contracts to employers under ORS chapter 656 shall deposit with the State Treasurer an amount that is the greater of the following amounts:

(a) $100,000.

(b) An amount equal to the sum described in this paragraph less credits for approved reinsurance that the insurer may take under subsection (2) of this section. The sum under this paragraph is the sum of the following, computed as of December 31 next preceding in respect to guaranty contracts written subject to ORS chapter 656:

(A) The aggregate of the present values at four percent interest of the determined and estimated future loss and loss-expense payments upon claims incurred more than three years next preceding the date of computation.

(B) The aggregate of the amounts computed under this subparagraph for each of the three years next preceding the date of computation. The amount for each year shall be 65 percent of the earned premiums for the year less all loss and loss-expense payments made upon claims incurred in the corresponding year, except that the amount for any year shall not be less than the present value at four percent interest of the determined and estimated future loss and loss-expense payments upon claims incurred in that year.

(2) Before an insurer may take a credit for reinsurance under paragraph (b) of subsection (1) of this section, the reinsurer must deposit with the State Treasurer an amount equal to the credit to be taken.

(3) An insurer may be allowed the credit referred to in paragraph (b) of subsection (1) of this section only when the reinsurer has deposited with the State Treasurer an amount equal to the credit. [1967 c.359 §118; 1971 c.231 §13; 1979 c.870 §4; 1981 c.854 §58; 1987 c.483 §5; 1989 c.700 §3]

731.632 Deposit required of domestic reciprocal insurers; exception. Every domestic reciprocal insurer shall deposit with the State Treasurer $50,000, except such an insurer which exchanges policies of insurance covering only wet marine hull insurance for persons whose earned income, in whole or in part, is derived from taking and selling food resources living in an ocean, bay or river. [1967 c.359 §119; 1977 c.651 §3; 1993 c.709 §5]

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

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

(b) Its required capitalization.

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

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

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

(a) Cash.

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

(c) Certificates of deposit or other investments described in ORS 733.650 (4). The director may promulgate rules to limit such investments.

(d) A surety bond, approved by the director, executed by an authorized surety insurer that is not under common ownership, management or control with the person making the deposit. This paragraph does not apply to deposits made by surety insurers or to workers' compensation deposits made under ORS 731.628.

(2) Deposits of domestic insurers made pursuant to the laws of other jurisdictions shall consist of cash or securities as required or permitted by the laws of such jurisdictions. [1967 c.359 §121; 1973 c.450 §1; 1981 c.854 §61]

731.642 Contracts for security deposits. The State Treasurer in performing duties under ORS 731.604 to 731.652 may enter into contracts with banks qualified to act as trust companies and as depositories of state funds to hold and service securities deposited by insurers with the State Treasurer. The in-

surers whose securities are held and serviced by the banks shall pay for the cost of such contracts. [1969 c.143 §2]

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

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

731.648 Duration and release of deposit. (1) Every deposit made in this state by an insurer pursuant to the Insurance Code shall be so held as long as there is outstanding any liability of the insurer as to which the deposit was required, except as follows:

(a) If the deposit was required under ORS 731.854, the deposit shall be held for so long as the basis of such retaliation exists.

(b) If the deposit was required of a reinsurer under ORS 731.628, the deposit shall be held as long as there is outstanding any liability of the reinsurer with respect to which the deposit was made.

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

(3) The State Treasurer shall release a deposit upon the written direction of the director and return the deposit:

(a) To the insurer upon extinguishment by reinsurance or otherwise of all liability of the insurer for the security of which the deposit is held. If extinguishment is by reinsurance, the assuming insurer shall be one authorized to transact such insurance in this state.

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

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

(4) The State Treasurer shall release a deposit by an insurer upon order of a court of competent jurisdiction, to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets pursuant to delinquency proceedings brought against the insurer. The State Treasurer shall release a deposit by a reinsurer under ORS 731.628 upon order of a court of competent jurisdiction, to the receiver, conservator, rehabilitator, or liquidator of the ceding insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets pursuant to delinquency proceedings brought against the ceding insurer. [1967 c.359 §123; 1989 c.700 §4; 1993 c.447 §106]

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

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

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

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

(5) If the director or the State Treasurer willfully fails faithfully to keep, deposit, account for or surrender any such assets or securities deposited through the director or State Treasurer, in the manner as authorized or required under the Insurance Code, they shall be liable therefor upon their official bonds, and suit may be brought upon the bonds by any person injured by such failure. The director or State Treasurer shall not, however, have any liability as to any assets

or securities of an insurer released by the director or State Treasurer in good faith pursuant to the authority vested in the director or State Treasurer under the Insurance Code. [1967 c.359 §124]

EDUCATIONAL INSTITUTIONS AND NONPROFIT CORPORATIONS PAYING ANNUITIES

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

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

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

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

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

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

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

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

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

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

(f) The nonprofit corporation is a hospital as defined in ORS 442.015, licensed by the Health Division of the Department of Human Resources under ORS chapter 441 and owning real or personal property that is exempt from taxation as provided in ORS 307.130 or is a hospital foundation;

(g) The nonprofit corporation is a religious organization which is currently in existence in Oregon and is exempt from taxation under section 501 (c) (3) of the federal Internal Revenue Code as of September 13, 1975;

(h) The nonprofit corporation is a museum or is principally organized to engage in or promote the performing arts, has continuously operated in this state for at least 20 years immediately prior to the application for a certificate of authority, has resources satisfactory to the director to maintain the reserve fund required under ORS 731.716 and is exempt from taxation under section 501 (c) (3) of the Internal Revenue Code. For purposes of this subsection, performing arts includes but is not necessarily limited to the presentation of theater, dance, music or opera;

(i) The nonprofit corporation is a national voluntary health organization that has a local component operating in this state and is exempt from taxation under section 501 (c) (3) of the federal Internal Revenue Code; or

(j) The nonprofit corporation:

(A) Is a charitable corporation, as defined in ORS 128.620;

(B) Is exempt from taxation under section 501 (c) (3) of the Internal Revenue Code;

(C) Is not a private foundation as defined in section 509 (a) (1) of the Internal Revenue Code;

(D) Has operated continuously in this state for at least 20 years immediately prior to the application for a certificate of authority; and

(E) Has financial resources satisfactory to the director to maintain the reserve fund required under ORS 731.716.

(6) As used in subsection (5) of this section, a "hospital foundation" means an organization that meets the following criteria:

(a) Is organized nonprofit under the laws of this state, another state or the United States and:

(A) Is organized, and at all times thereafter is operated, for the benefit of, to perform the functions of, or to carry out the purposes of one or more nonprofit hospitals; or

(B) Is operated, supervised or controlled by or in connection with one or more nonprofit hospitals;

(b) Permits no part of its net earnings to inure to the benefit of any private stockholder or individual; and

(c) Provides in its articles or other governing instrument that, upon dissolution, the assets remaining after satisfying all lawful debts and liabilities shall be distributed to one or more organizations granted exemption or right to claim exemption for property under ORS chapter 307 by reason of being a religious, literary, educational, benevolent, charitable or scientific organization or institution, a public body or a nonprofit hospital. [Formerly 128.820; 1971 c.425 §2; 1975 c.699 §1; 1983 c.740 §253; 1989 c.326 §1; 1989 c.413 §4; 1991 c.189 §1; 1991 c.190 §1; 1993 c.53 §1]

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

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

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

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

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

(5) The reasonable value as of the date of the agreement of the benefits thereby created. This value shall not exceed by more than 15 percent the net single premium for the benefits, determined in accordance with the standard of valuation set forth in ORS 731.716. [Formerly 128.830]

731.712 Obtaining approval of agreement forms. (1) An institution or nonprofit corporation shall file with the director a copy of each form of agreement proposed to be used relating to a transfer. Within 60 days the director shall approve or disapprove the proposed agreement forms and the director shall notify the educational institution or nonprofit corporation of the decision as soon as practicable.

(2) No educational institution or nonprofit corporation shall amend an approved agreement form until a copy of the proposed amendment has been filed with and approved by the director in the manner prescribed by subsection (1) of this section. [1967 c.359 §127; 1971 c.425 §3; 1989 c.784 §15]

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

(2) If an educational institution or nonprofit corporation fails to establish and maintain adequate reserve funds required by this section, the director shall revoke the certificate of authority of such institution or nonprofit corporation. [Formerly 128.850; 1971 c.425 §4]

731.720 Application of other provisions to report; form of report. (1) Every educational institution or nonprofit corporation holding a certificate of authority is subject to ORS 731.296 to 731.316, 731.414, 731.418, 731.988, 731.992, 733.010 to 733.115, 733.140 to 733.210, 746.075 and 746.110.

(2) Every educational institution or nonprofit corporation holding a certificate of authority shall make an annual report of its business relating to annuities for the year ending May 31 or June 30 immediately preceding. Each educational institution or nonprofit corporation must select one of the two year-end dates. An educational institution or nonprofit corporation may change from one year-end date to the other only upon prior approval of the director. The annual report shall be made in such form as the director requires. The annual report must be filed with the director on or before September 15 of each year.

(3) The form of the annual report must contain a provision for including the market value of annuity fund assets. Investment income may be reported on the reporting form on an accrual or cash basis at the option of the educational institution or nonprofit corporation. An educational institution or nonprofit corporation may change from one basis

to the other only upon prior approval of the director.

(4) In lieu of conducting an examination of the issuer of a charitable remainder gift annuity under ORS 731.300, the director may accept answers given under oath to interrogatories posed by the director:

(a) If the annual report of the issuer filed for the most recent year is audited by an independent certified public accountant; and

(b) If the director determines that the answers to the interrogatories and the audited annual report give information sufficiently equivalent to information obtainable by examination. [Formerly 128.860; 1971 c.425 §5; 1993 c.377 §2]

731.724 Procedure if authority is revoked or suspended. If the certificate of authority of an educational institution or nonprofit corporation is revoked or suspended, the director may bring a proceeding under ORS 734.140 and 734.150 to take possession of so much of the property of the institution or nonprofit corporation as is necessary to guarantee payments under agreements pursuant to ORS 731.704 to 731.724 then in effect. [Formerly 128.880; 1971 c.425 §6]

EXCHANGE OF INFORMATION BY REGULATORS

731.730 Insurer filings with National Association of Insurance Commissioners. (1) Every authorized insurer shall file with the National Association of Insurance Commissioners, on or before March 1 of each year, a copy of its annual statement blank, along with additional filings required by the director for the preceding year. The information filed with the National Association of Insurance Commissioners must be in the same format and scope as that required by the director and must include the signed jurat page and the actuarial certification. Each amendment and each addendum to the annual statement filing subsequently filed with the director must also be filed with the National Association of Insurance Commissioners.

(2) A foreign insurer that is domiciled in a state having a law substantially similar to the provisions of subsection (1) of this section is considered to be in compliance with this section.

(3) An insurer making a filing under subsection (1) of this section must pay the National Association of Insurance Commissioners the fee established by the National Association of Insurance Commissioners for filing, reviewing or processing the information. [1993 c.447 §100]

731.731 Immunity for certain persons dealing with information collected from filings under ORS 731.730. Except in the case of malfeasance in office or willful or wanton neglect of duty or authority, there shall be no liability on the part of, and no cause of action of any nature shall arise against, any of the following persons by virtue of their collection, review, analysis or dissemination of the data and information collected from the filings required by ORS 731.730:

(1) Members of the National Association of Insurance Commissioners and the delegates and authorized committees, subcommittees and task forces of the National Association of Insurance Commissioners.

(2) Employees of the National Association of Insurance Commissioners.

(3) The director or any representative of the director.

(4) The insurance regulatory official of another state or any representative of such an official. [1993 c.447 §101]

731.735 Certain disclosures prohibited. Neither the director nor any employee of the department may disclose examination synopses concerning insurers that are submitted to the director by the Insurance Regulatory Information System of the National Association of Insurance Commissioners. [1993 c.447 §102]

731.737 Immunity from liability for certain persons filing reports or furnishing information about specified activities to specified persons. (1) A person or other entity described in this subsection acting without malice, fraudulent intent or bad faith is not subject to civil liability, and no cause of action of any nature may exist against such a person or entity, when the person is performing authorized functions, including publication or dissemination of information, regarding any activity described in subsection (3) of this section. This subsection applies to the following persons and entities:

(a) Law enforcement officials and their agents and employees.

(b) The National Association of Insurance Commissioners, the department, a federal or state governmental agency established to detect and prevent activities described in subsection (3) of this section and any other organization established for the same purpose, and agents, employees or designees of any such person or entity.

(2) A person acting without malice, fraudulent intent or bad faith is not subject to liability by virtue of filing reports or furnishing information regarding any activity

described in subsection (3) of this section with or to any person or other entity described in subsection (1) of this section.

(3) The activities referred to in subsections (1) and (2) of this section include but are not limited to the following, whether any activity is suspected or anticipated or has occurred:

(a) Acts or omissions by a person who presents a statement described in this paragraph to or by an insurer or an agent, causes such a statement to be presented to or by an insurer or an agent, or prepares such a statement with knowledge or belief that it will be presented to or by an insurer or an agent. This paragraph applies to any statement that the person knows to contain false information as part of, in support of or concerning any fact relating to the following, or conceals relevant information relating to the following:

(A) An application for the issuance of insurance.

(B) The rating of insurance.

(C) A claim for payment or benefit pursuant to any insurance.

(D) Premiums paid on insurance.

(E) Payments made in accordance with the terms of insurance coverage.

(F) An application for a certificate of authority.

(G) The financial condition of an insurer.

(H) The acquisition of any insurer.

(b) Solicitation or an attempt to solicit new or renewal insurance by or for an insolvent insurer or other person subject to regulation under the Insurance Code.

(c) Removal or an attempt to remove assets or any record of assets, transactions and affairs from the home office or other place of business of the insurer or other person subject to regulation under the Insurance Code, or from the place of safekeeping of such a person, or who conceals or attempts to conceal the assets or record from the director.

(d) Diversion, an attempt to divert or a conspiracy to divert funds of an insurer or other person subject to regulation under the Insurance Code, or of any other person, in connection with:

(A) The transaction of insurance.

(B) The conduct of business activities by an insurer or other person subject to regulation under the Insurance Code.

(C) The formation, acquisition or dissolution of an insurer or other person subject to regulation under the Insurance Code.

(4) This section does not abrogate or modify in any way any common law or statutory privilege or immunity otherwise enjoyed by a person or entity made immune from liability under this section.

(5) A person or entity who is immune from liability under this section is entitled to attorney fees and costs if the person or entity is a prevailing party in a civil tort action and the party bringing the action did not have a reasonable basis in law or fact for bringing the action at the time the action was initiated. [1993 c.447 §103]

ASSESSMENTS, FEES AND TAXES

731.804 Assessments; fees; how determined. (1) Except as otherwise provided in this section, each authorized insurer doing business in this state shall pay assessments that the director determines necessary to support the legislatively authorized budget of the Department of Consumer and Business Services with respect to functions of the department under the Insurance Code. The director shall determine the assessments according to one or more percentage rates established by the director by rule. The director shall specify in the rule when assessments shall be made and payments shall be due. The premium-weighted average of the percentage rates shall not exceed nine-hundredths of one percent of the gross amount of premiums received by an insurer or its agents from and under its policies covering direct domestic risks, after deducting the amount of return premiums paid and the amount of dividend payments made to policyholders with respect to such policies. In the case of reciprocal insurers, the amount of savings paid or credited to the accounts of subscribers shall be deducted from the gross amount of premiums. In establishing the percentage rate or rates, the director shall use the most recent premium data approved by the director. In establishing the amounts to be collected under this subsection, the director shall take into consideration the expenses of the department for administering the Insurance Code and the fees collected under subsection (2) of this section. When the director establishes two or more percentage rates:

(a) Each rate shall be based on such expenses of the department ascribed by the director to the line of insurance for which the rate is established.

(b) Each rate shall be applied to the gross amount of premium received by an insurer or its agents for the applicable line of insurance as provided in this subsection.

(2) The director may collect fees for specific services provided by the department

under the Insurance Code according to a schedule of fees established by the director by rule. The director may collect such fees in advance. In establishing the schedule for fees, the director shall take into consideration the cost of each service for which a fee is imposed.

(3) Establishment and amendment of the schedule of fees under subsection (2) of this section are subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(4) The director shall not collect an assessment under subsection (1) of this section from any of the following persons:

(a) A fraternal benefit society complying with ORS chapter 748.

(b) An educational institution or nonprofit corporation issuing annuity policies in compliance with ORS 731.704 to 731.724.

(c) Any person or class of persons designated by the director by rule.

(5) The director shall not collect an assessment under subsection (1) of this section with respect to premiums received from any of the following policies:

(a) Workers' compensation insurance policies.

(b) Annuity policies, whether fixed or variable in nature.

(c) Wet marine and transportation insurance policies.

(d) Any category of policies designated by the director by rule. [1967 c.359 §131; 1971 c.231 §14; 1971 c.425 §7; 1983 c.94 §1; 1985 c.697 §17; 1987 c.373 §81; 1989 c.331 §24; 1989 c.413 §1; 1991 c.371 §1; 1991 c.703 §40; 1991 c.958 §5; 1993 c.265 §5]

731.808 "Gross amount of premiums" defined. As used in ORS 731.804, 731.812, 731.816 and 731.820, "gross amount of premiums" means the consideration paid by insureds to an insurer for policies of insurance, and includes all premiums, assessments, dues and fees received or derived, or obligations taken therefor, by whatever term known. [1967 c.359 §132; 1989 c.413 §5]

731.812 Foreign and alien insurer's report of Oregon business. Every foreign or alien insurer, in its annual statement to the director, shall set forth the gross amount of premiums received by it or its agents, return premiums paid, dividend payments made to policyholders, savings paid or credited to the accounts of subscribers in the case of a reciprocal insurer, and insurance benefit payments to policyholders, from and under its policies covering direct domestic risks in the preceding calendar year. [1967 c.359 §133]

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

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

(3) If a foreign or alien insurer or a domestic insurer described in subsection (2) of this section ceases to do business or collect premiums on direct domestic risks, it thereupon shall make a report to the director of its premiums subject to taxation and collected or due as of the date when it ceased to do business or collect premiums on direct domestic risks, and not theretofore reported, and shall forthwith pay to the director the tax thereon.

(4) If the director, during the period in which the director under ORS 731.836 may collect taxes owing under this section, finds the amount of such taxes paid by an insurer to have been incorrect, the director shall charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid.

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

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

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

(b) Wet marine and transportation insurance policies; or

(c) Policies issued by an insurer organized and operated without profit to any private shareholder or individual, exclusively for the purpose of aiding nonproprietary educational and scientific institutions. [1967 c.359 §134; 1971 c.560 §1; 1989 c.700 §5]

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

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

(A) Fire, 100 percent.

(B) Homeowners and farm owners multiple peril, 65 percent.

(C) Commercial multiple peril, 50 percent.

(D) Inland marine, 20 percent.

(E) Automobile physical damage, eight percent.

(F) Aircraft physical damage, eight percent.

(2) If an insurer ceases to do business or collect premiums on direct domestic risks, it thereupon shall make a report to the director of its premiums subject to taxation as provided in subsection (1) of this section and collected or due as of the date when it ceased to do business or collect premiums on direct domestic risks, and not theretofore reported, and shall forthwith pay to the director the tax thereon.

(3) If the director, during the period in which the director under ORS 731.836 may collect taxes owing under this section, finds the amount of such taxes paid by an insurer to have been incorrect, the director shall charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid. [1967 c.359 §135; 1967 c.453 §4; 1971 c.231 §15; 1975 c.275 §1; 1983 c.130 §1; 1989 c.700 §6]

731.822 Prepayment of tax due under ORS 731.816 or 731.820. (1) After January 1, 1981, every insurer with a tax obligation under ORS 731.816 or 731.820 shall make prepayment of the tax obligations under ORS 731.816 and 731.820 for the current calendar year's business, if the sum of the tax obligations under ORS 731.816 and 731.820 for the preceding calendar year's business is $400 or more.

(2) The director shall credit the prepayment toward the appropriate tax obligations of the insurer for the current calendar year under ORS 731.816 and 731.820.

(3) The amounts of the prepayments shall be percentages of the insurer's tax obligation based on the preceding calendar year's business, and shall be paid to the director by the due dates and in the following amounts:

(a) On or before June 15, 45 percent;

(b) On or before September 15, 25 percent; and

(c) On or before December 15, 25 percent.

(4) The effect of transferring policies of insurance from one insurer to another insurer is to transfer the tax prepayment obligation with respect to such policies.

(5) On or before June 1 of each year, the director shall notify each insurer required to make prepayments in that year of the amount of each prepayment, and shall provide remittance forms to be used by the insurer. However, an insurer's responsibility to make prepayments is not affected by failure of the director to send, or the insurer to receive, the notice or forms. [1980 s.s. c.10 §2]

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

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

(a) The losses incurred, and

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

(3) The amount of "net earned premiums" on such insurance policies written during the calendar year is the sum of

paragraphs (a) and (b) less paragraph (c) of this subsection.

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

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

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

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

(5) "Expenses incurred" includes:

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

(b) General expenses incurred on such earned premiums, consisting of that proportion of general or overhead expenses, such as salaries of officers and employees, printing and stationery, all taxes of this state and of the United States, except as otherwise provided herein, and all other expenses not chargeable specifically to a particular class of insurance, which the net premiums of such insurance written bear to the total net premiums written by such insurer from all classes of insurance written by it during the current calendar year. However, in arriving at the "underwriting profit" for purposes of taxation under this section there shall not be deducted in respect to expenses incurred, as defined and specified in paragraphs (a) and (b) of this subsection, amounts which, in the aggregate, exceed 40 percent of the gross premiums on such insurance policies. [Formerly 745.145]

731.828 Computation of wet marine and transportation insurance tax. (1) Each insurer transacting wet marine and transportation insurance in this state shall file annually on or before June 15 with the director and in the form prescribed by the director, a report of all the items pertaining to its insurance business as enumerated and prescribed in ORS 731.824.

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

(3) On or before June 15 of each year, if the insurer has transacted such insurance for three years, the insurer shall:

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

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

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

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

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

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

(7) If the director, during the period in which the director under ORS 731.836 may collect taxes owing under this section, finds the amount of such taxes paid by an insurer to have been incorrect, the director shall charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid.

(8) If an insurer ceases to transact wet marine and transportation insurance in the state, it shall thereupon make report to the director of the items pertaining to such insurance business, as enumerated and described in this section, to the date of its ceasing to transact such insurance and not theretofore reported, and forthwith pay to the director the taxes computed according to this section and the annual authorization fees thereon. [Formerly 745.150; 1969 c.158 §1; 1975 c.250 §1; 1989 c.700 §7]

731.832 Offset of workers' compensation insurer against premium tax. Assessments paid by insurers on behalf of their insureds under ORS 656.612 may be offset each year against taxes charged under ORS 731.816 on premiums for insuring obligations of employers under ORS chapter 656. [Formerly 736.175; 1987 c.373 §82]

731.836 Limitation on enforcement of insurer's tax obligations. The director shall commence an action for the recovery of taxes payable under ORS 731.816, 731.820, 731.824, 731.828 and 731.859 not later than the later of the following:

(1) Five years after the date such taxes were payable to the director under such sections; or

(2) Three years after the date on which the report of examination by the domiciliary state of the insurer, disclosing that such taxes were owing by the insurer under such sections, was filed with the director. [1967 c.359 §139; 1969 c.158 §4; 1989 c.700 §8]

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

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

(3) Subsection (1) of this section applies to insurers issuing policies referred to in ORS 731.816 (6) which insurers, for the purposes of subsection (1) of this section, shall be deemed to have paid to the director a tax upon the premiums of such policies.

(4) The State of Oregon hereby preempts the field of regulating or of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes, licenses and fees upon insurers and their agents and other representatives as such, and:

(a) No county, city, district, or other political subdivision or agency in this state shall so regulate, or shall levy upon insurers, or upon their agents and representatives as such, any such tax, license or fee; except that whenever a county, city, district or other political subdivision levies or imposes generally on a nondiscriminatory basis throughout the jurisdiction of the taxing authority a payroll, excise or income tax, as otherwise provided by law, such tax may be levied or imposed upon domestic insurers; and

(b) No county, city, district, political subdivision or agency in this state shall require of any insurer, agent or representative, duly authorized or licensed as such under the Insurance Code, any additional authorization, license, or permit of any kind for conducting therein transactions otherwise lawful under the authority or license granted under this code. [1967 c.359 §140; 1969 c.600 §12; 1973 c.515 §1; 1973 c.583 §2]

Note: If chapter 658, Oregon Laws 1993 (Sales and Use Tax), takes effect, 731.840, as amended by section 428, chapter 658, Oregon Laws 1993, will read as follows:

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

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

(3) Subsection (1) of this section applies to insurers issuing policies referred to in ORS 731.816 (6) which insurers, for the purposes of subsection (1) of this section, shall be deemed to have paid to the director a tax upon the premiums of such policies.

(4) The State of Oregon hereby preempts the field of regulating or of imposing excise, privilege, franchise,

income, license, permit, registration, and similar taxes, licenses and fees upon insurers and their agents and other representatives as such and:

(a) No county, city, district, or other political subdivision or agency in this state shall so regulate, or shall levy upon insurers, or upon their agents and representatives as such, any such tax, license or fee; except that whenever a county, city, district or other political subdivision levies or imposes generally on a nondiscriminatory basis throughout the jurisdiction of the taxing authority a payroll, excise or income tax, as otherwise provided by law, such tax may be levied or imposed upon domestic insurers; and

(b) No county, city, district, political subdivision or agency in this state shall require of any insurer, agent or representative, duly authorized or licensed as such under the Insurance Code, any additional authorization, license, or permit of any kind for conducting therein transactions otherwise lawful under the authority or license granted under this code.

731.842 Adjustment of amount to be prepaid for taxes; extension of time for payment; interest; penalty for late payment. (1) The director may grant, for good cause shown, a request for an adjustment of the amount of the prepayment due under ORS 731.822 or an extension of time for payment of taxes under ORS 731.816 to 731.832 and 731.859. The extension shall be requested no later than the due date and may not exceed 30 days or one month, whichever is longer, except that an extension of time for payments under ORS 731.822 may not exceed 10 days.

(2) Interest at the rate of two-thirds of one percent per month or fraction of a month shall accrue on any such tax payment not made by the due date.

(3) A penalty of 10 percent of the tax amount shall be imposed upon any late payment of any such tax, except for a payment made within an extension period as provided in subsection (1) of this section or when the director believes extenuating circumstances justify waiver of the penalty. [1975 c.230 §2; 1980 s.s. c.10 §4]

731.844 No personal liability for paying invalid tax. No personal liability shall arise against any director, trustee, officer or agent of any insurer on account of any taxes or fees paid pursuant to any statute, law or ordinance, even though such statute, law or ordinance is subsequently declared or held to be invalid. [1967 c.359 §141]

RETALIATORY PROVISIONS

731.854 Equalizing obligations of domestic and foreign or alien insurers. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon insurers domiciled in this state, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the director upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in this state. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on insurers domiciled in this state or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this subsection.

(2) This section does not apply as to personal income taxes, nor as to local ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state in connection with particular classes of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the director in determining the propriety and extent of retaliatory action under this section.

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

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

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

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

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

(c) Pay to the director that amount.

(2) If the director, during the period in which the director under ORS 731.836 may collect taxes owing under this section, finds the amount of such taxes paid by an insurer to have been incorrect, the director shall

charge or credit the insurer with the difference between the correct amount of tax and the amount actually paid. [1969 c.158 §3 (enacted in lieu of 731.858); 1989 c.700 §9]

PENALTIES

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

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

(3) In addition to the civil penalties set forth in subsections (1) and (2) of this section, any insurer that is required to make a report under ORS 731.490, 731.500 or 742.400 and that fails to do so within the specified time may be required to pay to the General Fund of the State Treasury a civil penalty in an amount determined by the director but not to exceed $10,000.

(4) A civil penalty imposed under this section may be recovered either as provided in subsection (5) of this section or in an action brought in the name of the State of Oregon in any court of appropriate jurisdiction.

(5) Civil penalties under this section shall be imposed in the manner provided by ORS 183.090. If a civil penalty is not paid within 10 days after an order assessing the penalty becomes final by operation of law or on appeal, the order may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon any interest in property of the person against whom the order is entered in the county where the order is recorded. Execution may be issued from the circuit court for the county in which the order is first recorded in the same manner as execution upon a judgment entered in the register and docketed in the judgment docket of that court.

(6) The provisions of this section are in addition to and not in lieu of any other enforcement provisions contained in the Insurance Code. [1967 c.359 §144; 1971 c.231 §16; 1987 c.774 §65; 1989 c.701 §70; 1991 c.401 §2; 1991 c.734 §120; 1993 c.265 §6]

731.990 [Repealed by 1965 c.241 §3]

731.992 Criminal penalty. (1) Violation of ORS 731.260 is punishable upon conviction, in the case of an individual, by imprisonment in the county jail for not more than one year or by a fine not exceeding $1,000; or, in the case of a corporation, by a fine not exceeding $10,000.

(2) Violation of any provision of the Insurance Code for which a greater penalty is not otherwise provided by the Insurance Code or by other applicable laws of this state, in addition to any applicable prescribed denial, suspension or revocation of any certificate or license or any civil forfeiture, shall be punishable upon conviction as for a misdemeanor. [1967 c.359 §145; 1987 c.158 §154a]