Chapter 744

2009 EDITION

Insurance Producers; Life Settlement Providers, Brokers and Contracts; Adjusters; Consultants; Third Party Administrators; Reinsurance Intermediaries; Rental Company Limited Licenses

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GENERAL PROVISIONS

744.001 License application; fees. (1) ORS 744.001 to 744.009, 744.011, 744.013, 744.014, 744.018, 744.022 to 744.033 and 744.037 govern the licensing of adjusters and insurance consultants.

(2) An applicant for a license as an adjuster or an insurance consultant shall apply for the license to the Director of the Department of Consumer and Business Services. The applicant shall include the following information:

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

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

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

(d) The applicant's fingerprints, if the applicant is applying for a resident license. An applicant applying for a nonresident license shall provide the applicant's fingerprints only if the director so requests.

(e) The class or classes of insurance to be transacted under the license.

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

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

(4) Each application shall be accompanied by the applicable fees established by the director. [1989 c.701 §§13,81g; 2001 c.191 §26; 2003 c.364 §117; 2007 c.71 §241]

744.002 License categories. (1) The Director of the Department of Consumer and Business Services may issue a license authorizing a person to act as an adjuster or an insurance consultant. A person licensed to act in one capacity may also be licensed to act in the other capacity if the person meets the appropriate qualifications. For purposes of this chapter, the capacity in which a person is licensed to act constitutes a "license category" or a "category of insurance business."

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

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

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

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

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

(b) The director may issue a nonresident license to a person if the person is not a resident of this state.

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

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

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

(c) If the director determines that the applicant has met the applicable qualifications and requirements for each license category, and for each class of insurance for which application is made. [1989 c.701 §§2,81e; 1995 c.639 §3; 2001 c.191 §27]

744.003 Amendment to license. (1) The Director of the Department of Consumer and Business Services may add a category of insurance business to an adjuster or insurance consultant license upon application by the licensee for amendment of the license.

(2) The director may add a class or classes of insurance to a license upon appli-

cation by the licensee for amendment of the license.

(3) The director may require that applications under this section be made in the same manner as applications for the initial license, or the director may establish other application procedures. [1989 c.701 §3; 2001 c.191 §28]

744.004 Firm or corporation license. (1) The Director of the Department of Consumer and Business Services may issue or amend a firm or corporation license under ORS 744.002 only if the firm or corporation, for each category of insurance business that the firm or corporation applies for on its license, employs an individual whose license under ORS 744.002 authorizes the individual to engage in that category of insurance business.

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

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

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

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

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

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

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

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

744.008 Renewal of license; fee; rules. An adjuster or insurance consultant may renew a license subject to the following requirements:

(1) The licensee must pay the applicable fee established by the Director of the Department of Consumer and Business Services.

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

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

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

(5) The licensee must satisfy any other requirements established by the director by rule. [1989 c.701 §§14,81h; 1991 c.810 §2; 2001 c.191 §29]

744.009 Renewal of expired license; fee. (1) The Director of the Department of Consumer and Business Services may renew an expired license of an adjuster or insurance consultant upon application if the license expired within two years prior to the application and if:

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

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

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

(d) The person satisfies all requirements for renewal.

(2) A person who does not renew an expired license as provided in this section may obtain a license only if the person applies and qualifies for and is issued the license in the same manner as a person who initially applies for the license. [1989 c.701 §6; 2001 c.191 §30]

744.010 [Repealed by 1967 c.359 §704]

744.011 Director's authority to investigate licensee; qualification for license by person who voluntarily surrendered license. (1) The expiration of a license or the voluntary surrender of a license by a licensee under this chapter shall not deprive the Director of the Department of Consumer

and Business Services of jurisdiction to proceed with any investigation of, or any action or disciplinary proceedings against, the licensee or to revise or render void an order suspending or revoking the license.

(2) As provided in this subsection, a person who has voluntarily surrendered a license may qualify for a license conferring the same authority as the surrendered license without having to take an examination that is otherwise required. In order to qualify without examination, the person must apply for the license within two years after the date on which the person surrendered the prior license. The person must apply and otherwise qualify for the license in the same manner as a person who initially applies for the license. If the person is required to satisfy continuing education requirements for renewal of the license, the person must show satisfaction of continuing education requirements for each renewal date occurring during the period following the surrender in which the person did not hold a license. [1989 c.701 §11; 1991 c.810 §3; 2001 c.191 §42]

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

744.013 Disciplinary actions against applicant, adjuster or insurance consultant. (1) If the Director of the Department of Consumer and Business Services finds with respect to an adjuster or insurance consultant or an applicant for an adjuster or insurance consultant license that one or more of the grounds set forth in subsection (2) of this section exist, the director may take the following disciplinary actions:

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

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

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

(a) Incompetence or untrustworthiness of the applicant or adjuster or insurance consultant.

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

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

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

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

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

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

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

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

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

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

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

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

(n) Failure to comply with continuing education requirements applicable to the license or any category of insurance author-

ized under the license, unless the director has waived the requirements.

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

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

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

(b) With respect to a director or officer of the firm or corporation.

(c) With respect to any person who directly or indirectly has the power to direct or cause to be directed the management, control or activities of the adjuster or insurance consultant. [Formerly 744.255; 1991 c.810 §4; 1993 c.447 §84; 2001 c.191 §31; 2003 c.364 §118; 2003 c.576 §258]

744.014 Condition of probation on license or on category or class of insurance; disciplinary action during probationary period. (1) The Director of the Department of Consumer and Business Services may place a condition of probation on an adjuster or insurance consultant license or on a category of insurance business authorized by a license or on a class of insurance if any ground for disciplinary action under ORS 744.013 exists, as follows:

(a) When the license is initially issued.

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

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

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

(3) A license applicant or licensee has the same right to a hearing on the placing of a condition of probation as the license applicant or licensee has with respect to any action taken by the director under ORS 744.013. [Formerly 744.260; 2001 c.191 §32]

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

744.016 [Formerly 744.265; repealed by 2001 c.191 §61]

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

744.018 Reinstatement of license; modification of suspension. With regard to any license issued under this chapter:

(1) The Director of the Department of Consumer and Business Services may reinstate a revoked license, any revoked category of insurance business or any revoked class of insurance. The director may grant reinstatement upon fulfillment by the former holder of the license of conditions set by the director.

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

(a) At a time certain; or

(b) When the person subject to the suspension fulfills conditions set by the director for reinstatement. [1989 c.701 §12; 2001 c.191 §43]

744.020 [Repealed by 1967 c.359 §704]

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

(2) An individual adjuster or insurance consultant who is employed by or under contract with a firm or corporate adjuster or insurance consultant may engage in insurance business only to the extent authorized by the license of the individual. [1989 c.701 §15; 2001 c.191 §33]

744.024 Places of business for resident adjuster or insurance consultant; records. (1) Each resident adjuster or insurance consultant shall maintain in this state a place of business in which the licensee principally engages in insurance business under the license.

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

(3) An adjuster or insurance consultant shall keep at the place of business of the adjuster or insurance consultant the usual and customary records pertaining to the business under the license. All such records as to any particular transactions shall be kept available and open to the inspection of the Director of the Department of Consumer and Business Services during business hours. An adjuster or insurance consultant shall keep records of a particular transaction by the adjuster or insurance consultant for

three years following the conclusion of the transaction.

(4) This section does not prohibit maintenance of a place of business under a license in the licensee's place of residence in this state. [1989 c.701 §16; 2001 c.191 §34]

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

744.026 Place of business for nonresident adjuster or insurance consultant; records. (1) A nonresident adjuster or insurance consultant shall keep at the principal place of business of the licensee the usual and customary records pertaining to the business under the nonresident license. All such records as to any particular transaction shall be kept available and open to the inspection of the Director of the Department of Consumer and Business Services during business hours. For the purpose of this subsection, if a nonresident licensee has a place of transacting insurance in this state, that place shall be the principal place of business for the licensee.

(2) A nonresident adjuster or insurance consultant shall keep records of a particular transaction by the nonresident adjuster or insurance consultant for three years following conclusion of the transaction. [1989 c.701 §17; 1995 c.639 §4; 2001 c.191 §35]

744.028 Notice of change of address or telephone number. (1) Not later than the 30th day after an adjuster or insurance consultant changes the address or telephone number of the principal place of business or the residence of the adjuster or insurance consultant, or any other location at which the licensee transacts business under the license, the licensee shall notify the Director of the Department of Consumer and Business Services of the change. The licensee also shall so notify the director not later than the 30th day after the licensee opens or closes a location at which the licensee transacts business under the license.

(2) Not later than the 30th day after a change in or deletion or addition of an assumed business name under which a licensee transacts business under a license as an adjuster or insurance consultant, the licensee shall notify the director of the change. [1989 c.701 §18; 2001 c.191 §36]

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

744.031 Notice of personnel changes from firm or corporate adjuster or insurance consultant to director; rules. (1) Not later than the 30th day after the authority of an individual adjuster or insurance consultant to act for a firm or corporate adjuster or insurance consultant has commenced or terminated, the firm or corporate adjuster or insurance consultant shall notify the Director of the Department of Consumer and Business Services of the commencement or termination.

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

(3) The director may establish by rule a different period within which a firm or corporate adjuster or insurance consultant must notify the director under subsection (1) or (2) of this section. [1989 c.701 §19; 2001 c.191 §37]

744.033 Manner of application or notification. Any application or notice to the Director of the Department of Consumer and Business Services regarding the licensing of an adjuster or insurance consultant under this chapter must be made in the manner prescribed by the director. [1989 c.701 §20; 2001 c.191 §38]

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

744.037 Fees; refunds; rules. A fee paid in connection with a license or a license application under this chapter is not refundable unless the Director of the Department of Consumer and Business Services provides otherwise by rule. [1989 c.701 §7; 2001 c.191 §44]

744.039 [1991 c.810 §22; 2001 c.191 §23; renumbered 744.077 in 2001]

744.040 [Repealed by 1967 c.359 §704]

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

744.050 [Repealed by 1953 c.93 §2]

744.051 [1989 c.701 §21; 1991 c.810 §5; repealed by 2001 c.191 §61]

INSURANCE PRODUCERS

744.052 Definitions. As used in ORS 744.052 to 744.089:

(1) "Business entity" has the meaning given that term in ORS 731.116.

(2) "Home state" means any state, district or territory of the United States, in which an insurance producer maintains the insurance producer's principal place of residence or principal place of business and is licensed to act as an insurance producer.

(3) "Limited class credit insurance" includes but is not limited to credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, and guaranteed automobile protection insurance, and any other form of insurance of-

fered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation that the Director of the Department of Consumer and Business Services determines should be designated a form of limited class credit insurance.

(4) "Limited class credit insurance producer" means a person required to be licensed to sell, solicit or negotiate one or more forms of limited class credit insurance coverage to individuals through a master, corporate, group or individual policy.

(5) "Limited class insurance" includes but is not limited to credit, mortgage, automobile dealer guaranteed automobile protection and any other form of insurance designated by the director as a form of limited class insurance.

(6) "Limited class insurance producer" means a person required to be licensed to sell, solicit or negotiate one or more forms of limited class insurance coverage to individuals through a master, corporate, group or individual policy.

(7) "Negotiate," "sell" and "solicit" have the meanings given those terms in ORS 731.104.

(8) "Terminate" means to cancel the relationship between an insurance producer and the insurer or to revoke an insurance producer's authority to sell, solicit or negotiate insurance.

(9) "Uniform Application" means the current version of the Uniform Application for resident and nonresident insurance producer licensing, produced by the National Association of Insurance Commissioners.

(10) "Uniform Business Entity Application" means the current version of the Uniform Business Entity Application for resident and nonresident business entities, produced by the National Association of Insurance Commissioners. [2001 c.191 §2; 2003 c.364 §2]

744.053 Requirements to be licensed as insurance producer for class of insurance. A person may not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed as an insurance producer for that class or those classes in accordance with ORS 744.052 to 744.089. [2001 c.191 §3; 2003 c.364 §3]

744.054 [Formerly 744.015; 1991 c.810 §6; repealed by 2001 c.191 §61]

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

744.056 Exemptions from insurance producer licensing requirements. (1) ORS 744.052 to 744.089 do not require an insurer to obtain a license as an insurance producer as required by ORS 744.053. For purposes of this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries or affiliates.

(2) A license as an insurance producer is not required of any of the following:

(a) An officer, director or employee of an insurer or an insurance producer, if the officer, director or employee does not receive any commission on or fee for policies written or sold to insure risks residing, located or to be performed in this state and:

(A) The officer's, director's or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance;

(B) The officer's, director's or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(C) The officer, director or employee is acting in the capacity of an agency supervisor assisting insurance producers when the person's activities are limited to providing technical advice and assistance to insurance producers and do not include the sale, solicitation or negotiation of insurance.

(b) A person who does either of the following, when the person does not receive any commission or fee for the service:

(A) Secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities or group or blanket health insurance or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administrative plans; or

(B) Performs administrative services related to mass-marketed property and casualty insurance.

(c) An employer or an association of employers or its officers, directors or employees, or the trustees of an employee trust plan:

(A) To the extent that the employers, associations, directors, officers, employees or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates;

(B) To the extent that the program of employee benefits involves the use of insurance issued by an insurer; and

(C) As long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the insurer issuing the insurance.

(d) An employee of an insurer or an organization employed by insurers who is engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who is not individually engaged in the sale, solicitation or negotiation of insurance.

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or electronic mass media, the distribution of which is not limited to residents of this state, but only if the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state.

(f) A person who is not a resident of this state who sells, solicits or negotiates a policy of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that policy, but only if the person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

(g) A salaried full-time employee who counsels or advises the employer of the employee relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, but only if the employee does not sell or solicit insurance or receive any commission.

(h) An attorney in fact of an authorized reciprocal insurer, or the salaried representative of the insurer or attorney who does not receive any commission.

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

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

(k) Any agent or representative of persons exempt from the Insurance Code under ORS 731.036 or holding a certificate of exemption under ORS 731.042, with respect to the exempted transactions.

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

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

(n) Salaried employees of a financial institution or trust company, as those terms are defined in ORS 706.008, who, in the regular course of business with the customers of the financial institution or trust company, present the customers with written information about savings account annuities issued by an authorized insurer. Any person who purchases such an annuity may rescind the transaction within 10 days after the issuance of the contract. For purposes of this paragraph, "savings account annuities" means annuities purchased with the proceeds of a savings account, certificate or share in a financial institution or trust company.

(3) A person who provides general insurance advice in connection with providing other professional services such as legal services, trust services, tax and accounting services, financial planning or investment advisory services is not considered to be soliciting the sale of insurance for the purpose of the definition of "insurance producer" in ORS 731.104. [2001 c.191 §4; 2003 c.364 §4; 2003 c.802 §175; 2007 c.71 §242; 2007 c.319 §34]

744.057 [Formerly 744.025; 1997 c.631 §547; 1999 c.59 §227; repealed by 2001 c.191 §61]

744.058 Written examination; fees; rules. (1) An individual applying for a resident insurance producer license must pass a written examination unless the individual is exempt from the prelicensing education and examination requirement as provided in ORS 744.067. The examination must test the knowledge of the individual concerning the class or classes of insurance for which application is made, the duties and responsibilities of an insurance producer and the insurance statutes and rules of this state. Except as provided in subsection (2) of this section, the examination required by this section shall be developed and conducted by the Director of the Department of Consumer and Business Services. An individual may apply for a resident insurance producer license only if the individual has established

in this state a residence or a place of business for acting as an insurance producer.

(2) The director may make arrangements, including contracting with a private testing service, for developing and administering the examination and collecting applicable fees.

(3) Each individual applying to take an examination shall pay fees as established by the director.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply to take the examination according to requirements and procedures established by the director by rule. [2001 c.191 §5; 2003 c.364 §5]

744.059 Qualifications for license; use of uniform application. (1) An individual applying for a resident insurance producer license shall apply to the Director of the Department of Consumer and Business Services on the Uniform Application and shall declare that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the director must find that the individual:

(a) Is at least 18 years of age;

(b) Has not committed an act that is a ground for action on a license set forth in ORS 744.074;

(c) When required by the director, has completed a prelicensing course of study for the lines of authority for which the person has applied;

(d) Has paid all applicable fees; and

(e) Has successfully passed the examination for the lines of authority for which the person has applied.

(2) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made on the Uniform Business Entity Application. Before approving the application, the director must find that:

(a) The business entity has paid all applicable fees; and

(b) The business entity has designated a licensed insurance producer responsible for the business entity's compliance with the insurance laws and rules of this state.

(3) The director may require any documents necessary to verify the information contained in an application.

(4) Each insurer that sells, solicits or negotiates any form of limited class credit insurance shall provide to each limited class credit insurance producer a program of instruction, which is subject to review and approval by the director. [2001 c.191 §6; 2003 c.364 §6]

744.060 [Repealed by 1953 c.93 §2]

744.061 Banking institution as insurance producer. (1) The Insurance Code does not limit or prohibit the licensing of a banking institution, as defined in ORS 706.008, as an insurance producer to transact one or more of the classes of insurance described in ORS 744.062, except for title insurance.

(2) The Insurance Code does not limit or prohibit the licensing, as an insurance producer to transact one or more of the classes of insurance described in ORS 744.062, of any of the following:

(a) A corporation owned in whole or in part by a banking institution under ORS 708A.120, 716.588 or 716.594.

(b) A corporation owned in whole or in part by a financial holding company or a bank holding company, as defined in ORS 706.008. [1989 c.701 §24; 1997 c.631 §548; 2001 c.191 §24; 2001 c.377 §51; 2003 c.364 §7; 2005 c.194 §5]

744.062 Issuance of insurance producer license; rules. (1) Unless the Director of the Department of Consumer and Business Services refuses to issue or renew a license pursuant to ORS 744.074, a person who has met the requirements of ORS 744.058 and 744.059, or ORS 744.063, shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following classes of insurance:

(a) Life insurance as defined in ORS 731.170.

(b) Health insurance as defined in ORS 731.162.

(c) Property insurance as defined in ORS 731.182.

(d) Casualty insurance as defined in ORS 731.158.

(e) Variable life insurance, including variable annuities.

(f) Property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

(g) Limited class credit insurance.

(h) Any form of insurance designated by the director as a form of limited class insurance.

(i) Title insurance as defined in ORS 731.190. A license for the class of title insurance may be issued only to a resident insurance producer.

(j) Any other class of insurance permitted under the Insurance Code or rules adopted thereunder.

(2) For assistance in performance of the director's duties, the director may participate with the National Association of Insurance Commissioners, or any affiliate or subsidiary

that the National Association of Insurance Commissioners oversees, in a centralized producer licensing registry in which insurance producer licenses and appointments are centrally or simultaneously effected for all states that require an insurance producer license. The director may adopt by rule any uniform standards and procedures as are necessary to participate in the registry, including the centralized collection of fees for licenses or appointments that are processed through the registry.

(3) An insurance producer may apply to amend a license for the purpose of adding or deleting a class of insurance on the license in the manner prescribed for license application in ORS 744.059 or 744.063, or as otherwise prescribed by the director. [2001 c.191 §8; 2003 c.364 §8]

744.063 Nonresident insurance producer license; fee. (1) Unless the Director of the Department of Consumer and Business Services refuses to issue or renew a license pursuant to ORS 744.074, a nonresident person shall receive a nonresident insurance producer license if:

(a) The person is currently licensed as a resident insurance producer and is in good standing in the person's home state;

(b) The person has submitted the proper request for a nonresident insurance producer license and has paid the applicable fees;

(c) The person has submitted or transmitted to the director the resident insurance producer license application that the person submitted to the person's home state, or in lieu of that application, a completed Uniform Application; and

(d) The person's home state grants nonresident insurance producer licenses to residents of this state on the same basis.

(2) The director may verify the insurance producer's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(3) A nonresident insurance producer licensed in this state who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file with the director a change of address and provide certification from the new resident state not later than the 30th day after the change of legal residence. No fee or license application is required under this subsection.

(4) A person licensed as a surplus lines insurance producer in the person's home state shall receive a nonresident surplus lines insurance producer license pursuant to subsection (1) of this section. Except as provided in subsection (1) of this section, nothing in this section supersedes any provision of ORS 735.400 to 735.495.

(5) Notwithstanding any other provision of ORS 744.052 to 744.089, the director shall issue a nonresident limited class insurance producer license pursuant to subsection (1) of this section to a person who is licensed as a limited class credit insurance producer or as another type of limited class insurance producer under the laws of the person's home state that restrict the authority of the license to less than the authority prescribed in ORS 744.062 for the classes of life insurance, health insurance, property insurance or casualty insurance.

(6) A license for the class of title insurance may not be issued to a nonresident insurance producer.

(7) The director is the attorney in fact of a person to whom a license is issued under this section, and upon whom all legal process in any action or proceeding against the person may be served. Any legal process against the person that is served upon the director has the same legal force and validity as if served upon the person. The authority of the director under this subsection continues as long as any liability remains outstanding in this state. The director becomes the attorney in fact of the person on the date that the director issues the nonresident insurance producer license to the person. [2001 c.191 §7; 2003 c.364 §9]

744.064 Persons licensed elsewhere. (1) Unless denied a license pursuant to ORS 744.074, a person who is currently licensed as a resident insurance producer in a Canadian province, in Mexico or in a state that does not grant nonresident insurance producer licenses to residents of this state on the same basis that this state grants nonresident insurance producer licenses under ORS 744.063 shall receive a nonresident insurance producer license if:

(a) The Director of the Department of Consumer and Business Services determines that the insurance regulator in the person's place of residence grants nonresident insurance producer licenses to residents of this state on the same basis that the director grants nonresident insurance producer licenses to residents of the other jurisdiction or on the same basis that the insurance regulator grants insurance producer licenses to residents of the other jurisdiction, or on another basis that is reasonable and fair to licensees of this state; and

(b) The person meets all of the following requirements:

(A) The person is in good standing as a resident insurance producer in the person's

place of residence in Canada, Mexico or the person's state of residence.

(B) The person has submitted the proper request for a nonresident insurance producer license and has paid the applicable fees.

(C) The person has submitted or transmitted to the Director of the Department of Consumer and Business Services the resident insurance producer license application that the person submitted to the insurance regulator in the person's place of residence, or in lieu of that application, a completed Uniform Application.

(D) The person has taken and passed a written examination specified by the director under this section with respect to the authority to transact the class or classes of insurance for which the applicant has applied. The requirement of an examination does not apply to an applicant that is a business entity.

(E) The person has satisfied any other qualifications established by the director by rule or has satisfied qualifications that the director establishes by rule in lieu of the qualifications established in this subsection.

(2) A person who is licensed by this state to sell, solicit or negotiate insurance as a nonresident insurance producer under this section may sell, solicit or negotiate any policy of insurance upon domestic risks to the same extent and upon the same terms as provided by the insurance regulator in the person's place of residence for residents of this state transacting a like business in a province of Canada, in Mexico or in the person's state of residence.

(3) The examination requirement under subsection (1) of this section is subject to waiver if:

(a) The director determines that a written examination or other comparable requirement acceptable to the director is required of applicants for a resident insurance producer license in the other jurisdiction;

(b) The insurance regulator of the other jurisdiction certifies that the applicant holds a valid license as a resident insurance producer in the other jurisdiction and either passed the written examination, was the holder of a resident insurance producer license prior to the time the written examination was first required or meets the other comparable requirement acceptable to the director; and

(c) In the other jurisdiction, a resident of this state is privileged to procure an insurance producer license upon conditions that the director determines to be reasonable and fair to licensees of this state.

(4) The director shall establish the form of the nonresident insurance producer license issued under this section.

(5) A person licensed as a surplus lines insurance producer in the person's home state is eligible for a nonresident surplus lines insurance producer license in the manner provided for nonresident insurance producer licenses in subsection (1) of this section. A person to whom a nonresident surplus lines insurance producer license is issued under this section is subject to ORS 735.400 to 735.495.

(6) The director is the attorney in fact of a person to whom a license is issued under this section, and upon whom all legal process in any action or proceeding against the person may be served. Any legal process against the person that is served upon the director has the same legal force and validity as if served upon the person. The authority of the director under this subsection continues as long as any liability remains outstanding in this state. The director becomes the attorney in fact of the person on the date that the director issues the nonresident insurance producer license to the person. This subsection does not apply to a person to whom a nonresident surplus lines insurance producer license is issued. [2001 c.191 §9; 2003 c.364 §10]

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

744.066 [Formerly 744.045; repealed by 2001 c.191 §61]

744.067 Exemptions from prelicensing education or examination requirement. (1) An individual who applies for a resident insurance producer license in this state who is or was previously licensed as an insurance producer for the same lines of authority in another state is not required to complete any prelicensing education or examination. The exemption under this subsection is available only if the individual is currently licensed in the other state or if the application is received by the Director of the Department of Consumer and Business Services not later than the 90th day after the applicant's previous license was terminated and if the other state issues a certification that, at the time of termination, the applicant was in good standing in that state or the state's Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries indicate that the applicant is or was licensed in good standing for the class of insurance requested.

(2) A person licensed as an insurance producer in another state who moves to this state must apply for a resident insurance producer license not later than the 90th day after the date on which the person established legal residence in order to qualify for

a resident insurance producer license pursuant to ORS 744.059. Neither prelicensing education nor an examination is required of a person to whom this subsection applies in order to obtain a license in a class of insurance described in ORS 744.062 if the person held a license in that class in the other state, except when the director has determined otherwise by rule.

(3) An individual who holds an industry designation described in this subsection is not required to complete prelicensing education or the examination required in ORS 744.058 if the director is satisfied, by examination or otherwise, that the applicant is knowledgeable in the particulars of the applicable provisions of the Insurance Code. This subsection applies to:

(a) An applicant for a license authorizing the applicant to transact property or casualty insurance or both, upon whom the American Institute for Chartered Property Casualty Underwriters has conferred the Chartered Property Casualty Underwriter (C.P.C.U.) designation.

(b) An applicant for a license authorizing the applicant to transact life or health insurance, or both, upon whom the American College has conferred the Chartered Life Underwriter (C.L.U.) designation.

(4) The director may recognize one or more industry designations as exempting an applicant from the prelicensing education requirement or the examination required in ORS 744.058 or both. For each industry designation that the director recognizes and for the extent of the exemption to be given, the director shall consider the content, quality and scope of the educational program required for the designation as well as other factors determined by the director to be relevant.

(5) An individual is not required to complete prelicensing education or the examination required in ORS 744.058 or 744.064 for the following licenses:

(a) A license authorizing the individual to transact a type of limited class insurance, except as the director otherwise provides by rule.

(b) A license authorizing the individual to transact title insurance. [2001 c.191 §10; 2003 c.364 §11]

744.068 Required notifications; maintenance of usual and customary records; rules. (1) An insurance producer shall notify the Director of the Department of Consumer and Business Services prior to transacting business under the insurance producer license under any name other than the insurance producer's legal name and prior to changing, deleting or adding an assumed business name in connection with the insurance producer's business under the insurance producer license.

(2) A resident insurance producer shall keep at the principal place of business of the insurance producer the usual and customary records pertaining to the business under the resident insurance producer license. All such records shall be kept available and open to the inspection of the director during business hours. A resident insurance producer shall keep records of insurance transacted by the insurance producer under the license for three years following expiration of the policy unless the director designates another period.

(3) A nonresident insurance producer shall keep at the principal place of business of the insurance producer the usual and customary records pertaining to the business under the nonresident insurance producer license. All such records shall be kept available and open to the inspection of the director during business hours. For the purpose of this subsection, if a nonresident insurance producer has a place of transacting insurance in this state, that place shall be the principal place of business for the nonresident insurance producer. A nonresident insurance producer shall keep records of insurance transacted by the insurance producer under the nonresident insurance producer license for three years following expiration of the policy unless the director designates another period.

(4) An insurance producer shall notify the director of any of the following changes not later than the 30th day after the date of the change:

(a) A change of address or telephone number of the principal place of business or any location at which the insurance producer transacts business under the license in this state.

(b) The opening or closing of a location at which the insurance producer transacts business under the license in this state.

(c) A change of residence. This paragraph applies only to a resident insurance producer.

(5) Not later than the 30th day after the authority of an individual insurance producer to act for an insurance producer that is a business entity has commenced or terminated, the business entity shall notify the director of the commencement or termination. The director may establish by rule a different period within which the business entity must notify the director under this subsection. [2001 c.191 §11; 2003 c.364 §12]

744.069 [1989 c.701 §26; repealed by 2001 c.191 §61]

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

744.071 [Formerly 744.055; repealed by 2001 c.191 §61]

744.072 Renewal or reinstatement of insurance producer license; continuing education; rules. (1) An insurance producer license remains in effect unless revoked or suspended as long as all applicable fees are paid by the due date and, if the licensee is a resident individual insurance producer, as long as the licensee has met applicable continuing education requirements for resident individual insurance producers under subsection (4) of this section by the due date. The renewal fee is due on the last day of the month in which the second anniversary of the initial issuance date of the license occurs and on the second anniversary following each renewal. The Director of the Department of Consumer and Business Services may establish another renewal period for the purpose of coordination with any national registration or licensing system.

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

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

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

(a) Any person to whom a license is issued without examination pursuant to ORS 744.067 (5);

(b) Any person who before January 1, 2010:

(A) Requests an exemption from the requirement;

(B) Is authorized to transact only life insurance;

(C) Is 58 years of age or older;

(D) Has 10 or more years of experience as a licensed insurance producer; and

(E) Is servicing only existing policies; or

(c) Any person whose license is indorsed to authorize the person to act as a reinsurance intermediary broker or reinsurance intermediary manager, or both, as described in ORS 744.800, but the exemption applies solely for the purpose of maintaining the indorsement and does not affect any continuing education requirement that otherwise applies.

(5) In connection with establishing continuing education requirements under subsection (4) of this section, the director may make arrangements, including contracting with a private service, for establishing and operating a program and standards for approving and registering continuing education programs and their providers.

(6) An individual insurance producer who allows the insurance producer license to lapse may apply to the director to reinstate the same license within 12 months from the due date for renewal without having to take and pass a written examination, but the insurance producer must pay an amount for the reinstatement that is equal to double the unpaid renewal fee for any renewal fee paid after the due date and must complete any continuing education requirements not satisfied to date, including the period for which the license was lapsed. A license reinstated under this subsection is effective upon the date that the director grants the reinstatement.

(7) An individual insurance producer who is unable to comply with license renewal procedures due to military service or another extenuating circumstance such as a long term medical disability may request a waiver from compliance with those procedures. The insurance producer may also request a waiver of any examination requirement or any penalty imposed for failure to comply with renewal procedures. [2001 c.191 §12; 2003 c.364 §13; 2009 c.96 §1]

744.073 Temporary insurance producer license. (1) The Director of the Department of Consumer and Business Services may issue a temporary insurance producer license for a period not to exceed 180 days without requiring a written examination if the director determines that the temporary license is necessary for the servicing of an insurance business in the following cases:

(a) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or

becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the insurance producer, for the recovery or return of the insurance producer to the business, or to provide for the training and licensing of new personnel to operate the insurance producer's business;

(b) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of the individual designated in the business entity application or the license;

(c) To the designee of a licensed insurance producer entering active service in the Armed Forces of the United States; or

(d) In any other circumstance in which the director determines that the public interest will best be served by the issuance of the license.

(2) The director may by order limit the authority of any temporary licensee in any way that the director determines to be necessary to protect insureds and the public. The director may require the temporary licensee to have a suitable sponsor who is a licensed insurance producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The director may revoke a temporary license if the interest of insureds or the public is endangered. A temporary license may not continue after the owner or the personal representative disposes of the business. [2001 c.191 §13; 2003 c.364 §14]

744.074 Authority of director to place licensee on probation or to suspend, revoke or refuse to issue or renew license. (1) The Director of the Department of Consumer and Business Services may place a licensee on probation or suspend, revoke or refuse to issue or renew an insurance producer license and may take other actions authorized by the Insurance Code in lieu thereof or in addition thereto, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application.

(b) Violating any insurance laws, or violating any rule, subpoena or order of the director or of the insurance commissioner of another state or Mexico or Canada.

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud.

(d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business.

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance.

(f) Having been convicted of a felony, of a misdemeanor involving dishonesty or breach of trust, or of an offense punishable by death or imprisonment under the laws of the United States. The record of the conviction shall be conclusive evidence of the conviction.

(g) Having admitted or been found to have committed any unfair trade practice or fraud related to insurance.

(h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

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

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

(k) Forging another person's name to an application for insurance or to any document related to an insurance transaction.

(L) Improperly using notes or any other reference material to complete an examination for an insurance license.

(m) Knowingly accepting insurance business from an individual who is not licensed.

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

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

(p) Failing to pay any fee or charge to the director.

(q) Failing to comply with continuing education requirements applicable to the license or any class of insurance authorized under the license, unless the director has waived the requirements.

(2) If the director refuses to issue or renew an insurance producer license, the di-

rector shall notify the applicant or licensee and inform the applicant or licensee in writing of the reason for the refusal to issue or renew and of the applicant's or licensee's rights under ORS chapter 183.

(3) The director may suspend, revoke or refuse to issue or renew the insurance producer license of a business entity if the director determines that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation but the violation was not reported to the director and corrective action was not taken. [2001 c.191 §14; 2003 c.364 §15]

744.075 [1967 c.359 §532; 1983 c.76 §4; 1989 c.701 §28; 1991 c.810 §7; repealed by 2001 c.191 §61]

744.076 Payment of commission, service fee or brokerage. (1) An insurer or insurance producer may not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed as an insurance producer and is not so licensed.

(2) A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed as an insurance producer and is not so licensed.

(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed as an insurance producer at the time of the sale, solicitation or negotiation and was then so licensed.

(4) An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, except when the payment or assignment would violate ORS 746.045 or 746.055. [2001 c.191 §15; 2003 c.364 §16]

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

(2) Except as otherwise provided by rule, an insurance producer who is not licensed as an insurance consultant may receive only commission. [Formerly 744.039; 2003 c.364 §17]

744.078 Appointment of insurance producers; rules. (1) An insurance producer shall not act as an agent of an insurer unless:

(a) The insurance producer is an appointed agent of that insurer; or

(b) The insurance producer transacts insurance on behalf of another insurance producer who is an appointed agent of that insurer according to conditions and limitations established by the Director of the Department of Consumer and Business Services by rule.

(2) Each insurer shall maintain a current list of insurance producers contractually authorized to accept applications on behalf of the insurer. Each insurer shall make the list available to the director upon request.

(3) An insurance producer may represent as agent under one insurance producer license as many insurers as may appoint the insurance producer in accordance with this section.

(4) Except as provided in a group contract of insurance under subsection (5) of this section, any person who solicits or procures an application for insurance as an agent of the insurer shall in all matters relating to the application for insurance and the policy issued in consequence of the application be regarded as the agent of the insurer issuing the policy and not the agent of the insured. Any provision in the application and policy to the contrary is invalid and of no effect.

(5) A group contract of insurance and the individual certificate issued pursuant to the group contract may contain provisions stating whether the group policyholder acts as the agent of the individual insured or as the agent of the insurer. [2001 c.191 §16; 2003 c.364 §18]

744.079 Termination of relationship with insurance producer. (1) An insurer or authorized representative of the insurer who terminates the appointment, employment, contract or other insurance business relationship with an insurance producer shall notify the Director of the Department of Consumer and Business Services not later than the 30th day after the effective date of the termination, in the manner prescribed by the director, if the reason for termination is

one of the reasons set forth in ORS 744.074 or if the insurer has knowledge that the insurance producer was found by a court, government body or self-regulatory organization authorized by law to have engaged in any of the activities set forth in ORS 744.074. Upon the written request of the director, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the insurance producer.

(2) An insurer or the authorized representative of the insurer shall promptly notify the director in a manner acceptable to the director if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the director in accordance with subsection (1) of this section if the insurer had then known of its existence.

(3) Not later than the 15th day after making a notification required by subsection (1) or (2) of this section, the insurer shall mail a copy of the notification to the insurance producer at the insurance producer's last known business address. If the insurance producer is terminated for cause for any of the reasons listed in ORS 744.074, the insurer shall provide a copy of the notification to the insurance producer at the insurance producer's last known business address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(4) Not later than the 30th day after the insurance producer has received a notification under subsection (3) of this section, the insurance producer may file with the director written comments concerning the substance of the notification. The insurance producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer. The comments shall become a part of the director's file and shall accompany every copy of a report distributed or disclosed for any reason about the insurance producer as allowed under subsection (5) of this section.

(5) In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the director or an organization of which the director is a member and that compiles the information and makes it available to other insurance regulators or regulatory or law enforcement agencies shall not be subject to civil liability. In the absence of actual malice, a civil cause of action shall not arise against any such entity or its agents or employees as a result of any statement or information required by or provided pursuant to this section, or any information relating to any statement that may be requested in writing by the director from an insurer or insurance producer, or relating to a statement by a terminating insurer or insurance producer to an insurer or insurance producer, that is limited exclusively to whether a termination for cause under subsection (1) of this section was reported to the director. Immunity under this subsection is available only if the propriety of any termination for cause under subsection (1) of this section is certified in writing by an officer or authorized representative of the insurer terminating the relationship.

(6) In any action brought against a person who may have immunity under subsection (5) of this section for making any statement required by this section or providing any information relating to any statement that may be requested in writing by the director, the party bringing the action must plead specifically in any allegation that subsection (5) of this section does not apply because the person making the statement or providing the information did so with actual malice.

(7) Subsections (5) and (6) of this section do not abrogate or modify any existing statutory or common law privileges or immunities.

(8) The director may take any administrative action authorized by the Insurance Code, including suspension or revocation of a license or certificate of authority, against an insurer, the authorized representative of an insurer or an insurance producer who fails to file notice as required by this section or who is found by a court of competent jurisdiction to have filed notice with actual malice.

(9) Any information, documents, records or other data in the control or possession of the director that are furnished by an insurer or an insurance producer, or an employee or agent thereof acting on behalf of the insurer or insurance producer, or that are obtained by the director in an investigation pursuant to this section shall be confidential, shall not be subject to subpoena and shall not be subject to discovery nor admissible in evidence in any private civil action. The director, however, may use the confidential information, documents, records or other data in administering this section and in the furtherance of any other regulatory or legal action brought as a part of the director's duties. The information, documents, records or other data referred to in this subsection are subject to the public officer privilege described in ORS 40.270. [2001 c.191 §17; 2003 c.364 §19]

744.080 [Repealed by 1967 c.359 §704]

744.081 Termination of appointment. (1) An insurer may terminate an agency appointment at any time as provided in this

section. Termination shall be without prejudice to the contract rights, if any, of the insurance producer so terminated. The insurer shall give written notice of the termination and the date thereof to the insurance producer at least 90 days prior to the effective date of the termination. The notice must specify the reasons for the termination. The insurer shall deliver the notice either in person or by mail at the address last provided by the insurance producer to the insurer. The insurance producer shall not have a cause of action against the insurer as a result of any statement in the notice unless the statement is false and the insurer knew the statement was false when made.

(2) An insurer may terminate an agency appointment without giving the notice required by subsection (1) of this section on any of the grounds specified in this subsection. The following are grounds for termination under this subsection:

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

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

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

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

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

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

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

(3) An insurance producer may terminate an agency appointment at any time, but the termination shall be without prejudice to the contract rights, if any, of the appointing insurer. The insurance producer shall give written notice of the termination and the date thereof to the director not later than the 30th day after the effective date of the termination, and to the insurer. The director may require reasonable proof from the insurance producer that the insurance producer has given such notice to the insurer. [Formerly 744.175; 2003 c.364 §20]

744.082 Waiver of requirement for nonresident insurance producer license applicant. The Director of the Department of Consumer and Business Services shall waive any requirement for a nonresident insurance producer license applicant with a valid resident insurance producer license from the applicant's home state, except the requirements imposed by ORS 744.063, if the applicant's home state grants nonresident insurance producer licenses to residents of this state on the same basis. [2001 c.191 §18; 2003 c.364 §21]

744.083 Trust account for premium funds; commingling; exceptions; rules. (1) All premium funds received by a resident insurance producer shall be accounted for and maintained in a trust account separate from all other business and personal funds.

(2) Except as provided in subsection (3) of this section, a resident insurance producer may not commingle or otherwise combine premiums with any other moneys.

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

(4) This section does not apply to:

(a) Any financial institution or trust company, as those terms are defined in ORS 706.008, or any entity licensed under ORS chapter 725 or 726.

(b) Any class of insurance producers that the Director of the Department of Consumer and Business Services designates by rule. The director may exempt a class of insurance producer from this section if the director determines that the requirements of this section are unduly burdensome to the insurance producers in relation to the public good served. [Formerly 744.225; 2003 c.364 §22]

744.084 Certificate of deposit in lieu of trust account; rules. (1) In lieu of the trust account required by ORS 744.083, a resident insurance producer may keep a certificate of deposit from an institution insured by the federal government or an instrumentality thereof if the resident insurance producer has an average monthly balance of premium funds received and held for the last 12 months of at least $2 million. A resident insurance producer who keeps a certificate of deposit shall have satisfactory evidence of the certificate available at all times for inspection by the Director of the Department of Consumer and Business Services.

(2) A certificate of deposit authorized under subsection (1) of this section shall be for an amount at least equal to the average monthly balance of premium funds received and held by the resident insurance producer for the last 12 months. Nothing in this subsection requires that the required amount of

the certificate of deposit be calculated, or the amount changed, more often than once a month.

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

(4) Authorization to use a certificate of deposit may be revoked by the director at any time upon a determination that the resident insurance producer has failed to comply with the provisions of this section or rules adopted under subsection (3) of this section. Upon revocation, the resident insurance producer shall comply immediately with the provisions of ORS 744.083. [Formerly 744.227; 2003 c.364 §23]

744.085 [1967 c.359 §533; 1971 c.231 §28; 1977 c.174 §1; 1977 c.820 §1; 1979 c.501 §4; 1981 c.817 §1; 1983 c.76 §5; 1989 c.701 §29; 1991 c.810 §8; 1993 c.447 §85; 1995 c.334 §1; repealed by 2001 c.191 §61]

744.086 Applicability of Insurance Code to insurance producers transacting title insurance. The Legislative Assembly finds that it is in the interest of the insurance-buying public that insurance producers authorized to transact title insurance be subject to the Insurance Code. It is declared to be the intent of the Legislative Assembly that the Insurance Code shall apply to such insurance producer only to the extent necessary for the regulation of title insurance ratemaking and unfair trade practices. [Formerly 744.240; 2003 c.364 §24]

744.087 Filing insurance producers compensation agreements; filing not public record. The Director of the Department of Consumer and Business Services may require the filing by an insurer of any compensation agreements for insurance producers who are appointed by the insurer as agents of the insurer under ORS 744.078. No such filing shall be deemed a "public record" as defined in ORS 192.410. [Formerly 744.245; 2003 c.364 §25]

744.088 Training requirements to be licensed as insurance producer for long term care insurance. (1) An individual may not sell, solicit or negotiate long term care insurance unless the individual is licensed as an insurance producer for health or life insurance and satisfies the following training requirements:

(a) The individual must complete a one-time training course of not less than eight hours before selling, soliciting or negotiating long term care insurance; and

(b) The individual must complete ongoing training of not less than four hours in each 24-month period following the one-time training course.

(2) The Director of the Department of Consumer and Business Services may approve as continuing education courses under ORS 744.072 any courses offered to satisfy the training requirements of this section.

(3) The training required by this section must consist of topics related to long term care insurance, long term care services and, if applicable, qualified state long term care insurance partnership programs, including but not limited to:

(a) State and federal rules and requirements and the relationship between qualified state long term care insurance partnership programs and other public and private coverage of long term care services, including Medicaid.

(b) Available long term care services and providers.

(c) Changes or improvements in long term care services or providers.

(d) Alternatives to the purchase of private long term care insurance.

(e) The effect of inflation on benefits and the importance of inflation protection.

(f) Consumer suitability standards and guidelines.

(4) The training required by this section may not include training that is insurer or company product specific or that includes any sales or marketing information, materials or training, other than those required by state or federal law.

(5) An insurer must:

(a) Obtain verification that an insurance producer receives training required by this section before an insurance producer sells, solicits or negotiates the insurer's long term care insurance products.

(b) Maintain records subject to the state's record retention requirements.

(c) Make the verification obtained under paragraph (a) of this subsection available to the director upon request.

(6) An insurer must maintain records with respect to the training of its insurance producers concerning the distribution of its partnership policies that will allow the director to provide assurance to the state Medicaid agency that insurance producers have received training on the topics described in subsection (3)(a) of this section and that insurance producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long term care, including Medicaid, in this state. An insurer must make the records available to the director upon request.

(7) The satisfaction in any state of the training required by this section is consid-

ered to satisfy the training required by this section. [2007 c.486 §9]

744.089 Report of administrative action taken against insurance producer. (1) An insurance producer shall report to the Director of the Department of Consumer and Business Services any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state not later than the 30th day after the date of the final disposition of the matter. This report shall include a copy of the order, consent to order and other relevant legal documents.

(2) Not later than the 30th day after the initial pretrial hearing date, an insurance producer shall report to the director any criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents. [2001 c.191 §19; 2003 c.364 §26]

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

744.091 Additional conditions under which person licensed as insurer or insurance producer may charge commission or service fee; rules. (1) An insurer or insurance producer may charge a commission, a service fee or a combination of the two when transacting insurance in other than the following categories of insurance:

(a) Insurance that covers an individual's person, property or liability;

(b) Life or health insurance for groups of fewer than 51 lives; or

(c) Insurance on a commercial or public entity paying combined annual premiums of less than $100,000 for the insurance.

(2) An insurer or insurance producer may charge a commission or service fee other than the commission or fee filed in accordance with ORS 737.205 only if the insurer or insurance producer has a written agreement with the prospective insured prior to the binding or issuance of an insurance policy. The Director of the Department of Consumer and Business Services may establish by rule minimum conditions for written agreements entered into under this subsection. An insurer or insurance producer who enters into a written agreement as provided in this subsection is not in violation of ORS 746.035 or 746.045. [2003 c.364 §17b]

744.093 Solicitation or sale of insurance policy by retail insurance producer or wholesale insurance producer; rules. (1) As used in this section:

(a) "Retail insurance producer" means an insurance producer who directly solicits or sells an insurance policy to a prospective insured or directly negotiates an insurance policy with a prospective insured.

(b) "Wholesale insurance producer" means an insurance producer who solicits or sells an insurance policy to a prospective insured through a retail insurance producer or negotiates an insurance policy for a prospective insured with a retail insurance producer and does not solicit or sell directly to or negotiate directly with a prospective insured.

(2) A wholesale insurance producer who sells, solicits or negotiates a policy directly with a retail insurance producer and not on behalf of a prospective insured may charge the retail insurance producer a fee or a combination of a fee and a commission if the wholesale insurance producer has a written agreement with the retail insurance producer prior to the binding or issuance of the insurance policy. The charge must be commensurate with the services provided by the wholesale insurance producer.

(3) A retail insurance producer may charge a fee to a prospective insured when the retail insurance producer pays a fee or a combination of a fee and a commission to a wholesale insurance producer under subsection (2) of this section if the retail insurance producer has a written agreement with the prospective insured prior to the binding or issuance of the insurance policy. The fee may not exceed the amount of compensation paid by the retail insurance producer to the wholesale insurance producer.

(4) For the purpose of determining the charge under subsection (2) of this section, the retail insurance producer and wholesale insurance producer may agree to any allocation of the fee that the retail insurance producer charges the consumer under this section. The Director of the Department of Consumer and Business Services may establish by rule minimum conditions for written agreements entered into under this section. An insurer or insurance producer who enters into a written agreement as provided in this section is not in violation of ORS 746.035 or 746.045. [2003 c.364 §26b]

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

744.100 [Repealed by 1967 c.359 §704]

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

744.110 [Repealed by 1967 c.359 §704]

744.115 [1967 c.359 §536; 1971 c.231 §30; 1973 c.515 §3; 1977 c.174 §2; 1979 c.501 §5; 1981 c.817 §2; 1987 c.774 §138; 1987 c.916 §9; 1989 c.331 §25; 1989 c.701 §30; 1991 c.810 §9; 1993 c.265 §7; 1995 c.334 §2; repealed by 2001 c.191 §61]

744.119 [Formerly 744.205; 1991 c.810 §10; 1993 c.447 §86; 1997 c.131 §4; repealed by 2001 c.191 §61]

744.120 [Repealed by 1967 c.359 §704]

744.123 [Formerly 744.195; repealed by 2001 c.191 §61]

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

744.127 [1989 c.701 §33; 1991 c.810 §11; repealed by 2001 c.191 §61]

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

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

744.140 [Repealed by 1967 c.359 §704]

744.145 [1967 c.359 §538; 1989 c.701 §35; repealed by 2001 c.191 §61]

744.150 [Repealed by 1967 c.359 §704]

744.155 [1967 c.359 §539; 1971 c.231 §31; 1975 c.769 §5; 1989 c.413 §11; 1989 c.701 §§34,81c; 1993 c.265 §8; repealed by 2001 c.191 §61]

744.160 [Repealed by 1967 c.359 §704]

744.165 [Formerly 739.520; 1971 c.231 §32; 1983 c.265 §1; repealed by 2001 c.191 §61]

744.170 [Repealed by 1967 c.359 §704]

744.175 [1967 c.359 §541; 1975 c.769 §6; 1989 c.692 §§1,2; 1989 c.701 §36; 2001 c.191 §24a; renumbered 744.081 in 2001]

744.180 [Repealed by 1967 c.359 §704]

744.182 [1989 c.701 §37; 1995 c.639 §5; repealed by 2001 c.191 §61]

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

744.190 [Repealed by 1967 c.359 §704]

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

744.200 [Repealed by 1967 c.359 §704]

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

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

744.225 [1987 c.569 §2; 1989 c.701 §38; 1997 c.631 §549; 2001 c.191 §24b; renumbered 744.083 in 2001]

744.227 [1989 c.680 §2; 2001 c.191 §24c; renumbered 744.084 in 2001]

744.231 [1989 c.701 §39; repealed by 2001 c.191 §61]

744.235 [Formerly 744.215; repealed by 1993 c.265 §14]

744.240 [Formerly 744.012; renumbered 744.086 in 2001]

744.245 [Formerly 744.017; 1999 c.55 §4; renumbered 744.087 in 2001]

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

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

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

MANAGING GENERAL AGENTS

744.300 License and indorsement; managing general agent described. (1) A person shall not act as a managing general agent with respect to risks located in this state for an authorized insurer unless the person holds a license issued under ORS 744.062 authorizing the person to act as an insurance producer and indorsed to authorize the person to act as a managing general agent.

(2) A person shall not act as a managing general agent representing a domestic insurer with respect to risks located outside this state unless the person holds a license issued under ORS 744.062 authorizing the person to act as an insurance producer and indorsed to authorize the person to act as a managing general agent.

(3) For purposes of ORS 744.300 to 744.316, a person acts as a managing general agent when the person:

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

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

(A) Adjusting or paying claims in excess of an amount determined by the Director of the Department of Consumer and Business Services.

(B) Negotiating reinsurance on behalf of the insurer.

(4) The provisions of ORS 744.062 governing application for amendment of a license apply to the indorsement of the license of an insurance producer for authority to act as a managing general agent, except that an examination is not required for the indorsement.

(5) The provisions of this section are subject to exemptions stated in ORS 744.301. [1991 c.495 §2; 2001 c.191 §39; 2003 c.364 §119]

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

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

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

(3) An underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer and is subject to ORS 732.517 to 732.592, and whose compensation is not based on the volume of premiums written.

(4) The attorney or attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney. [1991 c.495 §3; 1993 c.447 §63a]

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

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

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

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

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

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

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

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

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

(c) That with respect to all funds collected by a managing general agent for the account of an insurer, the managing general agent must comply with ORS 744.083 or 744.084, except that the managing general agent may retain in the account an amount not exceeding three months' estimated claims payments and allocated loss adjustment expenses.

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

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

(f) Appropriate underwriting guidelines, including:

(A) The maximum annual premium volume;

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

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

(D) Maximum limits of liability;

(E) Applicable exclusions;

(F) Territorial limitations;

(G) Policy cancellation provisions; and

(H) The maximum policy period.

(g) That the insurer may cancel or nonrenew any policy of insurance, subject to applicable statutes and rules governing cancellation and nonrenewal of insurance policies.

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

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

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

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

ages that may be reinsured and commission schedules.

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

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

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

(E) Appoint a submanaging general agent.

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

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

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

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

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

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

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

(A) Has the potential of exceeding an amount determined by the Director of the Department of Consumer and Business Services or the limit set by the insurer, whichever is less;

(B) Involves a coverage dispute;

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

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

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

(d) A provision that all claim files are the joint property of the insurer and managing general agent, except upon an order of liquidation of the insurer, and that in the event of such an order:

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

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

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

(5) The contract must provide that the insurer may not allow the managing general agent to pay or commit the insurer to pay a claim in excess of a specified amount, net of reinsurance, without approval by the insurer. The amount shall not exceed the amount established in ORS 744.308. [1991 c.495 §5; 2003 c.364 §120]

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

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

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

744.310 [Repealed by 1967 c.359 §704]

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

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

(2) An insurer is ultimately responsible for reporting the loss reserves. If a managing general agent calculates the loss reserves or a portion thereof, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves calculated for losses incurred and outstanding on business produced by the managing general agent. The requirement under this subsection is in addition to any other required loss reserve actuarial opinion. The actuary must be a member in good standing of an association of actuaries determined by the director to have established adequate professional standards for membership.

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

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

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

(6) An insurer shall review its books and records each calendar quarter to determine if any insurance producer who previously had not produced and underwritten sufficient gross direct written premium to meet the description of a managing general agent in ORS 744.300 has become a managing general agent subject to ORS 744.300 to 744.316. When an insurer determines that an insurance producer has become a managing general agent:

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

(b) The insurer and insurance producer must fully comply with ORS 744.300 to 744.316 not later than the 60th day after the date of notification under paragraph (a) of this subsection.

(7) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of any of its managing general agents. This subsection does not apply to relationships governed by ORS 732.517 to 732.592.

(8) The acts of a managing general agent shall be regarded as the acts of the insurer on whose behalf the managing general agent is acting. The director may examine a managing general agent as if it were the insurer. [1991 c.495 §§8,9; 2003 c.364 §121]

744.314 Rules. The Director of the Department of Consumer and Business Services may adopt rules to carry out ORS 744.300 to 744.316. [1991 c.495 §10]

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

744.316 Authority of director if managing general agent violates provisions of ORS 744.300 to 744.316. If the Director of the Department of Consumer and Business Services finds that a managing general agent has violated any provision of ORS 744.300 to 744.316, the director may order the managing general agent to reimburse the insurer or the rehabilitator or liquidator of the insurer for losses incurred by the insurer because of the violation. The director may take action under this section in addition to or instead of any other action the director may take under the Insurance Code. [1993 c.447 §63c]

LIFE SETTLEMENT CONTRACTS

744.318 Definitions. As used in ORS 744.318 to 744.384, 744.991 and 744.992:

(1) "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmission on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed directly before the public in this state for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy or to purchase or sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy pursuant to a life settlement contract.

(2) "Business of life settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner acquiring an interest in a life insurance policy by means of a life settlement contract.

(3) "Chronically ill" means:

(a) Being unable to perform at least two activities of daily living, such as eating, toileting, moving around, bathing or dressing;

(b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(c) Having a level of disability similar to that described in paragraph (a) of this subsection as determined by the Director of the Department of Consumer and Business Services.

(4)(a) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a life settlement provider, credit enhancer or any other person or entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract, but:

(A) Whose principal activity related to the transaction is providing funds to effect the life settlement or purchase of one or more settled policies; and

(B) Who has an agreement in writing with one or more licensed life settlement providers to finance the acquisition of life settlement contracts.

(b) "Financing entity" does not include a nonaccredited investor or a life settlement purchaser.

(5) "Licensee" means a life settlement provider, life settlement broker or life settlement investment agent.

(6) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority under ORS 744.062 or 744.063 to transact life insurance.

(7)(a) "Life settlement broker" means a person, including a life insurance producer, working exclusively on behalf of an owner and for a fee, commission or other valuable consideration, who offers or attempts to negotiate life settlement contracts between an owner and one or more life settlement providers or one or more life settlement brokers. Notwithstanding the manner in which the life settlement broker is compensated, a life settlement broker is deemed to represent only the owner, and not the life insurance producer or the life settlement provider, and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interest of the owner.

(b) "Life settlement broker" does not include an attorney, a certified public accountant or a financial planner, accredited by a nationally recognized accreditation agency, who is retained to represent the owner and whose compensation is not paid directly or indirectly by the life settlement provider or purchaser.

(8)(a) "Life settlement contract" means a written agreement between an owner and a life settlement provider or any affiliate of the life settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the owner's present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

(b) "Life settlement contract" includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns a life insurance policy or certificate of insurance if the trust or other entity was formed for the principal purpose of acquiring one or more life insurance contracts insuring the life of a person residing in this state.

(c) "Life settlement contract" also includes a premium finance loan made for a life insurance policy by a lender to an owner on, before or after the date of issuance of the policy if:

(A) The owner or the insured receives on the date of the premium finance loan a guarantee of a future life settlement value of the policy; or

(B) The owner or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(d) "Life settlement contract" does not include:

(A) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(B) Loan proceeds that are used solely to pay:

(i) Premiums for the policy; or

(ii) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses and third party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(C) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender. However, neither the default itself nor the transfer of the policy in

connection with a default may occur pursuant to an agreement or understanding with any other person for the purpose of evading regulation under ORS 744.318 to 744.384, 744.991 and 744.992;

(D) A premium finance loan made by a lender that does not violate the provisions of ORS 746.405 to 746.530, if the premium finance loan is not described in paragraph (c) of this subsection;

(E) An agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;

(F) Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(G) A legitimate business succession planning arrangement:

(i) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(ii) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(iii) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(H) An agreement entered into by a service recipient, or a trust established by the service recipient and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(I) Any other contract, transaction or arrangement exempted from the definition of life settlement contract by the director based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by ORS 744.318 to ORS 744.384, 744.991 and 744.992.

(9) "Life settlement investment agent" means a person who is an appointed or contracted agent of a licensed life settlement provider who solicits or arranges the funding for the purchase of a life settlement by a life settlement purchaser and who is acting on behalf of a life settlement provider.

(10)(a) "Life settlement provider" means a person, other than an owner, that enters into or effectuates a life settlement contract with an owner resident in this state.

(b) "Life settlement provider" does not include:

(A) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(B) A premium finance company making premium finance loans and exempted by the director from the licensing requirement under ORS 746.405 to 746.530 that takes an assignment of a life insurance policy solely as collateral for a loan;

(C) The issuer of the life insurance policy;

(D) An insurer certified under ORS 731.354 or accredited under ORS 731.511 that provides stop loss coverage or financial guaranty insurance to a life settlement provider, purchaser, financing entity, special purpose entity or related provider trust;

(E) An individual who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(F) A financing entity;

(G) A special purpose entity;

(H) A related provider trust;

(I) A life settlement purchaser; or

(J) Any other person that the director determines is not the type of person intended to be covered by the definition of "life settlement provider."

(11) "Life settlement purchase agreement" means a contract or agreement, entered into by a life settlement purchaser and to which the owner is not a party, to purchase a life insurance policy or an interest in a life insurance policy that is entered into for the purpose of deriving an economic benefit.

(12)(a) "Life settlement purchaser" means a person who, to derive an economic benefit:

(A) Provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or

(B) Owns or acquires or is entitled to a beneficial interest in a trust that owns a life settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a life settlement contract.

(b) "Life settlement purchaser" does not include:

(A) A licensee under ORS 744.321, 744.323 or 744.324;

(B) An accredited investor or qualified institutional buyer as defined in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(C) A financing entity;

(D) A special purpose entity; or

(E) A related provider trust.

(13)(a) "Owner" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a life settlement contract. For the purposes of ORS 744.318 to 744.384, 744.991 and 744.992, an owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except when specifically addressed. If there is more than one owner on a single policy and the owners are residents of different states, the transaction shall be governed by the law of the state in which the owner having the largest ownership percentage resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all the owners.

(b) "Owner" does not include:

(A) A licensee under ORS 744.321, 744.323 or 744.324, including a life insurance producer acting as a life settlement broker under ORS 744.323;

(B) A qualified institutional buyer as defined in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(C) A financing entity;

(D) A special purpose entity; or

(E) A related provider trust.

(14) "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(15) "Related provider trust" means a trust established by a licensed life settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction.

(16) "Settled policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.

(17) "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either direct or indirect access to institutional capital markets:

(a) For a financing entity or licensed life settlement provider;

(b) In connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by qualified institutional buyers as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or

(c) In connection with a transaction in which the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(18)(a) "Stranger-originated life insurance" means a practice or a plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. Such practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy, and for which, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party.

(b) Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, are considered stranger-originated life insurance arrangements.

(c) Stranger-originated life insurance arrangements do not include those practices set forth in subsection (8)(d) of this section.

(19) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less. [2009 c.711 §2]

744.319 [1995 c.342 §2; repealed by 2009 c.711 §23]

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

744.321 Life settlement providers. (1) A person shall not act as a life settlement provider unless the person holds a license of life settlement provider issued by the Director of the Department of Consumer and Business Services.

(2) A life settlement provider may use the term "viatical settlement provider" to describe the business transacted under the license and may use the term "viatical settlement contract" instead of "life settlement contract."

(3) A related provider trust must have a written agreement with a licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the director as if those records and files

were maintained directly by the licensed life settlement provider. [1995 c.342 §3; 2009 c.711 §3]

744.323 Life settlement brokers. (1) A person shall not act as a life settlement broker unless the person holds a license of life settlement broker issued by the Director of the Department of Consumer and Business Services.

(2) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the producer's home state for at least one year and is licensed as a nonresident producer in this state meets the licensing requirements of this section and is permitted to operate as a life settlement broker in this state.

(3) A life settlement broker may use the term "viatical settlement broker" to describe the business transacted under the license and may use the term "viatical settlement contract" instead of "life settlement contract." [1995 c.342 §4; 2009 c.711 §4]

744.324 Life settlement investment agents. A person shall not operate as a life settlement investment agent unless the person holds a license of life settlement investment agent issued by the Director of the Department of Consumer and Business Services or the person has obtained the appropriate license from the equivalent chief insurance regulatory official of the state of residence of the life settlement purchaser whom the agent is negotiating with on behalf of a life settlement provider. If there is more than one purchaser of a single policy and the purchasers are residents of different states, the life settlement investment agent must be licensed by the state in which the purchaser having the largest percentage ownership resides or, if the purchasers hold equal ownership, the state of residence of one purchaser agreed upon in writing by all purchasers. [2009 c.711 §5]

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

744.326 License application; fee. (1) In order to obtain a license to transact business as a life settlement provider or as a life settlement broker, an applicant shall apply for the license on a form prescribed by the Director of the Department of Consumer and Business Services, with payment of any fee required for the application.

(2) The director may request biographical, organizational, locational, financial, employment and any other information on the application form that the director determines to be relevant to the evaluation of applications and to the granting of the license. The director may also require a statement of the business plan or plan of operation of the applicant. The director may also require an applicant for a life settlement provider license to file with the application a copy of the life settlement contract that the applicant intends to use in business under the license.

(3) If an applicant is a corporation, the corporation must be incorporated under the laws of this state or must be a foreign corporation authorized to transact business in this state. [1995 c.342 §5]

744.328 Issuance of license. (1) If the Director of the Department of Consumer and Business Services determines that an applicant has satisfied all requirements for the license for which application is made, the director shall issue the license to the applicant. The director may issue a license if the director determines that the applicant, as required to be set forth in the application for the license:

(a) Has not engaged in conduct that would authorize the director to refuse to issue a license under ORS 744.338;

(b) Is competent and trustworthy and intends to act in good faith in the capacity specified by the license applied for;

(c) Has demonstrated evidence of financial responsibility in a format prescribed by the director through either a surety bond executed in an amount and in a manner prescribed by the director or a deposit of cash, certificates of deposit or securities or any combination thereof in an amount and manner prescribed by the director. The director shall accept as evidence of financial responsibility proof that financial instruments consistent with the requirements under this paragraph have been filed with at least one state in which the applicant is licensed as a life settlement provider, life settlement broker or life settlement investment agent;

(d) Has a good business reputation and has had experience, training or education so as to be qualified in the business of the licensee;

(e) If a life settlement provider or broker, has provided an antifraud plan under ORS 744.374 (10); and

(f) If a life settlement provider, has provided a detailed plan of operation in a manner prescribed by the director.

(2) The director may refuse to issue a license in the name of any firm, partnership or corporation if the director is not satisfied that any officer, employee, stockholder or partner thereof who may materially influence the conduct of the applicant meets the standards of this section.

(3) The director may issue a license to a nonresident applicant only if the nonresident applicant files with the director in writing an appointment of the director to be the at-

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

(4) If the director denies an application, the director shall so inform the applicant, stating the grounds for the denial. [1995 c.342 §6; 2009 c.711 §6]

744.330 [Repealed by 1967 c.359 §704]

744.331 Expiration of license; rules for renewal. (1) A license issued under ORS 744.328 expires on its expiration date unless it is renewed on or before its expiration date.

(2) Unless the Director of the Department of Consumer and Business Services designates another date, a license expires on the last day of the month in which the second anniversary of the initial issuance date of the license occurs, and on the second anniversary following each renewal.

(3) The director by rule may establish requirements for renewing licenses. [1995 c.342 §7]

744.333 Individual acting as provider under license of firm or corporation. An individual may act as a life settlement provider under the authority of the license of a firm or corporate life settlement provider, whether or not the individual holds a license as a life settlement provider, if:

(1) The individual is a member or employee of the firm or is an employee, officer or director of the corporation; and

(2) The individual is designated by the firm or corporation on its license application or on an amendatory or supplementary form thereto as authorized to act as a life settlement provider under the authority of the license. [1995 c.342 §8]

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

744.336 Notification by licensee of material change affecting qualification for license. A licensee shall immediately notify the Director of the Department of Consumer and Business Services of any material change in ownership or control or in any other matter affecting the qualification of the licensee for the license in this state. [1995 c.342 §9]

744.338 Suspension, revocation, refusal to issue or renew license. (1) The Director of the Department of Consumer and Business Services may suspend, revoke, refuse to issue or refuse to renew a license of a licensee if the director finds one or more of the following with respect to the licensee or applicant for a license:

(a) Dishonesty, fraud or gross negligence in the conduct of business as a licensee, or the licensee or applicant is otherwise shown to be untrustworthy or incompetent to act as a licensee.

(b) The life settlement provider demonstrates a pattern of unreasonable payments to policyholders or certificate holders.

(c) Falsification by the applicant or licensee of an application for the license or renewal thereof, or misrepresentation or engagement in any other dishonest act in relation to the application.

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

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

(f) Refusal to renew or cancellation, revocation or suspension of authority to transact insurance or business as a life settlement provider, life settlement broker or similar entity in another state.

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

(h) Refusal by a licensee to be examined or to produce accounts, records or files for examination, refusal by any officers to give information with respect to the affairs of the licensee or refusal to perform any other legal obligation as to the examination when required by the director.

(i) Affiliation with or under the same general management or interlocking directorate or ownership as another life settlement provider or life settlement broker or an insurer, any of which unlawfully transacts business in this state.

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

(k) Violation of any rule or order of the director or any provision of the Insurance Code by a licensee or any officer, partner, member or key management personnel of the licensee.

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

(a) The licensee is insolvent.

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

(3) A life settlement provider or life settlement broker holding a license that has not been renewed or has been revoked shall surrender the license to the director at the director's request.

(4) The director may take any other administrative action authorized under the Insurance Code in addition to or in lieu of the actions authorized under this section. [1995 c.342 §10; 2009 c.711 §7]

744.340 [Repealed by 1967 c.359 §704]

744.341 Terms of contract. (1) A life settlement contract must be in writing. A life settlement provider shall establish in the contract the terms under which the life settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the life settlement provider.

(2) A life settlement provider shall not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless the life settlement provider has filed the form with the Director of the Department of Consumer and Business Services and the director has approved the form. The director shall disapprove a life settlement contract form if, in the director's opinion, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, otherwise misleading or unfair to the policyholder or certificate holder or in violation of any of the requirements of ORS 744.318 to 744.384, 744.991 and 744.992.

(3) Each life settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind the contract not later than the 60th day after the date on which the contract is executed by all parties or not later than the 30th day after the policyholder or certificate holder receives the life settlement proceeds, whichever is the lesser period. In order to rescind such a contract, a policyholder or certificate holder who has received the proceeds must return them to the life settlement provider. [1995 c.342 §11; 2009 c.711 §8]

744.343 Annual report and statement by provider; restrictions on disclosure of information; rules. (1) Each life settlement provider shall file a report for the preceding calendar year with the Director of the Department of Consumer and Business Services on or before March 1 of each year, or within such extension of time therefor as the director may grant. The report shall be in the form and contain such information as the director prescribes and shall be verified as follows:

(a) If the life settlement provider is a corporation, by at least two principal officers of the life settlement provider.

(b) If the life settlement provider is a partnership, by two partners.

(c) If the life settlement provider is neither a corporation nor a partnership, by its president and secretary.

(2) For a policy settled within five years of policy issuance, a life settlement provider shall file with the director on or before March 1 of each year an annual statement containing such information as the director may prescribe by regulation. In addition to any other requirements, the annual statement must specify the total number and aggregate face amount and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement must also include the names of the insurance companies whose policies have been settled and the life settlement brokers that have settled the policies. The information must be limited to only those transactions for which the owner is a resident of this state.

(3) Except as otherwise allowed or required by law, a life settlement provider, life settlement broker, life settlement investment agent, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, may not disclose the fact that the person is insured or the insured's financial or medical information to any other person unless the disclosure:

(a) Is necessary to effect a life settlement between the owner and a life settlement provider and the owner and insured have provided prior written consent to the disclosure;

(b) Is necessary to effect a life settlement purchase agreement between the life settlement purchaser and a life settlement provider and the owner and insured have provided prior written consent to the disclosure;

(c) Is provided in response to an investigation or examination by the director or any other governmental officer or agency or pursuant to the requirements of ORS 744.346;

(d) Is a term of or condition to the transfer of a policy by one life settlement provider to another life settlement provider;

(e) Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a life settlement provider and the owner and insured have provided prior written consent to the disclosure;

(f) Is necessary to allow the life settlement provider or life settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or

(g) Is required to purchase stop loss coverage or financial guaranty insurance. [1995 c.342 §12; 2009 c.711 §9]

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

744.346 Examination of business and practices of licensee or applicant; records. (1) The Director of the Department of Consumer and Business Services may examine the business and practices of any licensee or applicant for a license when the director determines an examination to be necessary. The director may order a licensee or applicant to produce any records, books, files or other information reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(2)(a) A person required to be licensed under ORS 744.321 and 744.323 shall for five years retain copies of all:

(A) Proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later;

(B) Checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and

(C) Other records and documents related to the requirements under ORS 744.318 to 744.384, 744.991 and 744.992.

(b) This section does not relieve a person of the obligation to produce these documents for the director after the retention period has expired if the person has retained the documents.

(c) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(3) The director at any time may require a licensee to fully disclose the identity of all stockholders, partners, officers and employees.

(4) Names of, and individual identification data for, all policyholders and certificate holders who have entered life settlement contracts with life settlement providers are confidential as provided in ORS 705.137. [1995 c.342 §13; 2001 c.377 §15; 2009 c.711 §10]

744.348 [1995 c.342 §14; repealed by 2009 c.711 §23]

744.350 [Repealed by 1967 c.359 §704]

744.351 [1995 c.342 §15; repealed by 2009 c.711 §23]

744.353 [1995 c.342 §16; 2007 c.100 §31; renumbered 744.382 in 2009]

744.354 Disclosure by life settlement provider, broker or investment agent to policy owner. (1) With an application for a life settlement, a life settlement provider or life settlement broker shall provide the owner with at least the following disclosures no later than the time the application for the life settlement contract is signed by all parties. The disclosures must be provided in a separate document that is signed by the owner and the life settlement provider or life settlement broker, and must provide the following information:

(a) There are possible alternatives to life settlement contracts, including any accelerated death benefits or policy loans offered under the owner's life insurance policy.

(b) A life settlement broker represents exclusively the owner, and not the insurer or the life settlement provider, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner.

(c) Some or all of the proceeds of the life settlement may be taxable under federal and state income tax, and assistance should be sought from a professional tax adviser.

(d) Proceeds of the life settlement may be subject to the claims of creditors.

(e) Receipt of proceeds from a life settlement contract may affect the owner's eligibility for public assistance or other government benefits or entitlements, and advice should be obtained from appropriate agencies. Receipt of proceeds from a life settlement contract may reduce the owner's risk of becoming impoverished and becoming dependent on public assistance or other government benefits or entitlements.

(f) The owner has the right to rescind a life settlement contract before the earlier of 60 calendar days after the date upon which the life settlement contract is executed by all parties or 30 calendar days after the life settlement proceeds have been paid to the owner, as provided in ORS 744.364 (3). Rescission, if exercised by the owner, is ef-

fective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans and loan interest paid on account of the life settlement within the rescission period. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded, subject to repayment by the owner or the owner's estate of all life settlement proceeds and any premiums, loans and loan interest of the life settlement within 60 days of the insured's death.

(g) Funds will be sent to the owner within three business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(h) Entering into a life settlement contract may prevent the owner from qualifying for new life insurance coverage in the future and may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner. Assistance should be sought from a financial adviser.

(i) The following language: "All medical, financial or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) Following execution of a life contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in ORS 744.318 to 744.384, 744.991 and 744.992. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and to no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a life settlement provider licensed in the state in which the owner resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider.

(2) Prior to or concurrently with the disclosures required under subsection (1) of this section, the owner shall be given a brochure describing the process of life settlements. The Director of the Department of Consumer and Business Services shall develop and approve a form for the brochure.

(3) A life settlement provider shall provide the owner with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

(a) The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be settled;

(b) The name, business address and telephone number of the life settlement provider;

(c) Any affiliations or contractual arrangements between the life settlement provider and the life settlement purchaser;

(d) If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, information about the possible loss of coverage on the other lives under the policy and the need to consult with the owner's insurance producer or the insurer issuing the policy for advice on the proposed life settlement;

(e) The dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. If known, disclosure of the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement contract;

(f) If the funds will be escrowed with an independent third party during the transfer process, the name, business address and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents;

(g) The name, business address and telephone number of the life settlement broker;

(h) A full, complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed life settlement contract;

(i) A written disclosure of any affiliations or contractual arrangements between the life settlement broker and any person making an offer in connection with the proposed life settlement contracts;

(j) The amount and method of calculating the broker's compensation. Compensation in-

cludes anything of value paid or given to a life settlement broker for the placement of a policy; and

(k) When any portion of the life settlement broker's compensation, as described in paragraph (j) of this subsection, is taken from a proposed life settlement offer, disclosure of the total amount of the life settlement offer and the percentage of the life settlement offer comprised by the life settlement broker's compensation.

(4) If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

(5) A life settlement provider or its life settlement investment agent shall provide the life settlement purchaser with at least the following disclosures prior to the date the life settlement purchase agreement is signed by all parties. The disclosures must be conspicuously displayed in any life purchase contract or in a separate document signed by the life settlement purchaser and life settlement provider or life settlement investment agent, and must make the following disclosures to the life settlement purchaser:

(a) The purchaser shall receive no returns, such as dividends and interest, until the insured dies and a death claim payment is made.

(b) The actual annual rate of return on a life settlement contract is dependent upon an accurate projection of the insured's life expectancy and the actual date of the insured's death. An annual guaranteed rate of return is not determinable.

(c) The settled life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.

(d) The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the life investment.

(e) The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the life purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party also shall be disclosed.

(f)(A) The purchaser is responsible for payment of the insurance premiums or other costs related to the policy.

(B) The amount of the premiums, if applicable.

(g) The name, business address and telephone number of the independent third party providing escrow services and the relationship to the broker.

(h) The amount of any trust fees or other expenses to be charged to the life settlement purchaser.

(i) Whether the purchaser is entitled to a refund of all or part of the purchaser's investment under the settlement contract if the policy is later determined to be null and void.

(j)(A) Group policies may contain limitations or caps in the conversion rights, and additional premiums may have to be paid if the policy is converted.

(B) The name of the party responsible for the payment of the additional premiums.

(C) If a group policy is terminated and replaced by another group policy, there may be no right to convert the original coverage.

(k) The risks associated with policy contestability, including but not limited to the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.

(L) Whether the purchaser will be the owner of the policy in addition to being the beneficiary and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including but not limited to the risk that the beneficiary may be changed or the premium may not be paid.

(m) The experience and qualifications of the person who determines the life expectancy of the insured, the information this projection is based on and the relationship of the projection maker to the life settlement provider, if any.

(6) Disclosure to a life settlement purchaser shall include distribution of a brochure describing the process of investment in life settlements, in a form to be developed and approved by the director.

(7) A life settlement provider or its life settlement investment agent shall provide the life settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The disclosures must be contained in a document signed by the life settlement purchaser and life settlement provider or life settlement investment agent, and must make the following disclosures to the life settlement purchaser:

(a) The life expectancy certifications obtained by the provider in the process of determining the price paid to the owner.

(b) If premium payments or other costs related to the policy have been escrowed, the date when the escrowed funds will be depleted, whether the purchaser is responsible for payment of premiums thereafter and, if so, the amount of the premiums.

(c) Whether or not premium payments or other costs related to the policy have been waived. If waived, whether or not the investor is responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase, and the amount of those premiums.

(d) The type of policy offered or sold, such as whole life, term life, universal life or a group policy certificate, any additional benefits contained in the policy and the current status of the policy.

(e) If the policy is term insurance, the special risks associated with term insurance, including but not limited to the purchaser's responsibility for additional premiums if the owner continues the term policy at the end of the current term.

(f) If the policy is contestable.

(g) If the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the life settlement contract, what these rights are and under what conditions these rights are activated.

(h) The name and address of the person responsible for monitoring the insured's condition. A description of how often the monitoring of the insured's condition is done, how the date of death is determined and how and when this information is transmitted to the purchaser.

(8) The life settlement purchase agreement is voidable by the purchaser at any time within three days after the disclosures mandated by subsection (7) of this section are received by the purchaser. [2009 c.711 §11]

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

744.356 [1995 c.342 §17; repealed by 2009 c.711 §23]

744.358 [1995 c.342 §18; 2009 c.711 §20; renumbered 744.384 in 2009]

744.359 Disclosure by life settlement broker or provider to insurer. Prior to the initiation of a plan, transaction or series of transactions, a life settlement broker or life settlement provider shall fully disclose to an insurer the plan, transaction or series of transactions to which the life settlement broker or life settlement provider is a party, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of engaging in the business of life settlements at anytime prior to, or during the first five years after, issuance of the policy. [2009 c.711 §12]

744.360 [Repealed by 1967 c.359 §704]

744.362 Disclosure by insurance company to policy owner; rules. (1) With respect to each policy issued by an insurance company, the insurance company shall provide notice to the owner of an individual life insurance policy when the insured person under such a policy is 60 years of age or older and:

(a) The life insurance company receives notice from such an owner of a request to surrender, in whole or in part, an individual policy;

(b) The life insurance company receives notice from such an owner of a request to receive an accelerated death benefit under an individual policy; or

(c) The life insurance company sends to such an owner all notices of lapse of an individual policy, other than a term policy.

(2)(a) The notice must consist of the following statement in large, bold or otherwise conspicuous typeface calculated to draw the eye: "Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop around and seek advice from different financial advisers in order to find the option best suited to your needs."

(b) The communication of the notice must also contain a statement advising the recipient that the recipient may contact the Insurance Division of the Department of Consumer and Business Services for more information, and must include an address or other location or manner by which the recipient may contact the Insurance Division.

(c) The department shall adopt by rule the appropriate address or other location or manner of contact to be included in the required notice.

(3)(a) The Director of the Department of Consumer and Business Services shall make available to the public information designed to educate the consumer about the consumer's rights as an owner of a life insurance policy. The information must be written in lay terms and must advise the consumer:

(A) That life insurance is a critical part of a broader financial plan, and that the consumer is encouraged, and has a right, to seek additional financial advice and opinions;

(B) That possible alternatives to lapse exist; and

(C) Of the definitions of common industry terms.

(b) The information described in paragraph (a) of this subsection may include brief descriptions of common products available from licensees. These products must be discussed in general terms for informative purposes only, and not be identifiable to any specific licensee. [2009 c.711 §22]

744.364 Life settlement contract requirements. (1)(a) A life settlement provider entering into a life settlement contract shall first obtain:

(A) If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and

(B) A document in which the insured consents to the release of the insured's medical records to a licensed life settlement provider, life settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within 20 days after a owner executes documents necessary to transfer any rights under an insurance policy or, if the insured is terminally ill, within 20 days after an owner entering any agreement, option, promise or any other form of understanding, expressed or implied, to transfer the policy for value, the life settlement provider shall give written notice to the insurer that issued the insurance policy that the policy has or will become a settled policy. The notice must be accompanied by the documents required by paragraph (c) of this subsection.

(c) The life settlement provider shall deliver a copy of the medical release required under paragraph (a)(B) of this subsection, a copy of the owner's application for the life settlement contract, the notice required under paragraph (b) of this subsection and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life transaction. The Director of the Department of Consumer and Business Services shall develop and approve a form for the request for verification.

(d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement broker within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on a form approved by the director. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the owner. Failure by the insurer to meet its obligations under this subsection is a violation of the Insurance Code.

(e) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the owner consents to the life settlement contract, represents that the owner has a full and complete understanding of the life settlement contract, that the owner has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the owner is entering into the life settlement contract freely and voluntarily and, for persons with a terminal illness or chronic illness or condition, acknowledges that the insured has a terminal illness or chronic illness and that the terminal illness or chronic illness or condition was diagnosed after the life insurance policy was issued.

(f) If a life settlement broker performs any of the activities required of the life settlement provider, the provider is deemed to have fulfilled the requirements of this section that were performed by the broker.

(2) All medical information solicited or obtained by any licensee is privileged and confidential under ORS 705.137.

(3)(a) All life settlement contracts entered into in this state must provide the owner with an absolute right to rescind the contract before the earlier of 60 calendar days after the date upon which the life settlement contract is executed by all parties or 30 calendar days after the life settlement proceeds have been sent to the owner under subsection (5) of this section.

(b) The life settlement provider may condition rescission upon the owner both giving notice and repaying to the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement.

(c) If the insured dies during the rescission period, the life settlement contract is deemed to have been rescinded, subject to repayment within 60 calendar days of the death of the insured to the life settlement provider or purchaser of all life settlement proceeds and any premiums, loans and loan interest that have been paid by the life settlement provider or purchaser.

(d) In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement broker in connection with the rescinded transaction, the life settlement broker shall

refund all such commissions and compensation to the life settlement provider within five business days following receipt of written demand from the life settlement provider. The demand must be accompanied by either the owner's notice of rescission if rescinded at the election of the owner, or the notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(4) The life settlement purchaser shall have the right to rescind a life settlement contract within three days after the disclosures mandated by ORS 744.354 (7) are received by the purchaser.

(5)(a) The life settlement provider shall instruct the owner to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to an independent escrow agent selected by the provider.

(b) Within three business days after the date the escrow agent receives the document, or from the date the life settlement provider receives the documents, if the owner erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

(c) Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the owner.

(6) Failure to pay the owner the full contract amount for the life settlement contract within the time set forth under subsection (5) of this section renders the life settlement contract voidable by the owner until the time full payment is tendered to and accepted by the owner. Funds are deemed sent by a life settlement provider to a owner as of the date that the escrow agent either releases funds for wire transfer to the owner or places a check for delivery to the owner via the United States Postal Service or another nationally recognized delivery service.

(7)(a) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement broker after the life settlement has occurred may be made only by the life settlement provider or broker licensed in this state or its authorized representatives and are limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less.

(b) The limitations set forth in this subsection do not apply to any contacts with an insured for reasons other than determining the insured's health status. [2009 c.711 §13]

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

744.367 Limitations on ability to enter life settlement contract; exceptions. (1) A person may not enter into a life settlement contract at any time prior to the application or issuance of a policy that is the subject of a life settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate. However, this five-year restriction does not apply if the owner certifies to the life settlement provider that any one or more of the following conditions has been met within the five-year period:

(a) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy is calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(b) The owner submits independent evidence to the life settlement provider that one or more of the following conditions have been met within the five-year period:

(A) The owner or insured is terminally ill or chronically ill;

(B) The owner's spouse dies;

(C) The owner divorces the owner's spouse;

(D) The owner retires from full-time employment;

(E) The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

(F) A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee or liquidator to all or a substantial part of the owner's assets; or

(c) The owner enters into a life settlement contract more than two years after the

date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

(A) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or full recourse liability incurred by, the insured or a person closely related to the insured by blood or law or a party having a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or a trust established primarily for the benefit of such parties;

(B) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(C) Neither the insured nor the policy has been evaluated for settlement.

(2) Copies of the independent evidence described in subsection (1)(b) of this section and documents required by ORS 744.364 (1) must be submitted to the insurer when the life settlement provider or other party entering into a life settlement contract with an owner submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.

(3) If the life settlement provider submits to the insurer a copy of the owner's or insured's certification described in and the documents required by ORS 744.364 (1) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the life settlement provider, the copy conclusively establishes that the life settlement contract satisfies the requirements of this section and the insurer shall respond in a timely manner to the request.

(4) An insurer may not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, life settlement provider or life settlement broker sign any forms, disclosures, consent or waiver form that has not been expressly approved by the Director of the Department of Consumer and Business Services for use in connection with life settlement contracts in this state.

(5) Upon receipt of a properly completed request for a change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer may not unreasonably delay effecting change of ownership or beneficiary and may not otherwise seek to interfere with any life settlement contract lawfully entered into in this state. [2009 c.711 §14]

744.369 Unlawful life settlement contract actions. (1) With respect to a life settlement contract or insurance policy, it is unlawful for a life settlement broker to knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to a life settlement provider, financing entity or related provider trust that is controlling, controlled by or under common control with a life settlement broker, unless that relationship is disclosed to the owner.

(2) With respect to a life settlement contract or insurance policy, it is unlawful for a life settlement broker to knowingly enter into a life settlement contract with an owner if, in connection with the life settlement contract, anything of value will be paid to a life settlement broker that is controlling, controlled by or under common control with a life settlement provider, financing entity or related provider trust that is involved in the settlement contract, unless that relationship is disclosed to the owner.

(3) A person may not issue, solicit, market or otherwise promote the purchase of an insurance policy for the purpose of, or with an emphasis on, settling the policy.

(4) A person may not enter into a premium finance arrangement under which the person receives any proceeds, fees or other consideration, directly or indirectly, from the proceeds of the policy, from the owner of the policy or from any other person with respect to the premium finance agreement, the life settlement contract or any other transaction related to the policy that are in addition to the amounts required to pay the principal, interest and service charges related to the policy premiums under the premium finance agreement or subsequent sale of the agreement. Any payments, charges, fees or other amounts in addition to the amounts required to pay the principal, interest and service charges related to policy premiums paid under the premium finance agreement must be remitted to the original owner of the policy or the original owner's estate if the original owner is not living at the time of the determination of overpayment.

(5) In the solicitation, application or issuance of a life insurance policy, a person may not employ any device, scheme or artifice in violation of ORS 743.024.

(6) A life settlement provider may not enter into a life settlement contract unless the life settlement promotional, advertising and marketing materials, as may be prescribed by regulation, have been filed with the Director of the Department of Consumer and Business Services.

(7) A life insurance producer, insurance company, life settlement broker, life settlement provider or life settlement investment agent may not make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

(8) A person may not present, cause to be presented or prepare with the knowledge or belief that it will be presented to or by a life settlement provider, life settlement broker, life settlement purchaser, life settlement investment agent, financing entity, insurer, insurance producer or any other person, false material information, or conceal material information, as part of, in support of or concerning a fact material to one or more of the following:

(a) An application for the issuance of a life settlement contract or insurance policy;

(b) The underwriting of a life settlement contract or insurance policy;

(c) A claim for payment or benefit pursuant to a life settlement contract or insurance policy;

(d) Premiums paid on an insurance policy, or as a result of a life settlement purchase agreement;

(e) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract, life settlement purchase agreement or insurance policy;

(f) The reinstatement or conversion of an insurance policy;

(g) The solicitation, offer, effectuation or sale of a life settlement contract, insurance policy or life settlement purchase agreement;

(h) The issuance of written evidence of a life settlement contract, life settlement purchase agreement or insurance; or

(i) A financing transaction.

(9) A person may not employ any plan, financial structure, device, scheme or artifice to defraud related to settled policies.

(10) A person may not enter into any practice or plan that involves stranger-originated life insurance.

(11) A person may not fail to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy.

(12) A person may not, and may not permit employees or agents to:

(a) Remove, conceal, alter, destroy or sequester from the director the assets or records of a licensee or other person engaged in the business of life settlements;

(b) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;

(c) Transact the business of life settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of life settlements; or

(d) File with the director or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the director.

(13) A person may not embezzle, steal, misappropriate or convert moneys, funds, premiums, credits or other property of a life settlement provider, insurer, insured, owner, insurance policyowner or any other person engaged in the business of life settlements or insurance.

(14) A person may not recklessly enter into, negotiate, broker or otherwise deal in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, for which the person or the persons intended to defraud the policy's issuer, the life settlement provider or the owner. For the purposes of this subsection, "recklessly" means engaging in conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

(15) A person may not facilitate the change of state of ownership of a policy or certificate or the state of residency of an owner to a state or jurisdiction that does not have a law similar to ORS 744.318 to 744.384, 744.991 and 744.992 for the express purposes of evading or avoiding the provisions of ORS 744.318 to 744.384, 744.991 and 744.992.

(16) A person may not attempt to commit, assist, aid or abet in the commission of, or conspire to commit the acts or omissions specified in, this subsection.

(17) A life settlement investment agent shall not have any contact, directly or indirectly, with the owner or insured under the policy or have knowledge of the identity of the owner or insured. [2009 c.711 §15]

744.370 [Repealed by 1967 c.359 §704]

744.372 Advertising of life settlement contracts; rules. (1) This section applies to any advertising of life settlement contracts, life purchase agreements or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. When disclosure requirements are established pursuant to federal regulation, this section is interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

(2) Every licensee must establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, is the responsibility of the licensees, as well as the individual who created or presented the advertisement. A system of control must include regular routine notification, at least once a year, to agents and others authorized by the licensee who disseminate advertisements, of the requirements of this section and the requirements adopted by the Director of the Department of Consumer and Business Services in the use of any advertisements not furnished by the licensee.

(3) Advertisements must be truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract or life settlement purchase agreement must be sufficiently complete and clear so as to avoid deception. It may not have the capacity or tendency to mislead or deceive.

(4) An advertisement may not use the name or title of a life insurance company or a life insurance policy unless the named company or policy-holder consents to the usage in a form prescribed by the director.

(5) An advertisement may not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a life settlement contract or life settlement purchase agreement in order to maintain that policy, unless that is the fact.

(6) An advertisement may not state or imply that a life settlement contract or life settlement purchase agreement, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the licensee, or receives any payment or other consideration from the licensee for making an endorsement or testimonial, that fact must be disclosed in the advertisement.

(7) When an endorsement refers to benefits received under a life settlement contract or life settlement purchase agreement, all pertinent information must be retained for a period of five years after its use.

(8) An advertisement may not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement must be identified.

(9) An advertisement may not directly or indirectly create the impression that any division or agency of this state or of the United States government endorses, approves or favors:

(a) Any licensee or its business practices or methods of operation;

(b) The merits, desirability or advisability of any life settlement contract or life settlement purchase agreement;

(c) Any life settlement contract or life settlement purchase agreement; or

(d) Any life insurance policy or life insurance company.

(10) The director may adopt rules to implement this section. [2009 c.711 §16]

744.374 Enforcement of life settlement contract provisions; reporting of violations; required antifraud initiatives. (1) A person may not knowingly or intentionally interfere with the enforcement of the provisions of ORS 744.318 to 744.384, 744.991 and 744.992 or investigations of suspected or actual violations of ORS 744.318 to 744.384, 744.991 and 744.992.

(2) A person in the business of life settlements may not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

(3) Life settlements contracts and purchase agreement forms and applications for life settlements, regardless of the form of transmission, must contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in this application is guilty of a crime and may be subject to fines and confinement in prison."

(4) The lack of a statement as required in subsection (3) of this section does not constitute a defense in any investigation or

prosecution for an act violating any provision of ORS 744.318 to 744.384, 744.991 and 744.992.

(5) Any person engaged in the business of life settlements having knowledge or a reasonable suspicion that a fraudulent life settlement act is being, will be or has been committed must provide to the Director of the Department of Consumer and Business Services information as required by, and in a manner prescribed by, the director.

(6) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be or has been committed may provide to the director the information required by, and in a manner prescribed by, the director.

(7)(a) No civil liability is imposed on and no cause of action arises from a person's furnishing information concerning suspected, anticipated or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(A) The director or the director's employees, agents or representatives;

(B) Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;

(C) A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees or representatives;

(D) The National Association of Insurance Commissioners, the Financial Industry Regulatory Authority or the North American Securities Administrators Association, or their employees, agents or representatives, or any other regulatory body overseeing life insurance, life settlements, securities or investment fraud; or

(E) The life insurer that issued the life insurance policy covering the life of the insured.

(b) Paragraph (a) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act, the party bringing the action must plead specifically any allegation that paragraph (a) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person furnishing information as identified in paragraph (a) of this subsection is entitled to an award of attorney fees and costs if the person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of ORS 744.318 to 744.384, 744.991 and 744.992 and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to a person furnishing information concerning the person's own fraudulent life settlement acts.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (a) of this subsection.

(8) The documents and evidence obtained by the director in an investigation of suspected or actual fraudulent life settlement acts are privileged and confidential under ORS 705.137.

(9) This section does not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

(b) Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the Department of Consumer and Business Services; or

(c) Limit the powers granted elsewhere by the laws of this state to the director or any other state department or agency to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(10)(a) Life settlement providers and life settlement brokers must have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent life settlement acts. At the discretion of the director, the director may order, or a licensee may request and the director may grant, such modifications of the required initiatives described in paragraph (b) of this subsection as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives as long as the modifications may reasonably be expected to accomplish the purpose of this section.

(b) Antifraud initiatives must include:

(A) Fraud investigators, who may be life settlement provider or life settlement broker employees or independent contractors; and

(B) An antifraud plan, which must be submitted to the director. The antifraud plan must include, but is not limited to:

(i) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for

resolving material inconsistencies between medical records and insurance applications;

(ii) A description of the procedures for reporting possible fraudulent life settlement acts to the director;

(iii) A description of the plan for antifraud education and training of underwriters and other personnel; and

(iv) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for investigating and reporting possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the director are privileged and confidential under ORS 705.137. [2009 c.711 §17]

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

744.380 [Repealed by 1967 c.359 §704]

744.382 Prohibitions on finder's fee, solicitations, discrimination. (1) A licensee may not pay or offer to pay a finder's fee, commission or other compensation to a person described in this subsection, in connection with a policy insuring the life of an individual with a terminal illness or condition. The prohibition under this subsection applies with respect to payments or offers of payment to:

(a) The physician, attorney or accountant of the policyholder, of the certificate holder or of the insured individual when the individual is other than the policyholder or certificate holder.

(b) Any person other than a physician, attorney or accountant described in paragraph (a) of this subsection, who provides medical, legal or financial planning services to the policyholder, to the certificate holder or to the insured individual when the individual is other than the policyholder or certificate holder.

(c) Any person other than one described in paragraph (a) or (b) of this subsection who acts as an agent of the policyholder, certificate holder or insured individual.

(2) A licensee may not solicit an investor who could influence the treatment of the illness or condition of the individual whose life would be the subject of a life settlement contract.

(3) All information solicited or obtained from a policyholder or certificate holder by a licensee is subject to ORS 746.600 to 746.690. For purposes of this subsection, a licensee is considered an insurance-support organization within the meaning of ORS 746.600.

(4) A licensee may not discriminate in the making of a life settlement contract on the basis of race, religion, creed, sex, sexual orientation, national origin, marital status, age, familial status or occupation or discriminate between persons who have dependents and persons who do not have dependents. [Formerly 744.353]

744.384 Rules; standards. The Director of the Department of Consumer and Business Services may adopt rules for the purpose of carrying out ORS 744.318 to 744.384, 744.991 and 744.992. In addition:

(1) The director may establish standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally ill or chronically ill. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy insuring the life of a person who is terminally ill or chronically ill. For the purpose of the standards, the director shall consider payments made in regional and national life settlement markets, to the extent such information is available, as well as model standards developed by the National Association of Insurance Commissioners.

(2) The director may establish trade practice standards by rule for the purpose of regulating advertising and solicitation of life settlement contracts.

(3) The director may adopt rules governing the relationship and responsibilities of both insurers and life settlement providers, life settlement brokers and life settlement investment agents during the settlement of a life insurance policy or certificate.

(4) The director may adopt rules governing disclosure by a life settlement provider or broker to an insured of the tax implications and effect on life insurance capacity of a life settlement.

(5) The director may adopt rules governing the confidentiality of an insured's personal financial or medical information provided to a life settlement broker, life settlement provider or life settlement investment agent. [Formerly 744.358]

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

744.390 [Repealed by 1967 c.359 §704]

744.395 [Repealed by 1967 c.359 §704]

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

744.400 [Repealed by 1967 c.359 §704]

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

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

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

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

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

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

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

744.470 [Repealed by 1967 c.359 §704]

744.480 [Repealed by 1967 c.359 §704]

744.490 [Repealed by 1967 c.359 §704]

744.500 [Repealed by 1967 c.359 §704]

ADJUSTERS

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

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

744.510 [Repealed by 1967 c.359 §704]

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

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

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

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

(5) A person may perform or provide repair or replacement service under home protection insurance without obtaining an adjuster's license. [1967 c.359 §560; 1971 c.231 §33; 1981 c.247 §19; 1983 c.76 §11; 1989 c.701 §44; 2003 c.364 §122]

744.520 [Repealed by 1967 c.359 §704]

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

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

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

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

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

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

(a) Apply for the license on forms designed and furnished by the Director of the Department of Consumer and Business Services as provided in ORS 744.001.

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

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

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

(1) Property and casualty insurance. Under this class, in addition to property and casualty insurance, an adjuster may also adjust losses with respect to marine and transportation and surety insurance.

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

(3) Any class of insurance designated by the director by rule. [1989 c.701 §47; 2003 c.802 §170]

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

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

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

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

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

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

(3) A nonresident adjuster who changes residence to another state other than this state or to a province must apply to the director for a license as a nonresident adjuster as if the adjuster were initially applying for such a license. [1989 c.701 §49; 1995 c.639 §6]

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

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

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

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

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

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

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

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

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

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

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

744.575 Adjusting claims involving credit life or credit health insurance. No plan or arrangement shall be used with respect to credit life or credit health insurance whereby any person other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims, except that a group policyholder may, by arrangement with the group insurer, draw

drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer. [Formerly 741.455; 1989 c.701 §52]

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

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

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

INSURANCE CONSULTANTS

744.605 Insurance consultant's license required. (1) A person shall not act as an insurance consultant unless the person holds a valid license issued by the Director of the Department of Consumer and Business Services that authorizes the person to act as an insurance consultant. For purposes of this section, a person acts as an insurance consultant if:

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

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

(A) Acting as a consultant regarding insurance.

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

(C) In any other manner providing information about insurance.

(2) For the purposes of subsection (1)(b) of this section, compensation includes consideration paid for financial and other related services provided by the person in connection with services referred to in subsection (1)(b) of this section. [1985 c.697 §2; 1989 c.701 §53; 1991 c.810 §15; 1997 c.419 §1]

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

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

(2) Any certified public accountant or public accountant rendering services in the performance of the duties of a certified public accountant or public accountant, as authorized by law.

(3) Any person who, while conducting an educational seminar, performs any of the activities described in ORS 744.605 (1)(b).

(4) Any financial institution, as defined in ORS 706.008, or consumer finance licensee under ORS chapter 725.

(5) Any actuary who is a member of an organization determined by the Director of the Department of Consumer and Business Services as establishing standards for the actuarial profession.

(6) A person who provides or offers or purports to provide any of the services described in ORS 744.605 only to an insurance producer or an authorized insurer. [1985 c.697 §3; 1989 c.701 §54; 1991 c.810 §16; 1997 c.419 §2; 1999 c.59 §228; 2003 c.364 §123]

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

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

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

(1) The applicant must provide satisfactory evidence to the Director of the Department of Consumer and Business Services that the insurance required under ORS 744.635 has been procured and is in effect.

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

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

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

(5) The applicant must satisfy any other requirements established by the director by rule. [1985 c.697 §5; 1989 c.701 §57; 1991 c.810 §17; 2003 c.364 §124]

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

744.621 Nonresident insurance consultant license. (1) A person who resides in another state or province of Canada and is licensed in that state or province as an insurance consultant or is registered under a regulatory program of the other state or

province similar to the regulatory program for insurance consultants under this chapter, as determined by the Director of the Department of Consumer and Business Services, may be licensed to act as a nonresident insurance consultant in this state as provided in this section if the state or province in which the person resides gives the same privilege to a resident insurance consultant of this state.

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

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

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

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

(d) The applicant must satisfy any other requirements established by the director by rule. [1989 c.701 §58; 1991 c.810 §18; 2003 c.364 §125]

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

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

(1) Life insurance.

(2) Health insurance.

(3) Property and casualty insurance. Under this class, in addition to property and casualty insurance, an insurance consultant may also act as insurance consultant with respect to marine and transportation and surety insurance.

(4) Any class of insurance designated by the director by rule. [1989 c.701 §62; 2003 c.802 §171]

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

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

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

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

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

(3) A nonresident insurance consultant who changes residence to another state other than this state or to a province must apply to the director for a license as a nonresident insurance consultant as if the insurance consultant were initially applying for such a license. [1989 c.701 §61; 1995 c.639 §7]

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

(2) If the director determines that errors and omissions insurance required under this section is not generally available at a reasonable cost, the director by rule may suspend the requirement of insurance, but must reimpose the requirement when the insurance becomes available once again. [1985 c.697 §8; 1989 c.701 §63; 1991 c.331 §131; 1991 c.810 §19]

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

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

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

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

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

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

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

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

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

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

(g) Any other information required by the Director of the Department of Consumer and Business Services by rule.

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

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

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

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

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

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

(4) The director may design the form of disclosure statement to be used under subsection (1) of this section. [1985 c.697 §11; 1991 c.810 §20; 2003 c.364 §126]

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

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

744.665 Continuing education; rules. The Director of the Department of Consumer and Business Services by rule may establish requirements for continuing education that each insurance consultant must satisfy as a condition for continuation of the license. [1985 c.697 §14]

THIRD PARTY ADMINISTRATORS

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

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

(2) "Control" has the meaning given that term in ORS 732.548.

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

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

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

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

with life insurance or health insurance coverage.

(3) Nothing in ORS 744.700 to 744.740 exempts a third party administrator from any other applicable licensing requirement when the third party administrator performs the functions of an insurance producer, adjuster or insurance consultant. [1991 c.812 §3; 2003 c.364 §127]

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

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

(b) A person licensed as an insurance producer as required by ORS 744.053 and authorized to transact life or health insurance in this state, whose activities are limited exclusively to the sale of insurance and whose activities do not include the activities of a third party administrator.

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

(A) Its employees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(p) Any person designated by the Director of the Department of Consumer and Business Services by rule.

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

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

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

(c) In the case of any group policy or plan of insurance serviced by the third party administrator, the lesser of five percent or 100 certificate holders reside in this state. [1991 c.812 §4; 2001 c.191 §40; 2003 c.364 §128]

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

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

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

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

(2) If the director denies an application, the director shall so inform the applicant, stating the grounds for the denial. [1991 c.812 §7; 2003 c.364 §129]

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

(2) Unless the Director of the Department of Consumer and Business Services designates another date, a license expires on the last day of the month in which the second anniversary of the initial issuance date of the license occurs, and on the second anniversary following each renewal.

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

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

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

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

(a) Is in an unsound financial condition;

(b) Is using such methods or practices in the conduct of business so as to render further transaction of business by the third party administrator in this state hazardous or injurious to insured persons or to the public; or

(c) Has failed to pay any judgment rendered against the third party administrator in this state within 60 days after the judgment has become final.

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

(a) Falsification by the applicant or licensee of an application for the license or renewal thereof, or engagement in any dishonest act in relation to the application;

(b) Dishonesty, fraud or gross negligence in the transaction of insurance or in the conduct of business as a third party administrator;

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

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

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

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

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

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

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

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

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

(a) The third party administrator is insolvent;

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

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

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

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

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

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

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

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

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

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

(d) Provisions governing withdrawals from the fiduciary account required under ORS 744.730, and provisions otherwise relat-

ing to the fiduciary account, addressing at least the following matters:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Director of the Department of Consumer and Business Services shall have access to the books and records maintained under subsection (1) of this section for the purpose of examination, audit and inspection. Any document, material or other information in the possession or control of the director that is furnished by a third party administrator, an insurer, an agent or an employee or an agent acting on behalf of the third party administrator, insurer or insurance producer, or that is obtained by the director in an investigation, shall be confidential as provided in ORS 705.137.

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

(4) If an insurer and third party administrator cancel their agreement, the third party administrator may agree in writing with the insurer to transfer all records to a successor third party administrator. If the agreement includes provisions to transfer the records, the third party administrator is no longer responsible for retaining the records for the five-year period. The successor third party administrator shall acknowledge in writing as part of its agreement with the insurer that it is responsible for retaining the records of the prior third party administrator as required in subsection (1) of this section. [1991 c.812 §14; 2001 c.377 §16; 2003 c.364 §130]

744.726 Errors and omissions insurance; rules. (1) A third party administrator must maintain with the Director of the Department of Consumer and Business Services at all times a current certificate of errors and omissions insurance, in an amount established by the director by rule, from an insurer authorized to transact insurance in this state or from any other insurer acceptable to the director according to standards established by rule. The insurance must cover errors and omissions of and any vio-

lation of fiduciary responsibility by the third party administrator or its employees, or both.

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

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

744.730 Disposition of charges and premiums. (1) A third party administrator shall hold in a fiduciary capacity all insurance charges or premiums collected by the third party administrator on behalf of or for an insurer, and all return premiums received from the insurer. The third party administrator shall immediately remit all charges, premiums or return premiums to the person entitled to them or shall deposit them promptly in a fiduciary account established and maintained by the third party administrator in a federally or state insured financial institution. The fiduciary account may be used only for deposits authorized under this subsection.

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

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

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

(5) A third party administrator that is an insurance producer licensed under this chapter need not comply with this section if the third party administrator is in compliance with ORS 744.083 or 744.084 with respect to the premiums, charges and return premiums referred to in this section. [1991 c.812 §17; 2003 c.364 §131]

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

(2) This section does not prohibit:

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

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

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

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

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

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

744.738 Annual report. (1) Each third party administrator shall file an annual report for the preceding calendar year with the Director of the Department of Consumer and Business Services on or before March 1 of each year, or within such extension of time therefor as the director may grant. The report shall be in the form and contain such information as the director prescribes and shall be verified by at least two officers of the third party administrator if the third party administrator is a corporation, and by two partners if the third party administrator is a partnership.

(2) The annual report shall include the complete names and addresses of all insurers

with which the third party administrator had an agreement during the preceding fiscal year. [1991 c.812 §21]

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

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

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

REINSURANCE INTERMEDIARIES

744.800 Qualifications for reinsurance intermediary brokers and managers. (1) For purposes of ORS 744.800 to 744.818:

(a) A reinsurance intermediary broker is a person who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without acting as a reinsurance intermediary manager on behalf of the insurer.

(b) A reinsurance intermediary manager is a person who has authority to bind a reinsurer or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an insurance producer for the reinsurer, regardless of the title or designation of the person.

(c) A reinsurance intermediary means a reinsurance intermediary broker or a reinsurance intermediary manager.

(d) "Business entity" has the meaning given that term in ORS 731.116.

(2) A person may act as a reinsurance intermediary broker in this state only as follows:

(a) The person maintains an office in this state either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation, and the person is a licensed insurance producer or reinsurance intermediary in this state; or

(b) The person maintains an office in another state either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation, and the person is a licensed insurance producer or reinsurance intermediary in this state or another state having laws substantially similar to ORS 744.800 to 744.818.

(3) A person may act as a reinsurance intermediary manager only as follows:

(a) A person may act as a reinsurance intermediary manager for a reinsurer domiciled in this state if the person is a licensed insurance producer or reinsurance intermediary in this state.

(b) A person may act as a reinsurance intermediary manager in this state if the person maintains an office in this state either directly or as a member or employee of a firm or association, or as an officer, director or employee of a corporation, if the person is a licensed insurance producer or reinsurance intermediary in this state.

(4) The Director of the Department of Consumer and Business Services may issue a reinsurance intermediary license to any person that has complied with the requirements of this section. A license issued to a firm or association authorizes all of the members of the firm or association and any designated employees of the firm or association to act as reinsurance intermediaries under the license. All such persons must be named in the license application and any supplements to the application. A license issued to a corporation authorizes all of the officers and any designated employees and directors of the corporation to act as reinsurance intermediaries on behalf of the corporation. All such persons must be named in the license application and any supplements to the application.

(5) The director shall issue a resident reinsurance intermediary license to a person if the person holds an insurance producer license issued under ORS 744.062 and indorsed with the designation of reinsurance intermediary.

(6) The director shall issue a nonresident reinsurance intermediary license to a person if:

(a) The person is currently licensed in the person's home state as a resident reinsurance intermediary or insurance producer and is in good standing in the person's home state;

(b) The person has submitted the proper request for a license and has paid the applicable fees;

(c) The person has submitted or transmitted to the director the license application that the person submitted to the person's home state or, in lieu of that application, a completed application acceptable to the director; and

(d) The person's home state awards nonresident reinsurance intermediary licenses to residents of this state on the same basis.

(7) The director may refuse to issue a reinsurance intermediary license if, in the director's judgment:

(a) The application, anyone named in the application or any member, principal, officer, director or controlling person of the applicant is not trustworthy; or

(b) Any person described in paragraph (a) of this subsection has given cause for revocation or suspension of the license or has failed to comply with any requirement for issuance of the license.

(8) In order to obtain and maintain the indorsement of reinsurance intermediary manager, a resident reinsurance intermediary must satisfy the requirements of ORS 744.818 regarding errors and omissions insurance. [1993 c.447 §74; 2001 c.191 §41; 2003 c.364 §27]

744.802 Exemptions from application of requirements for reinsurance intermediary brokers and managers. (1) An officer or employee of a ceding insurer is not subject to the requirements of ORS 744.800 to 744.818 that apply to reinsurance intermediary brokers, with respect to the ceding insurer.

(2) When engaged in a relationship described in this subsection, the following persons are not subject, with respect to the reinsurer in the relationship, to the requirements of ORS 744.800 to 744.818 that apply to reinsurance intermediary managers:

(a) An employee of the reinsurer.

(b) A United States manager of the United States branch of an alien reinsurer.

(c) An underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer and subject to ORS 732.517 to 732.592, and whose compensation is not based on the volume of premiums written.

(d) The manager of a group, association, pool or organization of insurers who engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance regulatory official of the state in which the manager's principal business office is located.

(3) An attorney-at-law rendering services in the performance of duties of an attorney-at-law is not subject to the requirements of ORS 744.800 to 744.818 that apply to reinsurance intermediary brokers or reinsurance intermediary managers. [1993 c.447 §75; 2003 c.364 §28]

744.804 Conditions under which reinsurance intermediary broker and insurer may enter into transactions. A reinsurance intermediary broker and the insurer it represents in the capacity of a reinsurance intermediary broker may enter one or more transactions between them only pursuant to a written authorization that specifies the responsibilities of each party. The authorization must at least provide that:

(1) The insurer may terminate the authority of the reinsurance intermediary broker at any time.

(2) The reinsurance intermediary broker must render to the insurer accounts accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owing to the reinsurance intermediary broker, and remit all funds due to the insurer not later than the 30th day following the date of receipt.

(3) All funds collected for the account of the insurer must be held by the reinsurance intermediary broker in a fiduciary capacity in a qualified United States financial institution. For purposes of this subsection, a "qualified United States financial 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 authorities of the United States or of any state thereof having regulatory authority over banks and trust companies; and

(c) Has been determined by the Director of the Department of Consumer and Business Services to meet standards of financial condition and standing that are necessary and appropriate for regulating the quality of financial institutions whose letters of credit will be acceptable to the director. The director may consider standards and classifications of institutions established by the Securities Valuation Office of the National Association of Insurance Commissioners for the purpose of making determinations under this paragraph.

(4) The reinsurance intermediary broker must comply with ORS 744.806.

(5) The reinsurance intermediary broker must comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary broker must disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded. [1993 c.447 §76; 2003 c.364 §29]

744.806 Records required to be kept by reinsurance intermediary brokers. (1) A reinsurance intermediary broker must keep a complete record for each transaction of a contract of reinsurance as provided in this subsection. For each contract of reinsurance transacted by the reinsurance intermediary broker that is limited to first party property coverages, the reinsurance intermediary broker must keep the record for not less than five years after expiration of the contract of reinsurance. For all other contracts of reinsurance transacted by the reinsurance intermediary broker, the reinsurance intermediary broker must keep the record for not less than 10 years after expiration of each contract of reinsurance. The record must show all of the following:

(a) The type of contract, limits, underwriting restrictions, classes or risks and territory.

(b) The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation.

(c) Reporting and settlement requirements of balances.

(d) The rate used to compute the reinsurance premium.

(e) Names and addresses of assuming reinsurers.

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary broker.

(g) Related correspondence and memoranda.

(h) Proof of placement.

(i) Details regarding retrocessions handled by the reinsurance intermediary broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded.

(j) Financial records, including premium and loss accounts.

(k) The following written evidence, when the reinsurance intermediary broker procures a reinsurance contract on behalf of an authorized ceding insurer:

(A) When the contract is procured directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk.

(B) When the contract is placed through a representative of the assuming reinsurer other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) The insurer must have access to and the right to copy and audit all accounts and records maintained by the reinsurance intermediary broker and related to its business. The reinsurance intermediary broker must maintain the accounts and records in a form usable by the insurer. [1993 c.447 §77; 2003 c.364 §30]

744.808 Prohibition on use of unlicensed reinsurance intermediary broker; requirement that insurer obtain financial statement of reinsurance intermediary broker. (1) An insurer may not engage the services of any person to act as a reinsurance intermediary broker on its behalf unless the person is licensed as a reinsurance intermediary broker as required by ORS 744.800.

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary broker with which it transacts business unless the reinsurance intermediary broker is under common control with the insurer and subject to ORS 732.517 to 732.592.

(3) The insurer must annually obtain a copy of statements of the financial condition of each reinsurance intermediary broker with which it transacts business. [1993 c.447 §78; 2003 c.364 §31]

744.810 Conditions under which reinsurance intermediary manager and reinsurer may enter into transactions. A reinsurance intermediary manager and the reinsurer it represents in that capacity may enter a transaction only pursuant to a written contract that specifies the responsibilities of each party and otherwise satisfies the requirements of this section. The contract must be approved by the board of directors of the reinsurer. Not later than the 30th day before the reinsurer assumes or cedes business through the reinsurance intermediary manager, a true copy of the approved contract must be filed with the Director of the Department of Consumer and Business Services for approval. The contract must at least provide that:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary manager, and the reinsurer may immediately suspend the authority of the reinsurance intermediary manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary manager must render accounts to the reinsurer, accurately detailing all material transactions and including information necessary to support all commissions, charges and other fees received by or owing to the reinsurance intermediary manager and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the account of the reinsurer must be held by the reinsurance intermediary manager in a fiduciary capacity in a qualified United States financial institution as that term is described in ORS 744.804. The reinsurance intermediary manager may retain not more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary manager must maintain a separate bank account for each reinsurer that it represents.

(4) A reinsurance intermediary manager must keep a complete record for each transaction of a contract of reinsurance as provided in this subsection. For each contract of reinsurance transacted by the reinsurance intermediary manager that is limited to first party property coverages, the reinsurance intermediary manager must keep the record for not less than five years after expiration of the contract of reinsurance. For all other contracts of reinsurance transacted by the reinsurance intermediary manager, the reinsurance intermediary manager must keep the record for not less than 10 years after expiration of each contract of reinsurance. The record must show all of the following:

(a) The type of contract, limits, underwriting restrictions, classes or risks and territory.

(b) The period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks.

(c) Reporting and settlement requirements of balances.

(d) The rate used to compute the reinsurance premium.

(e) Names and addresses of reinsurers.

(f) The rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary manager.

(g) Related correspondence and memoranda.

(h) Proof of placement.

(i) Specific information regarding retrocessions handled by the reinsurance intermediary manager, including the identity of retrocessionaires and percentage of each contract assumed or ceded.

(j) Financial records, including premium and loss accounts.

(k) The following written evidence, when the reinsurance intermediary manager places a reinsurance contract on behalf of a ceding insurer:

(A) When the contract is procured directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(B) When the contract is placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer must have access to and the right to copy all accounts and records maintained by the reinsurance intermediary manager that are related to its business. The reinsurance intermediary manager must maintain the accounts and records in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the reinsurance intermediary manager.

(7) The reinsurance intermediary manager must comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.

(8) The contract must set forth the rates, terms and purposes of commissions, charges and other fees that the reinsurance intermediary manager may levy against the reinsurer.

(9) If the contract permits the reinsurance intermediary manager to settle claims on behalf of the reinsurer, all of the following provisions must apply:

(a) All claims must be reported to the reinsurer in a timely manner.

(b) A copy of the claim file must be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(A) Has the potential of exceeding the lesser of an amount determined by the director or the limit set by the reinsurer;

(B) Involves a coverage dispute;

(C) May exceed the claims settlement authority of the reinsurance intermediary manager;

(D) Is open for more than six months; or

(E) Is closed by payment of the lesser of an amount set by the director or an amount set by the reinsurer.

(c) All claim files must be the joint property of the reinsurer and the reinsurance intermediary manager. However, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate but the reinsurance intermediary manager shall have reasonable access to and the right to copy the files on a timely basis.

(d) Any settlement authority granted to the reinsurance intermediary manager may be terminated for cause upon written notice

by the reinsurer to the reinsurance intermediary manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary manager, the interim profits must not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the director for specified lines of insurance, and not until the adequacy of loss reserves on remaining claims has been attested to by an actuary pursuant to ORS 744.814.

(11) The reinsurance intermediary manager must annually provide the reinsurer with a statement of its financial condition that is prepared by an independent certified public accountant.

(12) Periodically, but not less frequently than semiannually, the reinsurer shall conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary manager.

(13) The reinsurance intermediary manager must disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to the contract.

(14) Within the scope of the actual or apparent authority of the reinsurance intermediary manager, the acts of the reinsurance intermediary manager are considered to be the acts of the reinsurer on whose behalf it is acting. [1993 c.447 §79; 2003 c.364 §32]

744.812 Prohibitions on actions of reinsurance intermediary managers. A reinsurance intermediary manager may not do any of the following:

(1) Cede retrocessions on behalf of the reinsurer that the reinsurance intermediary manager represents, except that the reinsurance intermediary manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines must include:

(a) A list of reinsurers with which the automatic agreements are in effect;

(b) For each such reinsurer, the coverages and amounts or percentages that may be reinsured; and

(c) For each such reinsurer, the commission schedules.

(2) Commit the reinsurer to participate in reinsurance syndicates.

(3) Appoint an insurance producer, reinsurance intermediary broker or reinsurance intermediary manager without assuring that the insurance producer, reinsurance intermediary broker or reinsurance intermediary manager is lawfully licensed to transact the type of reinsurance for which the appointment is made.

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the combined capital and surplus of the reinsurer as of December 31 of the last complete calendar year.

(5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, the reinsurance intermediary manager must promptly forward a report to the reinsurer.

(6) Jointly employ an individual who is employed by the reinsurer, unless the reinsurance intermediary manager is under common control with the reinsurer subject to ORS 732.517 to 732.592.

(7) Appoint a reinsurance subintermediary manager. [1993 c.447 §80; 2003 c.364 §33]

744.814 Prohibition on use of unlicensed reinsurance intermediary manager; requirement that reinsurer obtain financial statement of reinsurance intermediary manager and opinion of actuary. (1) A reinsurer may not engage the services of any person to act as a reinsurance intermediary manager on its behalf unless the person is licensed to act as a reinsurance intermediary manager as required by ORS 744.800.

(2) A reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary manager that the reinsurer has engaged. Each statement must be prepared by an independent certified public accountant in a form acceptable to the Director of the Department of Consumer and Business Services.

(3) If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary who is in good standing of the American Academy of Actuaries, attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary manager. The opinion must be in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates must rest with an of-

ficer of the reinsurer who is not affiliated with the reinsurance intermediary manager.

(5) Not later than the 30th day after termination of a contract with a reinsurance intermediary manager, the reinsurer shall provide written notification of the termination to the director.

(6) A reinsurer may not appoint to its board of directors any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary manager. This subsection does not apply to relationships governed by ORS 732.517 to 732.592. [1993 c.447 §81; 2003 c.364 §34]

744.816 Director access to books, accounts and records. (1) The Director of the Department of Consumer and Business Services may examine any reinsurance intermediary broker and any reinsurance intermediary manager. The director shall have access to all books, bank accounts and records of a reinsurance intermediary broker or reinsurance intermediary manager being examined. All such books, bank accounts and records must be maintained in a form usable to the director.

(2) A reinsurance intermediary manager may be examined as if the reinsurance intermediary manager were the reinsurer. [1993 c.447 §82; 2003 c.364 §35]

744.818 Errors and omissions insurance for reinsurance intermediary manager; rules. (1) A resident reinsurance intermediary acting as a reinsurance intermediary manager shall maintain with the Director of the Department of Consumer and Business Services a current certificate of errors and omissions insurance in an amount established by the director by rule from an insurer authorized to do business in this state or from any other insurer acceptable to the director according to standards established by rule.

(2) If the director determines that errors and omissions insurance required under this section is not generally available at a reasonable cost, the director by rule may suspend the requirement of insurance, but must reimpose the requirement when the insurance becomes available once again. [1993 c.447 §83; 2003 c.364 §36]

744.820 Director authority if reinsurance intermediary broker or manager violates provisions of ORS 744.800 to 744.818. If the Director of the Department of Consumer and Business Services finds that a reinsurance intermediary broker or a reinsurance intermediary manager has violated any provision of ORS 744.800 to 744.818, the director may order the reinsurance intermediary broker or reinsurance intermediary manager to reimburse the insurer, reinsurer, rehabilitator or liquidator for losses incurred by the insurer or reinsurer because of the violation. The director may take action under this section in addition to or instead of any other action that the director may take under the Insurance Code. [1993 c.447 §83a; 2003 c.364 §37]

VEHICLE RENTAL COMPANIES

744.850 Definitions for ORS 744.850 to 744.858. As used in ORS 744.850 to 744.858:

(1) "Limited license" means a license issued under ORS 744.852 that authorizes a rental company to offer or sell insurance as provided in ORS 744.854.

(2) "Rental agreement" means a written agreement setting forth the terms and conditions governing use of a vehicle provided by a rental company for rent.

(3) "Rental company" means a person or entity in the business of providing vehicles to the public under a rental agreement for a period of 90 days or less.

(4) "Renter" means a person obtaining the use of a vehicle from a rental company for a period of 90 days or less.

(5) "Vehicle" means an automobile, van, minivan, sports utility vehicle, cargo van, recreational vehicle, motorcycle, all-terrain vehicle, trailer, pickup truck or truck with a gross vehicle weight of less than 26,000 pounds that does not require a commercial driver license to operate. [1999 c.485 §2; 2007 c.719 §1]

Note: 744.850 to 744.858 were added to and made a part of the Insurance Code by legislative action but were not added to ORS chapter 744 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

744.852 Limited license for rental companies; application; rules. (1) The Director of the Department of Consumer and Business Services shall adopt rules establishing information required to be submitted by rental companies applying for a limited license.

(2) A rental company that intends to offer insurance as described in ORS 744.854 shall file a limited license application with the director in such form and containing such information as the director requires.

(3) Upon receipt of an application, if the director is satisfied that the application is complete, the director may issue a limited license to the rental company. [1999 c.485 §3]

Note: See note under 744.850.

744.854 Kinds of insurance authorized by limited license. A limited license issued under ORS 744.852 authorizes a rental company to offer and sell the following kinds of insurance in connection with the rental of vehicles:

(1) Personal accident insurance covering the risks of travel, including but not limited to accident and health insurance that provides coverage to renters and other occupants of the rental vehicle for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period.

(2) Liability insurance that provides coverage to renters and other authorized drivers of the rental vehicle for liability arising from the operation of the rental vehicle. Liability insurance shall include uninsured and underinsured motorist coverage, insofar as required by state law or rule.

(3) Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of and damage to personal effects during the rental period.

(4) Roadside assistance and emergency sickness insurance. [1999 c.485 §4]

Note: See note under 744.850.

744.856 Conditions for issuance of insurance; training; filing officer. (1) A rental company issued a limited license under ORS 744.852 may not issue insurance pursuant to ORS 744.854 unless:

(a) The rental agreement is for a period of 90 consecutive days or less.

(b) At every location where rental agreements are executed, there is written material available to prospective renters that:

(A) Summarizes clearly and correctly the material terms of the coverage offered and identifies the insurer;

(B) Discloses that the coverage offered by the rental company may duplicate coverage already provided by a renter's personal motor vehicle liability insurance policy, personal liability insurance policy or other source of coverage;

(C) States that the purchase of the coverage offered is not required in order to rent a vehicle; and

(D) Describes the process for filing a claim.

(c) The written material referred to in paragraph (b) of this subsection has been filed with and approved by the Director of the Department of Consumer and Business Services.

(d) The rental agreement separately discloses the price for the coverage purchased.

(2) A rental company issued a limited license under ORS 744.852 must conduct a training program for employees concerning kinds of coverage offered by the company. The syllabus for the training program shall be filed annually with the Director of the Department of Consumer and Business Services by the rental company and is subject to approval by the director. The rental company shall certify annually to the director that all employees involved in the sale or offer of coverage to members of the public have completed or will complete the training program prior to conducting such sales or offers. The rental company shall also certify annually to the director that all such employees will receive continuing education on a regular basis concerning the topics covered in the training program. The rental company's compliance with its certification to the director and with the filed training program syllabus is subject to audit by the Department of Consumer and Business Services.

(3) A rental company issued a limited license under ORS 744.852 may not advertise, represent or otherwise hold itself or its employees out as licensed insurers or insurance producers.

(4) A rental company issued a limited license under ORS 744.852 may offer and sell insurance only in connection with and incidental to the rental of vehicles.

(5) A rental company issued a limited license under ORS 744.852 shall designate an executive as the statewide filing officer for the rental company. [1999 c.485 §5; 2003 c.364 §132]

Note: See note under 744.850.

744.858 Revocation or suspension of limited license; other penalties; application of Insurance Code; rules. (1) If a rental company issued a limited license under ORS 744.852 offers or sells insurance not authorized by ORS 744.854, or violates any provision of ORS 744.856, the Director of the Department of Consumer and Business Services may, after notice and hearing, revoke or suspend the limited license or may impose such other penalties as the director prescribes, including but not limited to suspension of transaction of insurance at specific rental locations where violations of ORS 744.854 or 744.856 have occurred.

(2) All provisions of the Insurance Code apply to rental companies issued limited licenses under ORS 744.852 unless specifically rendered inapplicable by statute or by rule adopted by the director.

(3) The director may adopt any rules necessary for the implementation of ORS 744.850 to 744.858, including rules establishing license fees to defray the cost to the Department of Consumer and Business Services of administering the limited licensure program. [1999 c.485 §6]

Note: See note under 744.850.

744.990 [Repealed by 1967 c.359 §704]

PENALTIES

744.991 Criminal penalties; restitution. (1) Violation of ORS 744.369, in addition to any applicable prescribed denial, suspension or revocation of any license or civil forfeiture, shall be punishable upon conviction as for the crime of theft under ORS 164.015 to 164.135 or the crime of forgery or related offenses under ORS 165.002 to 165.070.

(2) A person convicted of a violation of ORS 744.369 may be ordered to pay restitution to persons aggrieved by the violation of ORS 744.369. Restitution may be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

(3) Except for an act under ORS 744.369 (8) to (16), the penalties of this section shall not apply to an owner. [2009 c.711 §19]

744.992 Civil penalties; civil actions; rescission of life settlement contracts. (1) A person who violates any provision of ORS 744.318 to 744.384, 744.991 and 744.992 is subject to civil penalties under ORS 731.988 and cease and desist orders under ORS 731.252.

(2) If a person violates any provision of ORS 744.318 to 744.384, 744.991 and 744.992, the Director of the Department of Consumer and Business Services may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the director determines are necessary to restrain the person from committing the violation.

(3) A person damaged by the acts of a person in violation of any provision of ORS 744.318 to 744.384, 744.991 and 744.992 may bring a civil action against the person committing the violation in a court of competent jurisdiction. Nothing in this subsection shall be construed to alter the provisions of ORS 743.168 or 743.171 relating to the period of incontestability of a policy of life insurance.

(4) A violation of any provision of ORS 744.318 to 744.384, 744.991 and 744.992 attendant to the execution of a life settlement purchase agreement renders the life settlement purchase agreement voidable and subject to rescission by the life settlement purchaser, upon return of the policy received to the life settlement provider. Suit for rescission may be brought in a court of competent jurisdiction or where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

(5) Except for an act under ORS 744.369 (8) to (16), the enforcement provisions and penalties of this section do not apply to an owner. [2009 c.711 §18]