Chapter 737

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GENERAL PROVISIONS

737.007 "Rating organization" defined. (1) As used in this chapter, unless the context requires otherwise, "rating organization" means:

(a) Every person, other than an insurer, whether located within or outside this state who has as the person's object or purpose the making of rates, rating plans or rating systems; or

(b) Two or more insurers which act in concert for the purpose of making rates, rating plans or rating systems.

(2) Subsection (1) of this section does not include, apply to or affect two or more insurers operating within the specific authorizations contained in ORS 737.275, 737.312, 737.365, 737.390 and 737.526. [1969 c.690 s.14]

737.010 [Amended by 1967 c.359 s.303; renumbered 737.280]

737.012 "Advisory organization" defined. As used in this chapter, unless the context requires otherwise, "advisory organization" means every group, association or other organization of insurers, whether located within or outside this state, which assists authorized insurers which make their own filings or licensed rating organizations in rate making, by the collection and furnishing of loss or expense statistics or by the submission of recommendations, but which does not make filings under this chapter. [1969 c.690 s.15]

737.015 [Repealed by 1967 c.359 s.704]

737.017 "Member," "subscriber" defined. As used in this chapter, unless the context requires otherwise:

(1) "Member" means:

(a) An insurer that participates in or is entitled to participate in the management of a rating, advisory or other organization; or

(b) For purposes of workers' compensation insurance, an insurer that is affiliated or associated with a rating, advisory or other organization by agreement with the organization for the purpose of obtaining the rates and rating manuals or the services offered by the organization.

(2) "Subscriber" means an insurer that is furnished at its request:

(a) With rates and rating manuals by a rating organization of which it is not a member; or

(b) With advisory services by an advisory organization of which it is not a member. [1969 c.690 s.16; 1999 c.235 s.6]

737.020 [1967 c.359 s.299; repealed by 1969 c.690 s.29]

737.025 Purpose, intent of chapter. (1) The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory and to authorize cooperation between insurers in rate making and other related matters.

(2) It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis. [1969 c.690 s.1]

737.030 [1967 c.359 s.300; repealed by 1969 c.690 s.29]

737.035 Application of chapter. This chapter applies to all forms of insurance on risks or operations in this state, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in ORS 737.390;

(2) Insurance against loss of, or damage to, aircraft, including accessories and equipment, or against liability arising out of ownership, maintenance or use of aircraft;

(3) Wet marine and transportation insurance;

(4) Life insurance; or

(5) Health insurance. [1969 c.690 s.2]

737.040 [1967 c.359 s.301; repealed by 1969 c.690 s.29]

737.045 Remedies of director for violations of chapter. (1) If the Director of the Department of Consumer and Business Services has reason to believe that a rate, rating plan or rating system filed or used by an insurer or filed by a rating or advisory organization on behalf of an insurer does not comply with the requirements and standards of this chapter, the director may issue an order directing the insurer or the rating or advisory organization to discontinue or desist from the noncompliance. An order issued under this subsection is subject to the provisions of ORS 731.252.

(2) If the director holds a hearing on an order issued pursuant to subsection (1) of this section, the insurer or rating or advisory organization filing or using the rate, rating plan or rating system shall pay to the director the just and legitimate costs of the hearing, including actual necessary expenses.

(3) If the director finds after a hearing under ORS 737.340 that any rate, rating plan or rating system violates the provisions of this chapter, the director may issue an order specifying the violation and stating when, within a reasonable period of time, the further use of such rate, rating plan or rating system by an insurer or rating or advisory organization shall be prohibited.

(4) If the director finds after a hearing under ORS 737.215 or 737.340 that an insurer or rating or advisory organization is in violation of any provision of this chapter other than the provisions dealing with rates, rating plans or rating systems, the director may issue an order specifying the violation and requiring compliance within a reasonable time.

(5) If the director finds after a hearing under ORS 737.215 that the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization that has been the subject of a hearing was willful, the director may suspend or revoke the certificate of authority of such insurer or the license of such rating organization.

(6) If the director finds after a hearing that any rating organization has willfully engaged in any fraudulent or dishonest act or practices, the director may suspend or revoke the license of such organization. [1969 c.690 s.10; 1987 c.774 s.143]

737.050 [1967 c.359 s.302; repealed by 1969 c.690 s.29]

737.105 [Amended by 1961 c.562 s.7; 1965 c.611 s.17; repealed by 1967 c.359 s.704]

737.110 [Repealed by 1967 c.359 s.704]

737.115 [Repealed by 1967 c.359 s.704]

737.120 [Repealed by 1967 c.359 s.704]

737.125 [Repealed by 1967 c.359 s.704]

737.130 [Repealed by 1967 c.359 s.704]

737.135 [Repealed by 1969 c.336 s.21 and 1969 c.690 s.29]

737.140 [Repealed by 1967 c.359 s.704]

737.145 [Repealed by 1967 c.359 s.704]

737.150 [Repealed by 1967 c.359 s.704]

737.155 [Repealed by 1967 c.359 s.704]

737.160 [Repealed by 1967 c.359 s.704]

737.165 [Repealed by 1967 c.359 s.704]

737.170 [Repealed by 1967 c.359 s.704]

737.175 [Repealed by 1967 c.359 s.704]

737.180 [Amended by 1967 c.359 s.308; renumbered 737.312]

737.185 [Repealed by 1967 c.359 s.704]

RATES AND RATE MAKING

737.205 Filing rates, plans with director; public inspection of filings; effect on workers' compensation filings. (1) Every insurer shall file with the Director of the Department of Consumer and Business Services copies of the rates, rating plans and rating systems used by it. Except as provided in ORS 737.207, 737.209 and 737.320 (2), each filing shall become effective immediately on the date specified therein but not earlier than the date such filing is received by the director. This subsection does not apply to inland marine risks which by general custom of the business are not written according to manual rates or rating plans.

(2) An insurer may satisfy its obligation to make such filings by becoming a member of or a subscriber to a licensed rating organization which makes such filings, and by authorizing the director to accept such filings on its behalf. Such insurer may so adopt the filings of a rating organization on part of the classes of risks insured by it and may make its own filings as to other classes which shall be uniform throughout the insurer's territorial classification. This subsection does not apply to workers' compensation insurance filings except to the extent that the rating organization filings of rating plans or systems under ORS 737.320 are complete and usable by an insurer without the addition of allowances for expenses, taxes or profit.

(3) A filing shall be open to public inspection immediately upon submission to the director. [1969 c.690 s.4; 1981 c.535 s.16; 1987 c.774 s.50]

737.207 Commercial liability insurance rate filings; prior approval by director. (1) As used in this section, a market may be a line, subline or classification of commercial liability insurance.

(2) Filings of commercial liability insurance rates for markets specified by the Director of the Department of Consumer and Business Services shall be submitted by an insurer or rating organization to the director for review prior to the effective date if the average annual rate level increase or decrease for each market exceeds 15 percent. Factors to be considered by the director in specifying a market to be subject to this section may include:

(a) The nature and extent of competition;

(b) The size and significance of the coverage provided;

(c) Reinsurance availability;

(d) The volume of cancellations and nonrenewals; and

(e) Changing conditions in the economic, judicial and social environment.

(3) Except as otherwise provided in ORS 737.209, the effective date of a commercial liability insurance filing required by subsection (2) of this section to be submitted to the director for review shall be the date specified therein but not earlier than the 30th day after the filing is received by the director. After review of the filing, the director may authorize an earlier effective date, if appropriate. The 30-day waiting period may be extended to 60 days if the director gives written notice within such waiting period to the insurer or rating organization which made the filing that the extended period is needed for consideration of the filing. A filing subject to subsection (2) of this section that has not been approved or disapproved within the waiting period, or any extension thereof, shall be deemed approved.

(4) Supporting actuarial data shall accompany every filing of commercial liability insurance rates. The data shall be in sufficient detail to justify the rate level change and shall demonstrate compliance with ORS 737.310 governing the making of rates. [1987 c.774 s.48]

737.209 Hearing on rate filings under ORS 737.207. (1) The Director of the Department of Consumer and Business Services may hold a hearing on a filing made pursuant to ORS 737.207 if the director determines that such a hearing would aid the director in determining whether to approve or disapprove the filing. A hearing under this section may be held at a place designated by the director and upon not less than 10 days' written notice to the insurer or rating organization that made the filing and to any other person the director decides should be notified. A filing that is the subject of a hearing under this section becomes effective, if approved, as provided in subsection (4) of this section.

(2) A hearing held pursuant to subsection (1) of this section must be conducted by a hearing officer assigned from the Hearing Officer Panel established under section 3, chapter 849, Oregon Laws 1999. The hearing officer shall report findings, conclusions and recommendations to the director within 30 days of the close of the hearing. The insurer or rating organization proposing the rate filing shall have the burden of proving that the rate proposal is justified and shall pay to the director the fair and reasonable costs of the hearing, including actual necessary expenses.

(3) Within 10 days of receiving a report from the hearing officer, the director shall issue an order approving or disapproving the filing.

(4) An order issued under subsection (3) of this section may be reviewed as provided in ORS 183.480 to 183.550 for review of contested cases. A filing approved by the director under this section shall be effective 10 days after the order issued under subsection (3) of this section and shall remain effective during any review of the order. [1987 c.774 s.48a; 1999 c.849 s.175]

Note: The amendments to 737.209 by section 176, chapter 849, Oregon Laws 1999, become operative January 1, 2004. See section 177, chapter 849, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

737.209. (1) The Director of the Department of Consumer and Business Services may hold a hearing on a filing made pursuant to ORS 737.207 if the director determines that such a hearing would aid the director in determining whether to approve or disapprove the filing. A hearing under this section may be held at a place designated by the director and upon not less than 10 days' written notice to the insurer or rating organization that made the filing and to any other person the director decides should be notified. A filing that is the subject of a hearing under this section becomes effective, if approved, as provided in subsection (4) of this section.

(2) A hearing held pursuant to subsection (1) of this section may be conducted by a hearing officer designated by the director. The hearing officer shall report findings, conclusions and recommendations to the director within 30 days of the close of the hearing. The insurer or rating organization proposing the rate filing shall have the burden of proving that the rate proposal is justified and shall pay to the director the fair and reasonable costs of the hearing, including actual necessary expenses.

(3) Within 10 days of receiving a report from the hearing officer, the director shall issue an order approving or disapproving the filing.

(4) An order issued under subsection (3) of this section may be reviewed as provided in ORS 183.480 to 183.550 for review of contested cases. A filing approved by the director under this section shall be effective 10 days after the order issued under subsection (3) of this section and shall remain effective during any review of the order.

737.215 Effect of noncompliance with rating regulation. If the Director of the Department of Consumer and Business Services has reason to believe that noncompliance by an insurer with the requirements and standards of this chapter to be willful, or if within the period prescribed by the director in the notice required by ORS 737.336, the insurer, rating or advisory organization does not make such changes as may be necessary to correct the noncompliance specified by the director or establish to the satisfaction of the director that such specified noncompliance does not exist, then the director may hold a hearing in connection therewith, provided that within a reasonable period of time which shall be not less than 10 days before the date of such hearing, the director shall mail written notice to the insurer, rating or advisory organization involved specifying the matters to be considered at such hearing. [1969 c.690 s.8]

737.225 Records requirements; inspection; statistics; workers' compensation statistical agency. (1) Each insurer, rating organization or advisory organization shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics or

information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it. An insurer providing workers' compensation insurance shall maintain reasonable records showing investment income earned by the insurer, insurer profit on workers' compensation insurance, accumulated reserves for vocational rehabilitation services and accumulated reserves for claim costs related to orders or awards made pursuant to ORS 656.278.

(2) The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization.

(3) Such records shall be available to the Director of the Department of Consumer and Business Services for examination and inspection at any time in order to determine whether the filings made pursuant to ORS 737.205 comply with this chapter.

(4) Each insurer shall maintain statistics under statistical plans compatible with the rating plans used by the insurer. An insurer may report its statistics through a recognized agency or advisory organization, except that workers' compensation insurance statistics shall be reported to the workers' compensation rating organization of which the insurer is a member. The director shall prescribe by rule the statistical plan for workers' compensation insurance.

(5)(a) The director shall designate one workers' compensation statistical agency from the licensed rating organizations as the agent to which all licensed workers' compensation rating organizations shall report workers' compensation insurance statistics. The director shall adopt rules to ensure a competitive process in the designation of the one workers' compensation statistical agency.

(b) The designated workers' compensation statistical agency shall assist the director in gathering workers' compensation insurance statistics and making compilations of those statistics and shall make the compilations available to insurers and other licensed workers' compensation rating organizations, subject to rules adopted by the director.

(c) If the director licenses only one workers' compensation rating organization under ORS 737.355 (2), that rating organization shall be the designated statistical agent under this subsection.

(6) The ownership of the financial and statistical data submitted to a workers' compensation statistical agency is vested in the submitting member insurer. The financial and statistical data shall be confidential and may not be disclosed, provided that the ownership rights of an insurer shall not limit access by the director for the purposes of performing the regulatory duties of the Department of Consumer and Business Services. [1969 c.690 s.11; 1981 c.535 s.17; 1983 c.360 s.2; 1987 c.884 s.54; 1999 c.235 s.2]

737.230 Data must include certain information. The data collected and maintained by each insurer, rating organization or advisory organization pursuant to ORS 737.225 shall be in sufficient detail to demonstrate the statistical significance of differences or correlations relevant to the rating plan definitions and rate differentials. [1979 c.870 s.6]

737.235 Examining rating systems of insurers; costs. (1) The Director of the Department of Consumer and Business Services may make or cause to be made an examination of every insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every such class of insurance complies with the requirements and standards of this chapter.

(2) The officers, managers, agents and employees of any insurer, under examination, may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such insurer in the conduct of the operations to which such examination relates.

(3) The reasonable cost of any examination authorized by this section shall be paid by the organization or insurer to be examined including actual necessary transportation and traveling expenses.

(4) Notwithstanding any other provision of law, all reimbursable expenses collected by the director under subsection (3) of this section shall be deposited in the fund created by ORS 705.145 for the payment of expenses incurred in conducting the examinations authorized by this section. The moneys deposited shall be continuously appropriated for such purpose. [1969 c.690 s.12; 1987 c.373 s.83]

737.245 Collusive ratings prohibited; liability for damages. In the event any insurer shall in collusion with any other insurer conspire to fix, set or adhere to insurance rates except as expressly sanctioned by the Insurance Code, such insurer shall be liable to any person damaged thereby for an amount equal to three times the amount of such

damage together with the damaged party's attorney fees. [1969 c.690 s.13]

737.255 Authority for cooperative ratings and systems. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data or carrying on of research. [1969 c.690 s.17]

737.265 Unauthorized adherence to rates, rating systems; workers' compensation insurance policy forms. (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in ORS 737.275, 737.312, 737.365, 737.390, 737.526 and subsection (2) of this section, shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more authorized insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining any competent evidence of the existence of any such agreement.

(2) Each insurer transacting workers' compensation insurance shall adhere to the policy forms filed by the licensed workers' compensation rating organization of which the insurer is a member and approved by the Director of the Department of Consumer and Business Services. [1969 c.690 s.19; 1971 c.385 s.4; 1977 c.333 s.1; 1981 c.535 s.18; 1999 c.235 s.3]

737.270 Determination of workers' compensation premiums for worker leasing company; reporting statistical experience. (1) When a worker leasing company required to be licensed by ORS 656.850 provides workers to work for a client and also provides the workers' compensation coverage for those workers, the insurance premium for the client's exposure shall be based on the client's own experience rating, in the same manner as required for employers insuring directly employed workers.

(2) An insurer that provides workers' compensation to a worker leasing company shall maintain and report to the licensed workers' compensation rating organization of which the insurer is a member separate statistical experience for each client of the worker leasing company according to the uniform statistical plan prescribed by the Director of the Department of Consumer and Business Services according to ORS 737.225 (4).

(3) To reimburse expenses incurred by the insurer in segregating client experience, the insurer shall be permitted to charge the worker leasing company a reasonable fee as determined by the director.

(4) The worker leasing company shall earn a separate experience rating for any administrative personnel the company employs. [1993 c.628 s.5; 1999 c.235 s.4]

737.275 Preparation of rates, rating systems and other administrative matters by insurers under common ownership. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to co-surety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer. [1969 c.690 s.21]

737.280 [Formerly 737.010; repealed by 1969 c.690 s.29]

737.290 [1967 c.359 s.305; repealed by 1969 c.690 s.29]

737.300 [1967 c.359 s.306; repealed by 1969 c.690 s.29]

737.305 [Repealed by 1967 c.359 s.704]

737.310 Method of rate making; factors considered; rules. The following standards shall apply to the making and use of rates:

(1) Rates shall not be excessive, inadequate or unfairly discriminatory.

(2) As to all classes of insurance, other than workers' compensation and title insurance:

(a) No rate shall be held to be excessive unless:

(A) Such rate is unreasonably high for the insurance provided; and

(B) A reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

(b) No rate shall be held inadequate unless such rate is unreasonably low for the insurance provided and:

(A) Use or continued use of such rate endangers the solvency of the insurer; or

(B) The use of such rate by the insurer has, or if continued will have, the effect of destroying competition or creating a monopoly.

(3) Rates for each classification of coverage shall be based on the claims experience of insurers within Oregon on that classification of coverage unless that experience provides an insufficient base for actuarially sound rates.

(4) Due consideration shall be given to past and prospective loss experience within this state, to the hazards of conflagration and catastrophe, to a reasonable margin for profit and to contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses specially applicable to this state, and to all other relevant factors, including judgment factors deemed relevant, within this state.

(5) In addition to subsection (4) of this section, rates for home protection insurance may include provision for unreimbursed costs of risk inspection and for loss costs under policies which are terminated without premium because the related home sale is not made.

(6) In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

(7) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group of insurers with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expenses are applicable.

(8) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates for casualty, surety or inland marine risks may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(9) Due consideration shall be given, in the making and use of rates for all insurance, to investment income earned by the insurer, to insurer profits and to accumulated reserves for vocational rehabilitation services and for claim costs related to orders or awards made pursuant to ORS 656.278.

(10) The Director of the Department of Consumer and Business Services, by rule, shall prescribe the conditions under which a division of payroll between different manual classifications is permitted for purposes of computing workers' compensation premiums.

(11)(a) The director shall not approve any workers' compensation rating system that does not include a plan for rewarding employers, however small, that have good loss experience or programs likely to improve accident prevention. However, this paragraph is not intended to require that all employers be experience rated.

(b) The director shall not approve any workers' compensation rating system that does not allow the insurer to include potential third party recovery as one of the variables in the claims reserving process.

(12) At the time an insurer issues a workers' compensation insurance policy to an insured for the first time, the insurer shall give written notice to the insured of the rating classifications to which the insured's employees are to be assigned and shall provide an adequate description of work activities in each classification. In the event an insurer recommences coverage following its termination, the notice required under this subsection must be given only if the gap in coverage exceeds six months.

(13) If an insurer determines the workers' compensation insurance policy of an insured needs reclassification, the insurer:

(a) May bill an additional premium for the revised classification after the insurer has provided the insured at least 60 days' written notice of the reclassification.

(b) Shall bill retroactively to policy inception or date of change in insured's operations for any reclassification that results in a net reduction of premium.

(c) May, notwithstanding paragraph (a) of this subsection, retroactively bill an insured for reclassification during the policy year without prior notice of reclassification if the insurer shows by a preponderance of the evidence that:

(A) The insured knew that the employees were misclassified, or the insured was adequately informed by the insurer of the proper classification for the insured's employees;

(B) The insured provided improper or inaccurate information concerning its operations; or

(C) The insured's operations changed after the date information on the employees was obtained from the insured.

(14) In consultation with system participants, the director shall analyze the rating classification system to investigate changes that simplify the system and reduce costs for employers and insurers while preserving rate equity and minimizing the potential for abuse. The director shall give particular emphasis to the method of allocating payroll to rating classifications and to alternatives to methods that require verifiable payroll records. Upon completion of this analysis, the director shall implement appropriate changes to the system.

(15) The director shall adopt rules to carry out the provisions of this section and may by rule specify procedures relating to rating and ratemaking by workers' compensation insurers.

(16) A rate increase based solely upon an insured's attaining or exceeding 65 years of age shall be presumed to be unfairly discriminatory unless the increase is clearly based on sound actuarial principles or is related to actual or reasonably anticipated experience. [Amended by 1967 c.359 s.307; 1969 c.690 s.3; 1981 c.247 s.15; 1981 c.535 s.19; 1981 c.874 s.19; 1983 c.360 s.1; 1987 c.676 s.1; 1987 c.774 s.146; 1987 c.884 s.52; 1991 c.768 s.1; 1997 c.766 s.1; 1997 c.768 s.1]

737.312 Agreements among insurers for assignment of risks; rate modifications. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to such insurance but who are unable to procure such insurance through ordinary methods. Such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the Director of the Department of Consumer and Business Services. [Formerly 737.180]

737.315 [Amended by 1967 c.359 s.309; 1967 c.366 s.1; repealed by 1969 c.690 s.29]

737.316 Combining employers for workers' compensation insurance; conditions. Notwithstanding ORS 737.600, but subject to all other rate filing requirements of this chapter, an insurer may combine for rating purposes the experience of a group of employers covered for workers' compensation insurance by the insurer, subject to applicable rules adopted by the Director of the Department of Consumer and Business Services, if:

(1) All the employers in the group are members of an organization.

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

(3) The grouping of employers is likely to substantially improve accident prevention, claims handling for the employers and reduce expenses. [1983 c.706 s.6; 1990 c.1 s.4]

737.318 Premium audit program for workers' compensation insurance; rules. (1) A workers' compensation insurer shall maintain a premium audit program to aid in achieving equitable premium charges to Oregon employers and for the collection of credible statewide data for ratemaking.

(2) The Director of the Department of Consumer and Business Services shall prescribe by rule a premium audit program system for workers' compensation insurance.

(3) The premium audit system shall include provisions for:

(a) Employer education of the audit reporting function of the rating system;

(b) A continuing test audit program providing for auditing of all insurers;

(c) A continuous monitoring of the audit program system pursuant to ORS 737.235;

(d) An appeal process pursuant to ORS 737.505 for employers to question the results of a premium audit. This process must include written notification to the employer that is included in the final premium audit billing that informs the employer of appeal rights to the director under ORS 737.505, of the requirement that a written request to initiate an appeal must be received by the director not later than the 60th day after the employer receives the final

premium audit billing and of any other information the director may request by rule; and

(e) Civil penalties pursuant to ORS 731.988 for violations of prescribed standards of the premium audit system.

(4) Notwithstanding ORS 737.505, the provisions of this section apply to all premium audit disputes between employers and insurers in existence on July 20, 1987, regardless of the policy year involved or the date of the final audit billing. [1987 c.884 s.8; 1999 c.1020 s.5]

737.320 Review of certain filings; effective date of filings; investigation and evaluation of workers' compensation rate filings. (1) The Director of the Department of Consumer and Business Services shall review title insurance filings, and each workers' compensation insurance filing, as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.

(2) The effective date of each title and workers' compensation insurance filing shall be the date specified therein but not earlier than the 30th day after the date the filing is received by the director or from the date of receipt of the information furnished in support of a filing or specific portions of such filing if such supporting information is required by the director. The waiting period may be extended by the director for not more than 30 days if the director gives written notice within such waiting period to the insurer or rating organization which made the filing that the director needs such additional time for the consideration of such filing or specific portions of such filing. Upon written application by such insurer or rating organization, the director may authorize a filing or specific portions of such filing, which the director has reviewed, to become effective before the expiration of the waiting period. A filing or portions of a filing shall be deemed to meet the requirements of this chapter unless disapproved by the director within the waiting period or any extension thereof.

(3) Filings of workers' compensation rates, rating plans and rating systems by a workers' compensation rating organization shall be limited to provisions for claim payment approved or established by the director, and shall not include allowances for or recognition of expenses, taxes or profit. A workers' compensation rating organization shall make such filings with the director, which filings shall be subject to this section. The organization shall also file the workers' compensation policy forms to be used by its members. The filing shall include a report of investment income.

(4) Filings of workers' compensation rates by an insurer shall specify allowances for expenses, taxes and profits.

(5) The director shall investigate and evaluate all workers' compensation filings to determine whether the filings meet the requirements of this chapter. The director shall employ such experts and other personnel as may be reasonably necessary to make such investigation and evaluation, the cost of which shall be paid out of the fund created under ORS 705.145.

(6) Notwithstanding the provisions of ORS 737.205 (1), the director may require any person to comply with the requirements of subsection (2) of this section if the director has good cause to believe that a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

(7) The director may require insurers to use, as that portion of a rate filing that constitutes the amount for claim payment, rates prescribed by the director based upon rating information determined pursuant to ORS 731.216 (3). [Amended by 1967 c.359 s.310; 1969 c.690 s.5; 1973 c.353 s.1; 1981 c.535 s.20; 1981 c.874 s.20; 1985 c.706 s.5; 1987 c.373 s.83a; 1987 c.884 s.51; 1989 c.171 s.83; 1989 c.700 s.12]

737.322 Surcharge prohibited; rating plan approval; hearing on disapproval; effect of disapproval. Notwithstanding any other provision of this chapter:

(1) The Director of the Department of Consumer and Business Services shall not approve any workers' compensation rate filing for an assigned risk pool that provides for any surcharge. As used in this subsection, a “surcharge” does not include a modification pursuant to an experience rating plan approved by the director.

(2) The director shall adopt rules providing for approval of workers' compensation rating plans that include provisions allowing for reasonable retroactive application of experience rating modification factors. Nothing in this subsection affects retrospective rating plans.

(3) If the director disapproves a workers' compensation rate or rating plan and the insurer or rating organization requests a hearing before the director, the burden of proof is upon the insurer or rating organization to prove that the filing meets the requirements of this chapter.

(4) If the director holds a hearing on an order disapproving a workers' compensation rate, rating plan or rating system, the insurer or rating or advisory organization filing or using the rate, rating plan or rating system shall pay to the director the just and legitimate costs of the hearing, including actual necessary expenses. [1987 c.884 s.49]

737.325 Suspension or modification of filing requirement; excess rates for specific risks. (1) Under such rules

and regulations as the Director of the Department of Consumer and Business Services adopts, the director, by written order, may suspend or modify the requirement of filing as to any class of insurance, or subdivision or combination thereof, or as to classes of risks, for which the rates cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The director may make such examination as the director deems advisable to ascertain whether any rates affected by such order meet the standards set forth in ORS 737.310.

(2) Upon the written application of the insured, stating the reasons therefor, filed with the director and approved by the director, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. [Amended by 1967 c.359 s.311]

737.330 Contracts to comply with effective filings; exception. (1) No insurer shall make or issue a policy except in accordance with the filings which are in effect for the insurer as provided in this chapter.

(2) This section does not apply to policies for inland marine risks as to which filings are not required. [Amended by 1967 c.359 s.312; 1969 c.690 s.6]

737.335 [Repealed by 1967 c.359 s.704]

737.336 Disapproval of filings by director. (1) If within the waiting period or the extension thereof, if any, as provided in ORS 737.320 (2), the Director of the Department of Consumer and Business Services finds that a filing does not meet the requirements of this chapter, the director shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing, specifying therein in what respects the director finds such filing fails to meet the requirements and stating that such filing shall not become effective.

(2) If the director has reason to believe that an insurer or rating or advisory organization is not complying with the requirements and standards of this chapter other than the requirements and standards dealing with rates, rating plans or rating systems, unless the director has reason to believe such noncompliance is willful, the director shall give notice in writing to such insurer or rating or advisory organization stating in what manner such noncompliance is alleged to exist and specifying a reasonable time, not less than 10 days after the date of mailing, in which such noncompliance may be corrected. [1967 c.359 s.313; 1969 c.690 s.7; 1987 c.774 s.144]

737.340 Initiation of proceedings by aggrieved person to determine lawfulness of filings; hearing. (1) Any person aggrieved with respect to any filing that is in effect, other than the insurer or rating organization that made the filing, may make written application to the Director of the Department of Consumer and Business Services for a hearing on the filing. The application shall specify the grounds to be relied upon by the applicant.

(2) If the director finds that the application is made in good faith, that the applicant would be so aggrieved if the grounds are established, and that such grounds otherwise justify holding such a hearing, the director shall do one of the following:

(a) Issue an order under ORS 737.045 (1). The director shall not act under this paragraph if the filing concerns a rate, rating plan or rating system subject to ORS 737.320 (1).

(b) Hold a hearing, within 30 days after receipt of such application, at a place designated by the director and upon not less than 10 days' written notice to the applicant and to the insurer or rating organization that made the filing. [Amended by 1967 c.359 s.314; 1969 c.690 s.9; 1987 c.774 s.145]

737.342 Hearing and order procedure. Conduct of the hearing, issuance of orders pursuant thereto and judicial review of orders shall be as provided in ORS 183.310 to 183.550. [1971 c.734 s.181]

737.345 [Amended by 1967 c.359 s.315; repealed by 1969 c.690 s.29]

737.346 [Formerly 737.512; 1977 c.428 s.5; 1979 c.850 s.4; 1983 c.754 s.1; 1985 c.484 s.1; 1987 c.774 s.71; 1995 c.79 s.362; 1995 c.278 s.58; 1995 c.306 s.40; renumbered 737.600 in 1999]

737.348 [Formerly 736.170; 1975 c.556 s.50; repealed by 1977 c.405 s.6]

RATING ORGANIZATIONS

737.350 Application for license by rating organization. No rating organization shall conduct its operations in this state without first filing with the Director of the Department of Consumer and Business Services a written application for a license as a rating organization for such classes of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business.

(2) A list of its members and subscribers.

(3) The name and address of a resident of this state upon whom notices or orders of the director or process affecting such rating organization may be served.

(4) A statement of its qualifications as a rating organization. This statement shall be on forms prescribed and furnished by the director and shall include:

(a) In the case of a fire insurance rating organization, a showing as to its facilities for inspecting and surveying the various municipalities and fire risks in this state and for inspecting and surveying in this state the facilities for the preventing, confining and extinguishing of fires and such other information as the director may require; and

(b) In the case of a title insurance rating organization, a showing that adequate representation, as determined by the director, is provided for title insurance agents. [Amended by 1967 c.359 s.318; 1969 c.690 s.18; 1979 c.501 s.2]

737.355 Licensing rating organizations generally; licensing workers' compensation rating organizations; revocation and suspension. (1) If the Director of the Department of Consumer and Business Services finds that the applicant represents a credible statistical base, is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, the director shall issue a license specifying the classes of insurance, or subdivision or class of risk or a part or combination thereof for which the applicant is authorized to act as a rating organization. Each application shall be granted or denied in whole or in part by the director within 60 days of the date of its filing with the director.

(2) The director need not issue a license to each workers' compensation rating organization that meets the qualifications and requirements of subsection (1) of this section. Instead, the director may issue licenses to one or more qualifying workers' compensation rating organizations pursuant to a selection process established by rule. At the end of the period for which one or more licenses are issued, the director may do the following pursuant to the selection process established by rule under this subsection:

(a) Renew a license or issue a license to another workers' compensation rating organization; and

(b) Renew or issue licenses to more than one workers' compensation rating organization.

(3) A license issued pursuant to this section shall remain in effect for three years unless suspended or revoked by the director. The license fee shall be as established by the director. A license issued pursuant to this section may be suspended or revoked by the director, after a hearing upon notice, in the event the rating organization ceases to meet the requirements of this section. If a license is issued to only one workers' compensation rating organization and the license is suspended or revoked, the director may issue a license to another workers' compensation rating organization for the remainder of the period for which the suspended or revoked license was issued.

(4) Each rating organization shall notify the director promptly of every change regarding matters listed in ORS 737.350 (1), (2) and (3).

(5) As a condition of receiving and holding its license, a workers' compensation rating organization must exchange data with other licensed workers' compensation rating organizations pursuant to rules adopted by the director that may include establishing fees for the exchange of data. [Amended by 1967 c.359 s.319; 1971 c.385 s.5; 1989 c.413 s.9; 1999 c.235 s.1]

737.360 Rating organization to accept insurers as subscribers; rules of organization to be reasonable; review of applications for subscribership and of reasonableness of rules. (1) Subject to rules and regulations which have been approved by the Director of the Department of Consumer and Business Services as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any class of insurance, subdivision or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers.

(2) Each rating organization shall furnish its rating services without discrimination to its members and subscribers. Any rating organization may subscribe to or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

(3) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, at the request of any subscriber or any such insurer, shall be reviewed by the director at a hearing held at a place designated by the director and upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the director finds that such rule or regulation is unreasonable in its application to subscribers, the director shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the director as if the application had been rejected. If the director finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, the director shall order the rating organization to admit the insurer as a subscriber. If the director finds that the action of the rating organization was justified, the director shall make an order affirming its action.

(4) No rating organization shall adopt any rule, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. [Amended by 1967 c.359 s.320]

737.365 Cooperative activities among rating organizations and insurers. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter hereby is authorized, provided the filings resulting from such cooperation are subject to and consistent with those sections which are applicable to filings generally.

(2) The Director of the Department of Consumer and Business Services may review such cooperative activities and practices and if, after a hearing, the director finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with this chapter, the director may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with those sections and requiring the discontinuance of such activity or practice. [Amended by 1967 c.359 s.321; 1969 c.690 s.20]

737.370 [Amended by 1967 c.359 s.322; repealed by 1969 c.690 s.29]

737.375 [Amended by 1967 c.359 s.323; repealed by 1969 c.690 s.29]

737.380 [Amended by 1967 c.359 s.324; repealed by 1969 c.690 s.29]

737.385 [Repealed by 1967 c.359 s.704]

737.386 [1967 c.359 s.325; repealed by 1969 c.690 s.29]

737.390 Regulation of joint underwriting and joint reinsurance. No group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall engage in any activity which is unfair, unreasonable or otherwise inconsistent with the provisions of this chapter. [Amended by 1967 c.359 s.326; 1969 c.690 s.22]

737.505 Insured entitled to rate information; remedies of aggrieved persons. (1) Every rating organization and every insurer which makes its own rates, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, shall furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

(2) Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by the authorized representative, on written request by the person or authorized representative to review the manner in which such rating system has been applied in connection with the insurance afforded the person. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if the application had been rejected.

(3) Any party affected by the action of such rating organization or such insurer on such request, within 30 days after written notice of such action, may appeal to the Director of the Department of Consumer and Business Services, who, after a hearing held at a place designated by the director upon not less than 10 days' written notice to the appellant and to such rating organization or insurer, shall affirm or reverse such action.

(4) Appeals to the director pursuant to ORS 737.318 with regard to a final premium audit billing must be made

within 60 days after receipt of the billing.

(5) The director may, upon a showing of good cause, stay any workers' compensation insurer's collection effort on a final premium audit billing during the pendency of an appeal authorized by subsection (4) of this section. [Amended by 1967 c.359 s.327; 1987 c.884 s.6]

737.510 Advisory organizations; registration; jurisdiction of Director of the Department of Consumer and Business Services to restrict unfair practices. (1) Every advisory organization shall file with the Director of the Department of Consumer and Business Services:

(a) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities.

(b) A list of its members.

(c) The name and address of a resident of this state upon whom notices may be served.

(d) An agreement that the director may examine such advisory organization in accordance with ORS 737.515.

(2) Any insurer which makes its own filings or any rating organization may support its filings by statistics or adopt rate-making recommendations furnished to it by an advisory organization which has complied with this section. If, after a hearing, the director finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with this chapter, the director may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with this chapter. If the act or practice thus specified is not modified to comply with such order, the director may issue an order requiring any insurer which makes its own filings or any rating organization to discontinue the use of the statistics or rate-making recommendations furnished to it by such advisory organization. [Amended by 1967 c.359 s.328; 1969 c.690 s.23]

737.512 [1959 c.324 s.2; 1967 c.359 s.316; renumbered 737.346]

737.515 Examination of rating, advisory and other organizations; payment of costs; acceptance of report from another state. (1) The Director of the Department of Consumer and Business Services shall make or cause to be made an examination:

(a) At least once in five years, of each rating organization licensed in this state.

(b) As often as the director deems it expedient, of each advisory organization complying with and referred to in ORS 737.510 and of each organization referred to in ORS 737.390.

(2) The reasonable costs of any such examination shall be paid by the organization examined, upon presentation to it of a detailed account of such costs. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its methods of operation.

(3) All such examinations shall be conducted as provided in ORS 731.300 to 731.316.

(4) In lieu of any such examination the director may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state. [Amended by 1967 c.359 s.329]

737.520 [Amended by 1967 c.359 s.330; repealed by 1969 c.690 s.29]

737.525 [Repealed by 1967 c.359 s.704]

737.526 Interchange of data; promoting uniformity of rating laws. (1) Reasonable rules and plans may be promulgated by the Director of the Department of Consumer and Business Services for the interchange of data necessary for the application of rating plans.

(2) In order to further uniform administration of rate regulatory laws, the director and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult and cooperate with them with respect to rate making and the application of rating systems. [1967 c.359 s.331]

737.530 [Repealed by 1967 c.359 s.704]

737.535 Withholding or giving false information prohibited. No person shall willfully withhold information

from or knowingly give false or misleading information to the Director of the Department of Consumer and Business Services, to any statistical agency designated by the director, to any rating organization, or to any insurer, which will affect the rates or premiums chargeable under this chapter. [Amended by 1967 c.359 s.332; 1969 c.690 s.24]

737.540 [Repealed by 1967 c.359 s.704]

737.545 Procedure for suspension of rating organization license. The Director of the Department of Consumer and Business Services may suspend the license of any rating organization which fails to comply with an order of the director within the time limited by such order, or any extension thereof which the director may grant. The director shall not suspend the license of any rating organization for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The director may determine when a suspension of license shall become effective, and it shall remain in effect for the period fixed by the director, unless the director modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed. [Amended by 1967 c.359 s.333]

737.547 [1971 c.734 s.183; repealed by 1975 c.769 s.10]

737.550 [Repealed by 1967 c.359 s.704]

737.555 [Repealed by 1967 c.359 s.704]

737.560 Rating organization membership. (1) Except as provided in subsection (2) of this section, nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(2) Each workers' compensation insurer, including the State Accident Insurance Fund Corporation, shall be a member of a licensed workers' compensation rating organization. [Amended by 1967 c.359 s.334; 1969 c.690 s.25; 1981 c.535 s.21; 1999 c.235 s.5]

FICTITIOUS GROUPINGS

737.600 Fictitious grouping for rate purposes prohibited; exceptions. (1) As used in this section, “fictitious grouping” means a grouping by way of membership, license, franchise, contract, agreement or any method other than common ownership, or use and control.

(2) No insurer shall:

(a) Make available, through any rating plan or form, property, inland marine, casualty or surety insurance, or any combination thereof, at a preferred rate or premium to any person based upon a fictitious grouping of that person.

(b) Write or deliver a form, plan or policy of insurance covering a grouping or combination of persons or risks, any of which are within this state, at a preferred rate or form other than that offered to the public generally and persons not in the group, unless the form, plan or policy and the rates or premiums to be charged therefor have been approved by the Director of the Department of Consumer and Business Services. The director shall not approve any form, plan or policy, or the rates therefor, that would constitute a violation of paragraph (a) of this subsection.

(3) Nothing in this section applies:

(a) To policies of life or health insurance;

(b) To insurance for public bodies as defined in ORS 30.260;

(c) To insurance for employers subject to ORS chapter 656 who are primarily engaged in farming. Any contract negotiated by an exempt farming group, including the rate, shall be restricted to members of the group;

(d) To property and casualty insurance policies for personal, family or household purposes, and not for commercial or business purposes, under the following conditions:

(A) If the policies are offered to members of an association, including a labor union, which has had an active existence for at least one year, has a constitution and bylaws and is maintained in good faith for purposes other than that of obtaining insurance;

(B) If the policies are based on premiums that are adequate to support coverage of the group without subsidy by other rate payers; and

(C) If the insurer does not unfairly discriminate against holders of other insurance policies;

(e) To liability and property insurance required under ORS 825.160 for persons who apply for or who have received authority issued by the Department of Transportation under ORS chapter 825 to transport logs, poles, pilings, peeler cores, lumber, shingles, veneer, plywood, particle board, wallboard, siding, cordwood in long or short lengths, sawdust, hog fuel, wood chips, wood pellets, bark dust or cut trees that are or will be sold for use as Christmas trees;

(f) To liability or casualty insurance issued in this state on commercial risks, if:

(A) The policy requires active participation in a plan of risk management which has established measures and procedures to minimize both the frequency and severity of losses;

(B) The policy passes on the benefits of reduced losses to plan participants; and

(C) Rates are actuarially measurable and credible and sufficiently related to actual and expected loss and expense experience of the group so as to assure that nonmembers of the group are not unfairly discriminated against; or

(g) To insurance for child care facilities that are certified in accordance with ORS chapter 657A.

(4) Under ORS 731.244, the director shall make rules necessary for implementation of this section. [Formerly 737.346]

737.602 Authorization for insurance for certain projects; premiums; qualifications. (1) As used in this section:

(a) “Project” means a construction project, a plant expansion or improvements within Oregon with an aggregate construction value in excess of $90 million that is to be completed within a defined period. The average construction value during the defined period of the project must be at least $18 million per year. “Project” does not mean a series of unrelated construction projects artificially aggregated to satisfy the $90 million requirement.

(b) “Project sponsor” means public bodies, utilities, corporations and firms undertaking to construct a project in excess of $90 million and conducting business in the State of Oregon.

(c) “Public body” has the meaning given the term in ORS 30.260.

(2) Notwithstanding ORS 279.320, 656.126, 737.600 or 746.160, an insurer approved to transact insurance in this state, including the State Accident Insurance Fund Corporation or a guaranty contract insurer as defined in ORS 656.005, may issue with the prior approval of the Director of the Department of Consumer and Business Services a policy of insurance or a guaranty contract covering and insuring the project sponsor, the prime contractor under a contract for the construction of the project, any contractors or subcontractors with whom the prime contractor may enter into contracts for the purpose of fulfilling its contractual obligations in construction of the project and any other contractors engaged by a project sponsor to provide architectural or other design services, engineering services, construction management services, other consulting services relating to the design and construction of the project or any combination thereof.

(3) The following provisions apply to premiums under a policy of insurance or guaranty contract described in subsection (2) of this section:

(a) A project sponsor or a prime contractor may not charge a premium for coverage under a policy of insurance or a guaranty contract to a contractor or subcontractor with whom the project sponsor or prime contractor enters into a contract or engages for services described in subsection (2) of this section.

(b) A prime contractor may not charge a project sponsor a premium for coverage under a policy of insurance or a guaranty contract other than a premium approved by the director under ORS chapter 737 prior to or at the same time as the director approves the project to which the policy or guaranty contract applies.

(c) Charging a premium prohibited by this subsection constitutes the unlawful transaction of insurance in violation of ORS 731.354.

(4) The director, upon application of any insurer, shall approve the issuance of a policy of insurance or a guaranty contract to any grouping of the persons described in subsection (2) of this section if:

(a) The grouping was formed for the purpose of performing a contract or a series of related contracts for the design and construction of a project for the project sponsor;

(b) The project sponsor can reasonably demonstrate that the formation and operation of the grouping will substantially improve accident prevention and claims handling to the benefit of the project sponsor and the contractors and workers employed by the project sponsor on construction related projects;

(c) The established rating and auditing standards required by authorized advisory organizations and rating organizations are adhered to;

(d) The insurer for the grouping guarantees adequate protection to any other insurance agency or agent that demonstrates that without such protection the agency or agent will suffer losses that will constitute a threat to the continuation of the business of the agency or agent;

(e) The insurer for the grouping guarantees insurance coverage of the classes of insurance issued to the grouping to

any contractor who, because of participation in the group, has been unable to maintain the contractor's normal coverage. The insurer's obligation under this paragraph shall continue until 12 months after substantial completion of the contractor's work;

(f) By permitting this grouping for a project sponsor, greater opportunities will be made available for historically underutilized businesses to bid on the project;

(g) The project insurers agree to provide not less than 90 days' notice to all insured parties of the cancellation or any material reduction in coverage for the project;

(h) The insurance coverage for the grouping contains a severability of interest clause with respect to liability claims between individuals insured under the group policy and includes contractual liability coverage that applies to the various contracts and subcontracts entered into in connection with the project; and

(i) The insurer places with the Department of Consumer and Business Services a special deposit of $25,000 per $100 million of construction project value, or an amount prescribed by rule of the director, whichever is greater. [1995 c.169 s.2; 1999 c.196 s.12; 1999 c.482 s.1]

Note: 737.602 was added to and made a part of the Insurance Code by legislative action but was not added to ORS chapter 737 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

737.604 Rules. In addition to other rulemaking authority of the Director of the Department of Consumer and Business Services, the director may make rules:

(1) Stating the necessary attributes that a construction project of a project sponsor and the participants in the project must have in order to qualify for the grouping permitted under ORS 737.602. The rules may include but are not limited to matters regarding an appropriate trust agreement for special deposit and adjustment of the construction project value according to an appropriate cost index; and

(2) Establishing a process for a state agency or local contract review board created under ORS 279.055 to evaluate the purchase by a public body of insurance authorized by ORS 737.602, or any agreements related thereto. [1995 c.169 s.3]

Note: 737.604 was added to and made a part of the Insurance Code by legislative action but was not added to ORS chapter 737 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

AUTHORIZATION FOR INSURANCE FOR LIGHT RAIL, AIRPORT,
OREGON ARENA AND COMBINED SEWER OVERFLOW PROJECTS

(Light Rail and Portland Airport)

Note: Sections 1, 3 and 4 (2), chapter 548, Oregon Laws 1991, provide:

Sec. 1. Sections 2 and 3 of this Act are added to and made a part of the Insurance Code of the State of Oregon. [1991 c.548 s.1]

Sec. 3. (1) As used in this section “public body” means the Port of Portland, a port organized under ORS chapter 778, and the Tri-County Metropolitan Transportation District, a mass transit district organized under ORS 267.010 to 267.390.

(2) Notwithstanding ORS 737.346 [renumbered 737.600], 746.160 or chapter 684, Oregon Laws 1989, an insurer approved to transact insurance in this state, including a guaranty contract insurer as defined in ORS 656.005, may issue, with the prior approval of the Director of the Department of Consumer and Business Services, a policy of insurance or a guaranty contract covering and insuring any public body, the prime contractor under a contract with the public body for the construction of any project of a public body and any contractors or subcontractors with whom the prime contractor may enter into contracts for the purpose of fulfilling its contractual obligations to the public body, or any combination thereof.

(3) The director, upon application of an insurer, shall approve the issuance of a policy of insurance or a guaranty contract to any grouping of the persons described in subsection (2) of this section if:

(a) The grouping was formed for the purpose of performing a contract or series of related contracts for the construction of a project of a public body;

(b) The combined total estimated cost of the project of the public body exceeds $100 million;

(c) The formation and operation of the grouping will substantially improve accident prevention and claims handling to the benefit of the public body and the contractors and workers employed in the construction project;

(d) The established rating and auditing standards required by authorized advisory organizations and rating organizations are adhered to;

(e) Adequate protection is guaranteed by the insurer for the grouping to any other agency or agent that demonstrates that, without such protection, the agency or agent will suffer losses which will constitute a threat to the continuation of the business of the agency or agent;

(f) The public body can reasonably demonstrate that a substantial savings will result from the formation of the grouping; and

(g) The insurer for the grouping will guarantee insurance coverage of the classes of insurance issued to the grouping to any contractor who, because of participation in the group, had been unable to maintain the contractor's normal coverage. The insurer's obligation under this paragraph shall continue until 12 months after substantial completion of the contractor's work for the public body. [1991 c.548 s.3]

Sec. 4. (2) Section 3 of this Act is repealed July 1, 2001. [1991 c.548 s.4(2)]

(Oregon Arena Project)

Note: Sections 2 and 3, chapter 7, Oregon Laws 1993, provide:

Sec. 2. (1) As used in this section:

(a) “Developer” means the Oregon Arena Corporation.

(b) “Project” means the Oregon Arena Project, including but not limited to the arena, coliseum, parking garages, other parking facilities, entertainment complex, plaza and public improvements to be on or adjacent to the Memorial Coliseum in Portland.

(2) Notwithstanding ORS 279.320, 656.126, 737.346 [renumbered 737.600] or 746.160 an insurer approved to transact insurance in this state, including a guaranty contract insurer as defined in ORS 656.005, may issue with the prior approval of the Director of the Department of Consumer and Business Services a policy of insurance or a guaranty contract covering and insuring the City of Portland, the developer, the prime contractor under a contract for the construction of the project, any contractors or subcontractors with whom the prime contractor may enter into contracts for the purpose of fulfilling its contractual obligations in construction of the project and any other contractors engaged by the City of Portland or the developer to provide architectural or other design services, engineering services, construction management services, other consulting services relating to the design and construction of the project or any combination thereof.

(3) The director, upon application of any insurer, shall approve the issuance of a policy of insurance or a guaranty contract to any grouping of the persons described in subsection (2) of this section if:

(a) The grouping was formed for the purpose of performing a contract or a series of related contracts for the design and construction of the project;

(b) The combined total estimated cost of the project exceeds $100 million;

(c) The City of Portland and the developer can reasonably demonstrate that the formation and operation of the grouping will substantially improve accident prevention and claims handling to the benefit of the City of Portland, the developer and the contractors and workers employed in the project;

(d) The established rating and auditing standards required by authorized advisory organizations and rating organizations are adhered to;

(e) Adequate protection is guaranteed by the insurer for the grouping to any other agency or agent that demonstrates that without such protection the agency or agent will suffer losses which will constitute a threat to the continuation of the business of the agency or agent;

(f) The City of Portland and the developer can reasonably demonstrate that a substantial savings will result from the formation of the grouping; and

(g) The insurer for the grouping will guarantee insurance coverage of the classes of insurance issued to the grouping to any contractor who, because of participation in the group, has been unable to maintain the contractor's normal coverage. The insurer's obligation under this paragraph shall continue 12 months after substantial completion of the contractor's work on the project. [1993 c.7 s.2]

Sec. 3. Section 2 of this Act is repealed July 1, 2001. [1993 c.7 s.3]

(Sewer Overflow Project)

Note: Sections 1 and 2, chapter 336, Oregon Laws 1995, provide:

Sec. 1. (1) As used in this section, “project” means the group of projects that make up the combined sewer overflow program.

(2) Notwithstanding ORS 279.320, 656.126, 737.346 [renumbered 737.600] or 746.160, an insurer approved to transact insurance in the State of Oregon, including a guaranty contract insurer as defined in ORS 656.005, may issue with the prior approval of the Director of the Department of Consumer and Business Services a policy of insurance or a guaranty contract covering and insuring the City of Portland, the prime contractor under contract for the construction of the project, any contractors or subcontractors with whom the prime contractor may enter into contracts for the purpose of fulfilling its contractual obligations in construction of the project and any other contractors engaged by the City of Portland to provide architectural or other design services, engineering services, construction management service or other consulting services relating to the design and construction of the projects or any combination thereof.

(3) The director, upon application of any insurer, shall approve the issuance of a policy of insurance or a guaranty contract to any grouping of the persons described in subsection (2) of this section if:

(a) The grouping was formed for the purpose of performing a contract or a series of related contracts for the design and construction of the project;

(b) The combined total estimated cost of the project exceeds $100 million;

(c) The City of Portland can reasonably demonstrate that the formation and operation of the grouping will substantially improve accident prevention and claims handling to the benefit of the City of Portland and the contractors and workers employed in the project;

(d) The established rating and auditing standards required by authorized advisory organizations and rating organizations are adhered to;

(e) Adequate protection is guaranteed by the insurer for the grouping to any other insurance agency or agent that demonstrates that without such protection the insurance agency or agent will suffer losses which will constitute a threat to the continuation of the insurance business of the agency or agent;

(f) The City of Portland can reasonably demonstrate that a substantial savings will result from the formation of the grouping;

(g) The insurer for the grouping will guarantee insurance coverage of the classes of insurance issued to the grouping to any contractor who, because of participation in the group, has been unable to maintain the contractor's normal coverage. The insurer's obligation under this paragraph shall continue 12 months after substantial completion of the contractor's work on the project;

(h) Monoline workers' compensation insurers domiciled in the State of Oregon had the opportunity to propose a policy of insurance or a guaranty contract covering persons referred to in subsection (2) of this section; and

(i) The insurer places with the Department of Consumer and Business Services a special deposit of $25,000 per $100 million of construction project value per project phase, or an amount prescribed by rule of the director, whichever is greater. [1995 c.336 s.1; 1999 c.196 s.11]

Sec. 2. Section 1 of this Act is repealed July 1, 2015. [1995 c.336 s.2]