

(Including Amendments to Resolve Conflicts)

B-Engrossed Senate Bill 269

Ordered by the House May 16
Including Senate Amendments dated April 6 and House Amendments
dated May 16

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Specifies when certain information in possession of Department of Consumer and Business Services is confidential and not subject to disclosure.

Adds financial holding companies to laws regulating bank holding companies. Requires that certain rights or options may not be issued to director, officer or employee of Oregon banking institution or Oregon stock savings bank unless issuance is to all shareholders of entity.

Specifies circumstances in which worker medical and vocational records in possession of workers' compensation insurers may be disclosed.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the regulation of financial activities; creating new provisions; amending ORS 59.015, 59.840, 98.412, 192.502, 205.460, 294.035, 310.651, 646.382, 656.268, 706.005, 706.008, 706.015, 706.690, 706.720, 706.723, 706.730, 707.262, 708A.120, 708A.200, 708A.565, 715.012, 715.017, 715.019, 715.045, 715.055, 715.075, 715.090, 717.210, 722.419, 731.264, 731.312, 731.450, 731.735, 731.750, 731.752, 732.230, 732.523, 732.528, 732.548, 732.586, 733.304, 733.620, 735.425, 735.430, 744.061, 744.346, 744.724, 746.182, 746.185, 746.600, 746.620, 746.630, 746.665, 746.680, 748.603, 750.055, 803.092 and 803.220; repealing ORS 731.740 and section 45, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 268); and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2001 Act are added to and made a part of ORS chapter 705.

SECTION 2. (1) Except as provided in subsection (3) of this section, any document, material or other information that is in the possession or control of the Department of Consumer and Business Services for the purpose of administering ORS 646.380 to 646.396, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905, ORS chapters 59, 722, 723, 725 and 726, the Bank Act and the Insurance Code and that is described in statute as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.410 to 192.505, is not subject to subpoena and is not subject to discovery or admissible in evidence in any private civil action. The Director of the Department of Consumer and Business Services may use such confidential documents, materials or other information in administering ORS 646.380 to 646.396, 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 717.905, ORS chapters 59, 722, 723, 725 and 726, the Bank Act and the Insurance Code and in
2 the furtherance of any other regulatory or legal action brought as a part of the director's
3 duties.

4 (2) Any document, material or other information to which subsection (1) of this section
5 applies is subject to the public officer privilege described in ORS 40.270.

6 (3) In order to assist in the performance of the director's duties, the director:

7 (a) May authorize the sharing of confidential documents, materials and other information
8 subject to subsection (1) of this section as appropriate among the administrative divisions
9 and staff offices of the department created under ORS 705.115 for the purpose of adminis-
10 tering and enforcing the statutes referred to in subsection (1) of this section, in order to
11 enable the administrative divisions and staff offices to carry out their functions and re-
12 sponsibilities.

13 (b) May share documents, materials and other information, including the confidential
14 documents, materials and other information that is subject to subsection (1) of this section
15 or that is otherwise confidential under ORS 192.501 or 192.502, with other state, federal, for-
16 eign and international regulatory and law enforcement agencies and with the National As-
17 sociation of Insurance Commissioners and its affiliates or subsidiaries, if the recipient agrees
18 to maintain the confidentiality of the documents, materials and other information.

19 (c) May receive documents, materials and other information, including otherwise confi-
20 dential documents, materials and other information, from state, federal, foreign and inter-
21 national regulatory and law enforcement agencies and from the National Association of
22 Insurance Commissioners and its affiliates or subsidiaries. The director shall maintain as
23 confidential as provided in this section any such document, material or other information
24 received upon notice or with an understanding that it is confidential or privileged under the
25 laws of the jurisdiction that is the source of the document, material or other information.

26 (4) Neither disclosure of documents, materials or other information to the director under
27 this section nor the sharing of documents, materials or other information as authorized in
28 subsection (3) of this section waives any applicable privilege or claim of confidentiality in the
29 documents, materials or other information.

30 (5) This section does not prohibit the director from releasing final, adjudicated actions,
31 including suspensions or revocations of certificates of authority or licenses, when the actions
32 are otherwise open to public inspection, to a database or other clearinghouse service main-
33 tained by the National Association of Insurance Commissioners or its affiliates or subsid-
34 iaries.

35 **SECTION 3.** (1) The Director of the Department of Consumer and Business Services may
36 enter into agreements with other state, federal, foreign and international regulatory and law
37 enforcement agencies and with the National Association of Insurance Commissioners and its
38 affiliates or subsidiaries, governing the sharing and use of information consistent with sec-
39 tion 2 of this 2001 Act.

40 (2) An agreement under this section must specify the duration of the agreement, the
41 purpose of the agreement, the methods that may be employed for terminating the agreement
42 and any other necessary and proper matters.

43 (3) An agreement under this section does not relieve the director of any obligation or
44 responsibility imposed by law.

45 (4) The director may expend funds of the Department of Consumer and Business Services

1 **and may supply services for the purpose of carrying out an agreement under this section.**

2 **(5) Agreements under this section are exempt from ORS 190.410 to 190.440 and 190.480 to**
 3 **190.490.**

4 **SECTION 4.** ORS 731.264 is amended to read:

5 731.264. (1) A complaint made to the Director of the Department of Consumer and Business
 6 Services against any person regulated by the Insurance Code, and the record thereof, shall be
 7 confidential[,] and [shall] **may** not be disclosed except as [*considered necessary by the director in the*
 8 *administration of the Insurance Code*] **provided in section 2 of this 2001 Act.** No such complaint,
 9 or the record thereof, shall be used in any action, suit or proceeding except to the extent considered
 10 necessary by the director in the prosecution of apparent violations of the Insurance Code **or other**
 11 **law.**

12 (2) Data gathered pursuant to an investigation by the director of a complaint shall be confi-
 13 dential, [*and shall*] **may** not be disclosed [*or*] **except as provided in section 2 of this 2001 Act and**
 14 **may not be** used in any action, suit or proceeding except to the extent considered necessary by the
 15 director in the investigation or prosecution of apparent violations of the Insurance Code **or other**
 16 **law.**

17 (3) Notwithstanding subsections (1) and (2) of this section, the director shall establish by rule
 18 a method for publishing an annual statistical report containing the insurer's name and the number,
 19 percentage, type and disposition of complaints received by the Department of Consumer and Busi-
 20 ness Services against each insurer transacting insurance within this state.

21 **SECTION 5.** ORS 731.312 is amended to read:

22 731.312. (1) Not later than the 60th day after completion of an examination, the examiner in
 23 charge of the examination shall submit to the Director of the Department of Consumer and Business
 24 Services a full and true report of the examination, verified by the oath of the examiner. The report
 25 shall comprise only facts appearing upon the books, papers, records, accounts, documents or com-
 26 puter and other recordings of the person, its agents or other persons being examined or facts as-
 27 certained from testimony of individuals [*under oath*] concerning the affairs of such person, together
 28 with such conclusions and recommendations as reasonably may be warranted from such facts.

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

34 (3) Before the director files the examination report as a final examination report or makes the
 35 report or any matters relating thereto public, the person being examined shall have an opportunity
 36 for a hearing. A copy of the report must be mailed by certified mail to the person being examined.
 37 The person may request a hearing not later than the 30th day after the date on which the report
 38 was mailed. This subsection does not limit the authority of the director to disclose a preliminary
 39 or final examination report as otherwise provided in this section.

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

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

(6) *[Except as provided in subsections (7) and (8) of this section, or unless, in the sole discretion of the director,]* **All work papers, recorded information, documents and copies thereof that are produced or obtained by or disclosed to the director or any other person in the course of an examination or in the course of analysis by the director of the financial condition or market conduct of an insurer are confidential and are exempt from public inspection as provided in section 2 of this 2001 Act.** If the director, **in the director's sole discretion**, determines that disclosure is necessary to protect the public interest, **the director may make available** *[all]* work papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the director or any other person in the course of the examination *[are confidential and are exempt from public inspection]*.

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

[(8)] **(7)** The director may disclose the content of an examination report that has not yet otherwise been disclosed or may disclose any of the materials described in subsection (6) of this section **as provided in section 2 of this 2001 Act.** *[to any entity described in this subsection if the entity, prior to receiving the report or materials, agrees in writing to hold the report or materials confidential and in a manner consistent with this section. This subsection does not require the director to disclose any information or records revealing the existence or content of any investigation by or activity of a criminal justice agency. The entities to whom a report or other materials may be disclosed are as follows:]*

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

[(b) Law enforcement officials of this or any other state or agency of the federal government.]

[(c) The National Association of Insurance Commissioners.]

SECTION 6. ORS 731.735 is amended to read:

731.735. *[Neither the Director of the Department of Consumer and Business Services nor any employee of the Department of Consumer and Business Services may disclose]* **All financial analysis ratios and** examination synopses concerning insurers that are submitted to the Director **of the Department of Consumer and Business Services** by the Insurance Regulatory Information System of the National Association of Insurance Commissioners **are confidential as provided in section 2 of this 2001 Act.**

SECTION 7. ORS 731.750 is amended to read:

731.750. (1) A report filed with the Director of the Department of Consumer and Business Services according to requirements established by rule for disclosure of material acquisitions or dispositions of assets and disclosure of material nonrenewals, cancellations and revisions of ceded reinsurance agreements shall be confidential as provided in *[this]* **section 2 of this 2001 Act.**

(2) The director may direct the insurer to furnish copies of a report described in subsection (1) of this section to the National Association of Insurance Commissioners.

(3) *[Except as provided in this subsection, a report described in subsection (1) of this section shall not be disclosed by the director or the National Association of Insurance Commissioners.]* The director may disclose or use a report as considered necessary by the director in the administration of the Insurance Code **or other law**.

[(4) A report described in subsection (1) of this section shall not be subject to subpoena and shall not be used in any action or proceeding except to the extent considered necessary by the director in the administration of the Insurance Code.]

[(5)] **(4)** Information contained in documents described in subsections (1) to (3) of this section that is also contained in financial statements of insurers filed under ORS 731.574 or in final examination reports filed under ORS 731.312 is not confidential under this section.

SECTION 8. ORS 731.752 is amended to read:

731.752. (1) A report filed with the Director of the Department of Consumer and Business Services according to requirements established by rule for the purpose of determining the amount of capital or surplus, or any combination thereof, that should be possessed and maintained by an insurer under ORS 731.554 **or by a health care service contractor under ORS 750.045**, or under the laws of another state establishing similar requirements, shall be confidential and shall not be disclosed except as *[considered necessary by the director in administration of the Insurance Code]* **provided in section 2 of this 2001 Act**.

(2) A financial plan of action stating corrective actions to be taken by an insurer in response to a determination of inadequate capital or surplus, or any combination thereof, that is filed by the insurer with the director according to requirements established by rule shall be confidential and shall not be disclosed except as *[considered necessary by the director in administration of the Insurance Code]* **provided in section 2 of this 2001 Act**.

(3) The results or report of any examination or analysis of an insurer performed by the director in connection with a financial plan described in subsection (2) of this section and any corrective order issued by the director pursuant to such an examination or analysis shall be confidential and shall not be disclosed except as *[considered necessary by the director in administration of the Insurance Code]* **provided in section 2 of this 2001 Act**.

[(4) Documents described in subsections (1) to (3) of this section are not subject to subpoena and shall not be used in any action or proceeding except to the extent considered necessary by the director in the administration of the Insurance Code.]

[(5)] **(4)** Information contained in documents described in subsections (1) to (3) of this section that is also contained in financial statements of insurers filed under ORS 731.574 or in final examination reports filed under ORS 731.312 is not confidential under this section.

SECTION 9. ORS 732.230 is amended to read:

732.230. (1) Whenever the Director of the Department of Consumer and Business Services determines from any showing or statement made to the director or from any examination made by the director that the assets of a domestic insurer are less than its liabilities plus required capitalization, the director may proceed immediately under the provisions of ORS chapter 734 or the director may allow the insurer a period of time, not to exceed 90 days, in which to make good the amount of the impairment with cash or authorized investments.

(2) If the amount of any such impairment is not made good within the time prescribed by the director under subsection (1) of this section, the director shall proceed under the provisions of ORS chapter 734.

(3) *[The director may withhold from public inspection]* An order directing an insurer to cure an

1 impairment **is confidential as provided in section 2 of this 2001 Act**, for such time as the director
 2 considers proper but not exceeding the time prescribed by the director for making the amount of the
 3 impairment good[.]. If the director determines that **the public interest in disclosure outweighs** the
 4 public interest in protecting or salvaging the solvency of the insurer [*outweighs the public interest*
 5 *in disclosure*], **the director may make the order available for public inspection.**

6 **SECTION 10.** ORS 732.523 is amended to read:

7 732.523. (1) An acquiring party:

8 (a) Must file with the Director of the Department of Consumer and Business Services for ap-
 9 proval a statement containing the information required in this section. If more than one acquiring
 10 party is required to file a statement under this paragraph, any or all such parties acting in concert
 11 may file a joint statement.

12 (b) Must deliver or mail to the domestic insurer to which the activity described in ORS 732.521
 13 (1) applies, concurrently with filing the statement under paragraph (a) of this subsection, a statement
 14 containing the information required by this section. A statement mailed under this paragraph shall
 15 be sent by certified mail, return receipt requested. If a joint statement is filed under paragraph (a)
 16 of this subsection, the joint statement shall be the statement mailed or delivered under this para-
 17 graph.

18 (2) The statement to be filed with the director under this section shall be made under oath or
 19 affirmation and shall contain the following information:

20 (a) The name and address of the domestic insurer involved and each acquiring party required
 21 to file the statement, and additional biographical and business information about each acquiring
 22 party required to file the statement, business plans and information regarding persons who will
 23 serve as or perform functions of directors or officers, as required by the director.

24 (b) The source, nature and amount of the consideration used or to be used in effecting the ac-
 25 tivity, a description of any transaction in which funds were or are to be obtained for the activity
 26 and the identity of persons furnishing the consideration. However, when a source of consideration
 27 is a loan made in the lender's ordinary course of business, the identity of the lender shall remain
 28 confidential **as provided in section 2 of this 2001 Act**, if the acquiring party filing the statement
 29 so requests.

30 (c) Fully audited financial information as to the earnings and financial condition of each ac-
 31 quiring party for the preceding five fiscal years of the acquiring party, or for such lesser period as
 32 the acquiring party and any predecessors of the acquiring party have been in existence, and similar
 33 unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

34 (d) Any plan or proposals of each acquiring party required to file a statement to liquidate the
 35 insurer, to sell its assets or merge or consolidate it with any person, or to make any other material
 36 change in its business or corporate structure or management.

37 (e) As required by the director, information regarding shares to be acquired by an acquiring
 38 party in connection with the activity, information regarding related offers or agreements, informa-
 39 tion regarding classes of security to be acquired and related contracts, arrangements or under-
 40 standings, and information regarding related purchases of securities and recommendations to
 41 purchase.

42 (f) Any additional information required by the director.

43 (3) All requests or invitations for tenders or advertisements making a tender offer or requesting
 44 or inviting tenders of securities for control of a domestic insurer made by or on behalf of any ac-
 45 quiring party required to file the statement under this section shall contain such information speci-

1 filed in subsection (2) of this section as the director may prescribe. Copies of the materials shall be
 2 filed with the director at least 10 days prior to the time the materials are first published or sent
 3 or given to security holders. Any additional materials soliciting or requesting the tenders subse-
 4 quent to the initial solicitation or request shall contain such information as the director may pre-
 5 scribe. Copies of the additional materials shall be filed with the director at least 10 days prior to
 6 the time the materials are first published or sent or given to security holders.

7 (4) If any acquiring party required to file the statement under this section is a partnership,
 8 limited partnership, syndicate or other group, the director may require that the information called
 9 for by subsection (2) of this section be given with respect to each partner of the partnership or
 10 limited partnership, each member of the syndicate or group and each person who controls the part-
 11 ner or member. If any such partner, member or person is a corporation or if the acquiring party is
 12 a corporation, the director may require that the information called for by subsection (2) of this
 13 section be given with respect to the corporation and each officer and director of the corporation
 14 and each person who is directly or indirectly the beneficial owner of more than 10 percent of the
 15 outstanding securities of the corporation.

16 (5) If any material change occurs in the facts set forth in the statement filed under this section,
 17 the party who filed the statement must file with the director and send to the insurer, within two
 18 business days after the party learns of the change, an amendment setting forth the change together
 19 with copies of all documents and other material relevant to the change.

20 (6) If an offer, request, invitation, agreement or acquisition referred to in ORS 732.521 (1) is
 21 proposed to be made by means of a registration statement under the Securities Act of 1933 or in
 22 circumstances requiring the disclosure of similar information under the Securities Exchange Act of
 23 1934, or under a state law requiring similar registration or disclosure, the party or parties required
 24 to file the statement under this section may use such documents in furnishing the information called
 25 for by that statement.

26 (7) Any acquiring party may file with the completed statement or within 10 days thereafter a
 27 written request for a hearing on the acquisition. The insurer to be acquired may file with the di-
 28 rector a written request for a hearing on the acquisition within 10 days after the filing of the com-
 29 pleted statement.

30 **SECTION 11.** ORS 732.586 is amended to read:

31 732.586. (1) All information, documents and copies thereof obtained by or disclosed to the Di-
 32 rector of the Department of Consumer and Business Services or any other person in the course of
 33 an examination or investigation made pursuant to ORS 732.584 are subject to [*disclosure as provided*
 34 *in*] **the provisions of ORS 731.312.**

35 (2) All information reported pursuant to ORS 732.552, 732.554, 732.574 and 732.576 [*are exempt*
 36 *from disclosure and shall not be made public by the director, the National Association of Insurance*
 37 *Commissioners or any other person. As provided in ORS 731.312, the director may disclose reported*
 38 *information in the furtherance of a judicial or administrative proceeding and to the insurance depart-*
 39 *ment of any other state or country, the National Association of Insurance Commissioners and law*
 40 *enforcement officials of this or any other state or of an agency of the federal government*] **is confi-**
 41 **dential and may not be made public except as provided in this subsection. The director may**
 42 **disclose reported information only as provided in section 2 of this 2001 Act.** Otherwise, the
 43 director may disclose such reported information only as follows:

44 (a) If the director obtains the prior written consent of the insurer to which the reported infor-
 45 mation pertains; or

(b) If the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof. If the director determines that one or more of such interests will be so served, the director may publish all or any part thereof in any manner that the director determines to be appropriate.

SECTION 12. ORS 733.304 is amended to read:

733.304. (1) Each insurer transacting life insurance in this state shall submit annually to the Director of the Department of Consumer and Business Services the opinion of a qualified actuary as provided in this section. The following provisions apply with respect to opinions required under this subsection:

(a) The opinion must state whether, in the opinion of the qualified actuary, the reserves and related actuarial items held in support of the policies and contracts specified by the director by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The director by rule shall establish the specific requirements for the opinion and may require any other items that the director determines to be necessary to its scope.

(b) The opinion shall be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year.

(c) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the director as specified by rule.

(d) The director by rule:

(A) Shall adopt standards on which actuarial opinions under this subsection must be based. In adopting the standards, the director shall consider standards established from time to time by the Actuarial Standards Board of the American Academy of Actuaries.

(B) Shall define "qualified actuary" for purposes of this subsection, by establishing qualifications required of an actuary for the purpose of giving the opinions. In establishing the definition, the director shall consider standards established from time to time by the American Academy of Actuaries.

(C) May also adopt any other rules needed for carrying out this subsection.

(e) In the case of an opinion required to be submitted by a foreign or alien insurer, the director may accept the opinion filed by the insurer with the insurance supervisory official of another state if the director determines that the opinion reasonably meets the requirements applicable to a domestic insurer.

(f) Except in cases of fraud or willful misconduct, a qualified actuary shall not be liable for damages to any person other than the insurer or the director for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(g) For each opinion submitted under this subsection, a memorandum shall be prepared supporting the opinion. The memorandum must conform in form and substance to requirements established by the director by rule.

(h) If an insurer fails to provide a supporting memorandum within the period specified by rule or if the director determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by rule or is otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare any supporting memorandum that is required by the director.

(i) *[A memorandum in support of an actuarial opinion under this subsection and any other material*

provided to the director in connection therewith shall be confidential and shall not be disclosed except as considered necessary by the director in the administration of the Insurance Code. Such a memorandum and such material also shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules adopted under this section.] **Except as provided in this paragraph, a memorandum in the possession or control of the director that is in support of an actuarial opinion, and any other material provided by the insurer to the director in connection with the memorandum, is confidential as provided in section 2 of this 2001 Act. Notwithstanding section 2 of this 2001 Act, such a memorandum and other materials are subject to subpoena only for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of any action required by this section or by rules adopted under this section.** Once any portion of the confidential memorandum is cited by the insurer in its marketing or is cited before any governmental agency other than a state insurance department or is released by the insurer to the news media, all portions of the confidential memorandum shall be no longer confidential. **In addition to the uses and disclosures allowed under section 2 of this 2001 Act,** a memorandum or other material may otherwise be released by the director:

(A) With the written consent of the insurer; or

(B) To the American Academy of Actuaries upon request thereof, when the request states that the memorandum or other material is required for the purpose of professional disciplinary proceedings and sets forth procedures satisfactory to the director for preserving the confidentiality of the memorandum or other material.

(j) Grounds for disciplinary action by the director against the insurer or the qualified actuary shall be defined by rule.

(2) Unless exempted by the director by rule, each insurer transacting life insurance in this state shall include in each opinion required by subsection (1) of this section an opinion by the same actuary who prepared the opinion required by subsection (1) of this section. The following provisions apply with respect to the opinion:

(a) The actuary shall state the actuary's opinion as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the director by rule, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(b) The director may provide by rule for a transition period for establishing any higher reserves that the actuary may deem necessary in order to render the opinion required under this subsection.

SECTION 13. ORS 735.425 is amended to read:

735.425. (1) Within 90 days after the placing of any surplus lines insurance, each surplus lines licensee shall file with the Director of the Department of Consumer and Business Services:

(a) An affidavit **regarding the insurance**, which shall be kept confidential **as provided in section 2 of this 2001 Act**, [regarding the insurance,] including the following:

(A) The name and address of the insured;

(B) The identity of the insurer or insurers;

(C) A description of the subject and location of the risk;

(D) The amount of premium charged for the insurance; and

(E) Such other pertinent information as the director may reasonably require.

(b) A statement on a standardized form furnished by the director, as to the diligent efforts by the producing agent to place the coverage with admitted insurers and the results thereof. The statement shall affirm that the insured was expressly advised prior to placement of the insurance that:

(A) The surplus lines insurer with whom the insurance was to be placed is not licensed in this state and is not subject to its supervision; and

(B) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

(2) The director may direct that filings required under this section be made to the Surplus Lines Association of Oregon.

SECTION 13a. If Senate Bill 268 becomes law, section 45, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 268) (amending ORS 735.425), is repealed and ORS 735.425, as amended by section 13 of this 2001 Act, is amended to read:

735.425. (1) Within 90 days after the placing of any surplus lines insurance **in this state**, each surplus lines licensee shall file with the Director of the Department of Consumer and Business Services:

(a) An affidavit **signed by the licensee** regarding the insurance, which shall be kept confidential as provided in section 2 of this 2001 Act, including the following:

(A) The name and address of the insured;

(B) The identity of the insurer or insurers;

(C) A description of the subject and location of the risk;

(D) The amount of premium charged for the insurance; and

(E) Such other pertinent information as the director may reasonably require.

(b) A statement on a standardized form furnished by the director, as to the diligent efforts by the producing agent to place the coverage with admitted insurers and the results thereof. The statement shall **be signed by the producing agent and shall** affirm that the insured was expressly advised prior to placement of the insurance that:

(A) The surplus lines insurer with whom the insurance was to be placed is not licensed in this state and is not subject to its supervision; and

(B) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

(2) The director may direct that filings required under **subsection (1) of** this section be made to the Surplus Lines Association of Oregon. **The director may also require that such filings be made electronically but may exempt a licensee from the requirement for good cause shown.**

(3) A nonresident surplus lines licensee or nonresident insurance producer who places a surplus lines policy on a risk with exposures located both in this state and outside this state shall satisfy filing requirements established by the director by rule. The director shall ensure that the rules facilitate interstate regulation of surplus lines insurance transactions.

SECTION 13b. (1) The amendments to ORS 735.425 by section 13a of this 2001 Act become operative on January 1, 2002.

(2) The Director of the Department of Consumer and Business Services may take any action before the operative date of the amendments to ORS 735.425 by section 13a of this 2001 Act that is necessary to enable the director to exercise, on and after the operative date of the amendments to ORS 735.425 by section 13a of this 2001 Act, all the duties, functions and

1 **powers conferred on the director by the amendments to ORS 735.425 by section 13a of this**
2 **2001 Act.**

3 **SECTION 14.** ORS 735.430 is amended to read:

4 735.430. (1) The Surplus Lines Association of Oregon shall be the advisory organization of sur-
5 plus lines licensees to:

6 (a) Facilitate and encourage compliance by its members with the laws of this state and the rules
7 of the Director of the Department of Consumer and Business Services relative to surplus lines in-
8 surance;

9 (b) Provide means for the examination, which shall remain confidential **as provided in section**
10 **2 of this 2001 Act**, of all surplus lines coverage written by its members to determine whether such
11 coverages comply with such laws;

12 (c) Communicate with organizations of admitted insurers with respect to the proper use of the
13 surplus lines market;

14 (d) Receive and disseminate to its members information relative to surplus lines coverages; and

15 (e) Receive and collect on behalf of the state and remit to the state premium receipts tax for
16 surplus lines insurance.

17 (2) The Surplus Lines Association of Oregon shall file with the director:

18 (a) A copy of its constitution, articles of agreement or association or certificate of incorporation;

19 (b) A copy of its bylaws and rules governing its activities;

20 (c) A current list of members;

21 (d) The name and address of a resident of this state upon whom notices or orders of the director
22 or processes issued at the direction of the director may be served;

23 (e) An agreement that the director may examine the Surplus Lines Association of Oregon in
24 accordance with the provisions of this section; and

25 (f) A schedule of membership fees and charges.

26 (3) The director may make or cause to be made an examination of the surplus lines advisory
27 organization. The reasonable cost of any such examination shall be paid by the surplus lines advi-
28 sory organization upon presentation to it by the director of a detailed account of each cost. The
29 officers, managers, agents and employees of the surplus lines advisory organization may be examined
30 at any time, under oath, and shall exhibit all books, records, accounts, documents or agreements
31 governing its method of operation. The director shall furnish two copies of the examination report
32 to the surplus lines advisory organization examined and shall notify such organization that it may,
33 within 20 days thereof, request a hearing on the report or on any facts or recommendations therein.
34 If the director finds the surplus lines advisory organization or any member thereof to be in violation
35 of ORS 735.400 to 735.495, the director may issue an order requiring the discontinuance of such vi-
36 olation.

37 **SECTION 15.** ORS 744.346 is amended to read:

38 744.346. (1) The Director of the Department of Consumer and Business Services may examine the
39 business and practices of any licensee or applicant for a license when the director determines an
40 examination to be necessary. The director may order a licensee or applicant to produce any records,
41 books, files or other information reasonably necessary to ascertain whether or not the licensee or
42 applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the
43 public. The expenses incurred in conducting any examination shall be paid by the licensee or ap-
44 plicant.

45 (2) A life settlement provider shall maintain records of all transactions of life settlement con-

tracts of the life settlement provider and must make the records available to the director for inspection during reasonable business hours. The records must be maintained for a period of not later than five years from the date of their creation.

(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 shall be confidential [*and shall not be disclosed except as considered necessary by the director in administration of the Insurance Code*] **as provided in section 2 of this 2001 Act.**

SECTION 16. ORS 744.724 is amended to read:

744.724. (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. [*The director shall keep confidential any trade secrets contained in the books and records, including the identity and addresses of policyholders and certificate holders, except that the director may use any such information in any proceedings instituted against the third party administrator.*] **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 agent, or that is obtained by the director in an investigation, shall be confidential as provided in section 2 of this 2001 Act.**

(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.

SECTION 17. ORS 192.502 is amended to read:

192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical

1 or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy,
2 unless the public interest by clear and convincing evidence requires disclosure in the particular in-
3 stance. The party seeking disclosure shall have the burden of showing that public disclosure would
4 not constitute an unreasonable invasion of privacy.

5 (3)(a) Public body employee or volunteer addresses, dates of birth and telephone numbers con-
6 tained in personnel records maintained by the public body that is the employer or the recipient of
7 volunteer services. This exemption does not apply:

8 (A) To such employees or volunteers if they are elected officials, except that a judge or district
9 attorney subject to election may seek to exempt the judge's or district attorney's address or tele-
10 phone number, or both, under the terms of ORS 192.445;

11 (B) To such employees or volunteers to the extent that the party seeking disclosure shows by
12 clear and convincing evidence that the public interest requires disclosure in a particular instance;
13 or

14 (C) To a substitute teacher as defined in ORS 342.815 when requested by a professional educa-
15 tion association of which the substitute teacher may be a member.

16 (b) Nothing in this subsection exempting employee records from disclosure relieves a public
17 employer of any duty under ORS 243.650 to 243.782.

18 (4) Information submitted to a public body in confidence and not otherwise required by law to
19 be submitted, where such information should reasonably be considered confidential, the public body
20 has obliged itself in good faith not to disclose the information, and when the public interest would
21 suffer by the disclosure.

22 (5) Information or records of the Department of Corrections, including the State Board of Parole
23 and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabili-
24 tation of a person in custody of the department or substantially prejudice or prevent the carrying
25 out of the functions of the department, if the public interest in confidentiality clearly outweighs the
26 public interest in disclosure.

27 (6) Records, reports and other information received or compiled by the Director of the Depart-
28 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
29 otherwise required by law to be made public, to the extent that the interests of lending institutions,
30 their officers, employees and customers in preserving the confidentiality of such information out-
31 weighs the public interest in disclosure.

32 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

33 (8) Any public records or information the disclosure of which is prohibited by federal law or
34 regulations.

35 (9) Public records or information the disclosure of which is prohibited or restricted or otherwise
36 made confidential or privileged under Oregon law.

37 (10) Public records or information described in this section, furnished by the public body ori-
38 ginally compiling, preparing or receiving them to any other public officer or public body in con-
39 nection with performance of the duties of the recipient, if the considerations originally giving rise
40 to the confidential or exempt nature of the public records or information remain applicable.

41 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
42 programs pursuant to ORS 469.530.

43 (12) Employee and retiree address, telephone number and other nonfinancial membership records
44 and employee financial records maintained by the Public Employees Retirement System pursuant to
45 ORS chapter 238 and ORS 238.410.

(13) Records submitted by private persons or businesses to the State Treasurer or the Oregon Investment Council relating to proposed acquisition, exchange or liquidation of public investments under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that disclosure of such records reasonably may be expected to substantially limit the ability of the Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption.

(14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(15) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(16) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Resource and Technology Development Account or the Oregon Resource and Technology Development Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(17) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(18) All information supplied by a person under ORS 151.430 to 151.491 for the purpose of requesting court-appointed counsel, and all information supplied to the State Court Administrator from whatever source for the purpose of verifying indigency of a person pursuant to ORS 151.430 to 151.491.

1 (19) Workers' compensation claim records of the Department of Consumer and Business Services,
2 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
3 ness Services, in any of the following circumstances:

4 (a) When necessary for insurers, self-insured employers and third party claim administrators to
5 process workers' compensation claims.

6 (b) When necessary for the director, other governmental agencies of this state or the United
7 States to carry out their duties, functions or powers.

8 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
9 to identify any worker who is the subject of a claim.

10 (d) When a worker or the worker's representative requests review of the worker's claim record.

11 (20) Sensitive business records or financial or commercial information of the Oregon Health
12 Sciences University that is not customarily provided to business competitors.

13 (21) Records of Oregon Health Sciences University regarding candidates for the position of
14 president of the university.

15 (22) The records of a library, including circulation records, showing use of specific library ma-
16 terial by a named person or consisting of the name of a library patron together with the address
17 or telephone number, or both, of the patron.

18 (23) The following records, communications and information submitted to the Housing and
19 Community Services Department by applicants for and recipients of loans, grants and tax credits:

20 (a) Personal and corporate financial statements and information, including tax returns.

21 (b) Credit reports.

22 (c) Project appraisals.

23 (d) Market studies and analyses.

24 (e) Articles of incorporation, partnership agreements and operating agreements.

25 (f) Commitment letters.

26 (g) Project pro forma statements.

27 (h) Project cost certifications and cost data.

28 (i) Audits.

29 (j) Project tenant correspondence requested to be confidential.

30 (k) Tenant files relating to certification.

31 (L) Housing assistance payment requests.

32 (24) Raster geographic information system (GIS) digital databases, provided by private forestland
33 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
34 that is not otherwise required by law to be submitted.

35 (25) Sensitive business, commercial or financial information furnished to or developed by a
36 public body engaged in the business of providing electricity or electricity services, if the information
37 is directly related to a transaction described in ORS 261.348, or if the information is directly related
38 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
39 disclosure of the information would cause a competitive disadvantage for the public body or its re-
40 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
41 velopment or review of generally applicable rate schedules.

42 (26) Sensitive business, commercial or financial information furnished to or developed by the
43 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
44 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
45 and disclosure of the information would cause a competitive disadvantage for the Klamath

1 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
 2 ment or review of generally applicable rate schedules.

3 (27) Personally identifiable information about customers of a municipal electric utility or a
 4 people's utility district. The utility or district may, however, release such information to a third
 5 party if the customer consents in writing or electronically, if the disclosure is necessary to render
 6 utility or district services to the customer, or if the disclosure is required pursuant to a court order.
 7 The utility or district may charge as appropriate for the costs of providing such information. The
 8 utility or district may make customer records available to third party credit agencies on a regular
 9 basis in connection with the establishment and management of customer accounts or in the event
 10 such accounts are delinquent.

11 (28) A record of the street and number of an employee's address submitted to a special district
 12 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

13 (29) Except under the provisions of section 8 (2), chapter 1059, Oregon Laws 1999, pesticide sales
 14 or use reporting data obtained by the State Department of Agriculture exclusively under the pro-
 15 visions of sections 2 to 9, chapter 1059, Oregon Laws 1999, that would reveal the identity or specific
 16 location of the owner or lessee of a specific property where a pesticide has been applied for a pri-
 17 vate agriculture or forestry production operation, or other nonpublic facility on private property.
 18 Nothing in this subsection shall limit the use that may be made of such information for regulatory
 19 purposes or its admissibility in any enforcement proceedings.

20 (30) Sensitive business records, capital development plans or financial or commercial information
 21 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

22 **(31) Documents, materials or other information submitted to the Director of the De-**
 23 **partment of Consumer and Business Services in confidence by a state, federal, foreign or**
 24 **international regulatory or law enforcement agency or by the National Association of In-**
 25 **surance Commissioners, its affiliates or subsidiaries under ORS 646.380 to 646.396, 697.005 to**
 26 **697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725**
 27 **or 726, the Bank Act or the Insurance Code or section 2 of this 2001 Act when:**

28 **(a) The document, material or other information is received upon notice or with an**
 29 **understanding that it is confidential or privileged under the laws of the jurisdiction that is**
 30 **the source of the document, material or other information; and**

31 **(b) The director has obligated the Department of Consumer and Business Services not**
 32 **to disclose the document, material or other information.**

33 **SECTION 18.** ORS 192.502, as amended by section 16, chapter 1059, Oregon Laws 1999, is
 34 amended to read:

35 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

36 (1) Communications within a public body or between public bodies of an advisory nature to the
 37 extent that they cover other than purely factual materials and are preliminary to any final agency
 38 determination of policy or action. This exemption shall not apply unless the public body shows that
 39 in the particular instance the public interest in encouraging frank communication between officials
 40 and employees of public bodies clearly outweighs the public interest in disclosure.

41 (2) Information of a personal nature such as but not limited to that kept in a personal, medical
 42 or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy,
 43 unless the public interest by clear and convincing evidence requires disclosure in the particular in-
 44 stance. The party seeking disclosure shall have the burden of showing that public disclosure would
 45 not constitute an unreasonable invasion of privacy.

1 (3)(a) Public body employee or volunteer addresses, dates of birth and telephone numbers con-
2 tained in personnel records maintained by the public body that is the employer or the recipient of
3 volunteer services. This exemption does not apply:

4 (A) To such employees or volunteers if they are elected officials, except that a judge or district
5 attorney subject to election may seek to exempt the judge's or district attorney's address or tele-
6 phone number, or both, under the terms of ORS 192.445;

7 (B) To such employees or volunteers to the extent that the party seeking disclosure shows by
8 clear and convincing evidence that the public interest requires disclosure in a particular instance;
9 or

10 (C) To a substitute teacher as defined in ORS 342.815 when requested by a professional educa-
11 tion association of which the substitute teacher may be a member.

12 (b) Nothing in this subsection exempting employee records from disclosure relieves a public
13 employer of any duty under ORS 243.650 to 243.782.

14 (4) Information submitted to a public body in confidence and not otherwise required by law to
15 be submitted, where such information should reasonably be considered confidential, the public body
16 has obliged itself in good faith not to disclose the information, and when the public interest would
17 suffer by the disclosure.

18 (5) Information or records of the Department of Corrections, including the State Board of Parole
19 and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabili-
20 tation of a person in custody of the department or substantially prejudice or prevent the carrying
21 out of the functions of the department, if the public interest in confidentiality clearly outweighs the
22 public interest in disclosure.

23 (6) Records, reports and other information received or compiled by the Director of the Depart-
24 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
25 otherwise required by law to be made public, to the extent that the interests of lending institutions,
26 their officers, employees and customers in preserving the confidentiality of such information out-
27 weighs the public interest in disclosure.

28 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

29 (8) Any public records or information the disclosure of which is prohibited by federal law or
30 regulations.

31 (9) Public records or information the disclosure of which is prohibited or restricted or otherwise
32 made confidential or privileged under Oregon law.

33 (10) Public records or information described in this section, furnished by the public body ori-
34 ginally compiling, preparing or receiving them to any other public officer or public body in con-
35 nection with performance of the duties of the recipient, if the considerations originally giving rise
36 to the confidential or exempt nature of the public records or information remain applicable.

37 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
38 programs pursuant to ORS 469.530.

39 (12) Employee and retiree address, telephone number and other nonfinancial membership records
40 and employee financial records maintained by the Public Employees Retirement System pursuant to
41 ORS chapter 238 and ORS 238.410.

42 (13) Records submitted by private persons or businesses to the State Treasurer or the Oregon
43 Investment Council relating to proposed acquisition, exchange or liquidation of public investments
44 under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that
45 disclosure of such records reasonably may be expected to substantially limit the ability of the

Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such transactions. Records which relate to concluded transactions are not subject to this exemption.

(14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(15) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(16) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Resource and Technology Development Account or the Oregon Resource and Technology Development Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(17) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(18) All information supplied by a person under ORS 151.430 to 151.491 for the purpose of requesting court-appointed counsel, and all information supplied to the State Court Administrator from whatever source for the purpose of verifying indigency of a person pursuant to ORS 151.430 to 151.491.

(19) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to

1 process workers' compensation claims.

2 (b) When necessary for the director, other governmental agencies of this state or the United
3 States to carry out their duties, functions or powers.

4 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
5 to identify any worker who is the subject of a claim.

6 (d) When a worker or the worker's representative requests review of the worker's claim record.

7 (20) Sensitive business records or financial or commercial information of the Oregon Health
8 Sciences University that is not customarily provided to business competitors.

9 (21) Records of Oregon Health Sciences University regarding candidates for the position of
10 president of the university.

11 (22) The records of a library, including circulation records, showing use of specific library ma-
12 terial by a named person or consisting of the name of a library patron together with the address
13 or telephone number, or both, of the patron.

14 (23) The following records, communications and information submitted to the Housing and
15 Community Services Department by applicants for and recipients of loans, grants and tax credits:

16 (a) Personal and corporate financial statements and information, including tax returns.

17 (b) Credit reports.

18 (c) Project appraisals.

19 (d) Market studies and analyses.

20 (e) Articles of incorporation, partnership agreements and operating agreements.

21 (f) Commitment letters.

22 (g) Project pro forma statements.

23 (h) Project cost certifications and cost data.

24 (i) Audits.

25 (j) Project tenant correspondence requested to be confidential.

26 (k) Tenant files relating to certification.

27 (L) Housing assistance payment requests.

28 (24) Raster geographic information system (GIS) digital databases, provided by private forestland
29 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
30 that is not otherwise required by law to be submitted.

31 (25) Sensitive business, commercial or financial information furnished to or developed by a
32 public body engaged in the business of providing electricity or electricity services, if the information
33 is directly related to a transaction described in ORS 261.348, or if the information is directly related
34 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
35 disclosure of the information would cause a competitive disadvantage for the public body or its re-
36 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
37 velopment or review of generally applicable rate schedules.

38 (26) Sensitive business, commercial or financial information furnished to or developed by the
39 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
40 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
41 and disclosure of the information would cause a competitive disadvantage for the Klamath
42 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
43 ment or review of generally applicable rate schedules.

44 (27) Personally identifiable information about customers of a municipal electric utility or a
45 people's utility district. The utility or district may, however, release such information to a third

1 party if the customer consents in writing or electronically, if the disclosure is necessary to render
 2 utility or district services to the customer, or if the disclosure is required pursuant to a court order.
 3 The utility or district may charge as appropriate for the costs of providing such information. The
 4 utility or district may make customer records available to third party credit agencies on a regular
 5 basis in connection with the establishment and management of customer accounts or in the event
 6 such accounts are delinquent.

7 (28) A record of the street and number of an employee's address submitted to a special district
 8 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

9 (29) Sensitive business records, capital development plans or financial or commercial information
 10 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

11 **(30) Documents, materials or other information submitted to the Director of the De-**
 12 **partment of Consumer and Business Services in confidence by a state, federal, foreign or**
 13 **international regulatory or law enforcement agency or by the National Association of In-**
 14 **surance Commissioners, its affiliates or subsidiaries under ORS 646.380 to 646.396, 697.005 to**
 15 **697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725**
 16 **or 726, the Bank Act or the Insurance Code or section 2 of this 2001 Act when:**

17 **(a) The document, material or other information is received upon notice or with an**
 18 **understanding that it is confidential or privileged under the laws of the jurisdiction that is**
 19 **the source of the document, material or other information; and**

20 **(b) The director has obligated the Department of Consumer and Business Services not**
 21 **to disclose the document, material or other information.**

22 **SECTION 19.** ORS 748.603 is amended to read:

23 748.603. (1) Societies shall be governed by this chapter and shall be exempt from all other pro-
 24 visions of the insurance laws of this state unless expressly designated therein, or unless specifically
 25 made applicable by this chapter.

26 (2) ORS 731.004 to 731.026, 731.032 to 731.136, 731.146 to 731.156, 731.162, 731.166, 731.170,
 27 731.216 to 731.268, 731.296, 731.324, 731.328, 731.354, 731.356, 731.358, 731.378, 731.380, 731.381,
 28 731.382, 731.385, 731.386, 731.390, 731.394, 731.396, 731.398, 731.402, 731.406, 731.410, 731.422 to
 29 731.434, 731.446 to 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.592,
 30 731.594, 731.730, 731.731, 731.735, 731.737, [731.740,] 731.750, 731.804, 731.844 to 731.992, 732.245,
 31 732.250, 732.320, 732.325, 733.010 to 733.050, 733.080, 733.140 to 733.210, 733.220, 733.510, 733.652 to
 32 733.658, 733.730 to 733.750, 735.600 to 735.650, 742.001, 742.003, 742.005, 742.007, 742.009, 742.013 to
 33 742.021, 742.028, 742.038, 742.041, 742.046, 742.051, 742.150 to 742.162 and 744.700 to 744.740 and ORS
 34 chapters 734 and 743 **and sections 2 and 3 of this 2001 Act** shall apply to fraternal benefit societies
 35 to the extent so applicable and not inconsistent with the express provisions of this chapter.

36 (3) For the purposes of this subsection and subsection (2) of this section, fraternal benefit soci-
 37 eties shall be deemed insurers, and benefit certificates issued by fraternal benefit societies shall be
 38 deemed policies.

39 (4) Every society authorized to do business in this state shall be subject to the provisions of
 40 ORS chapter 746 relating to unfair trade practices. However, nothing in ORS chapter 746 shall be
 41 construed as applying to or affecting the right of any society to determine its eligibility require-
 42 ments for membership, or be construed as applying to or affecting the offering of benefits exclusively
 43 to members or persons eligible for membership in the society by a subsidiary corporation or affil-
 44 iated organization of the society.

45 **SECTION 20.** ORS 750.055 is amended to read:

750.055. (1) The following provisions of the Insurance Code shall apply to health care service contractors to the extent so applicable and not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, [731.740] 731.750, **731.752**, 731.804 and 731.844 to 731.992 **and sections 2 and 3 of this 2001 Act.**

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.549 and 732.574 to 732.592.

(c)(A) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.620, 733.635 to 733.680 and 733.695 to 733.780 apply to not-for-profit health care service contractors.

(B) ORS chapter 733, not including ORS 733.630, applies to for-profit health care service contractors.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.412, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to 743.555, 743.556, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.693, 743.697, 743.699, 743.701, 743.704, 743.706 to 743.712, 743.721, 743.722, 743.726, 743.727, 743.728, 743.729, 743.804, 743.807, 743.808, 743.809, 743.814 to 743.839, 743.842, 743.845 and 743.847.

(f) The provisions of ORS chapter 744 relating to the regulation of agents.

(g) ORS 746.005 to 746.140, 746.160, 746.180, 746.220 to 746.370 and 746.600 to 746.690.

(h) ORS 743.714, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician associated with a group practice health maintenance organization.

(i) ORS 735.600 to 735.650.

(j) ORS 743.680 to 743.689.

(k) ORS 744.700 to 744.740.

(L) ORS 743.730 to 743.773.

(m) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section only, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state which is not governed by the insurance laws of such state, will be subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

SECTION 21. ORS 706.720 is amended to read:

706.720. (1) The Director of the Department of Consumer and Business Services shall receive and file in the Department of Consumer and Business Services all reports required by the Bank Act.

(2) Except as provided in subsection (3) of this section and ORS 706.730, the records of the Department of Consumer and Business Services pertaining to the administration of the Bank Act are

1 available for public inspection unless the director determines in the particular instance that the
 2 public interest in disclosure of the records is outweighed by the interests of an Oregon operating
 3 institution or its directors, stockholders, officers, employees and customers in keeping the records
 4 confidential, or that the records are exempt from disclosure under ORS 192.501 to 192.505. A deter-
 5 mination by the director under this subsection is subject to review under ORS 192.410 to 192.505.

6 (3) Except as provided in subsections (4) and (5) of this section, the following records of the
 7 department are exempt from disclosure or production **and shall be treated as confidential as**
 8 **provided in section 2 of this 2001 Act:**

9 (a) Examination reports and work papers, directives, orders and correspondence that relate to
 10 examination reports.

11 (b) Investigatory information concerning persons subject to investigation by the director under
 12 ORS 707.070, 707.080, 707.110, 707.140, 707.145, 707.155 or 707.705 and financial statements of such
 13 persons.

14 (c) Proprietary information.

15 (d) Reviews of financial statements submitted to the director.

16 (e) Reports filed under ORS 706.655.

17 (f) Stockholder lists.

18 (4) Notwithstanding subsection (3) of this section, the director may disclose any record of the
 19 department specified in this subsection pertaining to an Oregon operating institution that has been
 20 liquidated under ORS 711.400 to 711.615 if the director determines in the particular instance that
 21 the public interest in disclosure of the record outweighs the interests of the Oregon operating in-
 22 stitution or its directors, stockholders, officers, employees or customers in keeping the record con-
 23 fidential. Under no circumstances, however, shall the director disclose any such record or portion
 24 thereof that contains any proprietary information or any information relating to the individual fi-
 25 nancial activities or affairs of persons unless the director concludes that those activities or affairs
 26 were a direct and substantial contributing factor in the failure of the Oregon operating institution.
 27 This subsection applies to the following records of the department:

28 (a) Examination reports and work papers, directives, orders and correspondence relating to ex-
 29 amination reports;

30 (b) Investigatory information concerning persons subject to investigation by the director under
 31 ORS 707.070, 707.080, 707.110, 707.140, 707.145, 707.155 or 707.705;

32 (c) Reviews of financial statements; and

33 (d) Reports filed under ORS 706.655.

34 (5) Notwithstanding ORS 40.270, an officer of the department may be examined concerning re-
 35 cords that are exempt from disclosure under subsection (2) or (3) of this section and ORS 706.730
 36 and the records are subject to production if the court before which a civil or criminal action is
 37 pending finds that such examination and production is essential for establishing a claim or defense.
 38 In making a finding under this subsection, if the court views the records, the court shall do so in
 39 camera.

40 (6) A civil penalty imposed by the director under the Bank Act shall become subject to public
 41 inspection after the 20th day after the director imposes the civil penalty.

42 (7) All records of the department pertaining to the condition of Oregon operating institutions
 43 may be furnished to:

44 (a) The Federal Reserve Bank and its examiners.

45 (b) The Comptroller of the Currency of the United States and national bank examiners.

(c) The Federal Deposit Insurance Corporation and its examiners.

(d) The Federal Home Loan Bank of which the operating institution is a member or to which the operating institution has applied for membership.

(e) The State Treasurer if the Oregon operating institution is a depository of public fund deposits.

(f) Any supervisory authority that regulates financial institutions, **financial holding companies** or bank holding companies.

(g) The respective Oregon operating institution, or the **financial holding company** or bank holding company that controls an Oregon operating institution.

(8) The director shall prescribe and furnish to interested persons the forms for all reports required by the Bank Act.

(9) If the director is requested to disclose any record subject to this section and the record contains both material that is exempt from disclosure under this section or any other provision of law and material that is not exempt from disclosure, the director shall separate the exempt and nonexempt material and shall disclose only the nonexempt material.

SECTION 22. ORS 706.723 is amended to read:

706.723. (1) Notwithstanding any other provision of law:

(a) Compliance review documents shall be confidential **as provided in section 2 of this 2001 Act** and shall not be discoverable or admissible as evidence in any civil action or administrative proceeding.

(b) Compliance review documents delivered to a state, federal or foreign governmental or regulatory agency remain confidential **as provided in section 2 of this 2001 Act** and shall not be discoverable or admissible in any civil action or administrative proceeding.

(c) A person serving on a compliance review committee or acting at the request of a compliance review committee may not be required to testify in any civil action as to:

(A) The contents or conclusions of a compliance review document; or

(B) The actions taken by a compliance review committee.

(2) This section does not limit the discovery or admissibility in any civil action or administrative proceeding of any documents that are not compliance review documents.

(3) Upon motion by any party, a court shall determine a claim of confidentiality under this section after an in camera review of the materials or information claimed to be confidential. If the court determines that part, but not all, of the materials or information is confidential under this section, the court shall ensure that only the materials or information that is not confidential is disclosed.

(4) The provisions of this section do not affect the ability of a person to claim any privilege that may be provided by law, including but not limited to a claim of privilege under ORS 40.225.

(5) For the purposes of this section:

(a) "Compliance review committee" means a person or persons assigned by a board of directors of a financial institution, or by the management of a financial institution, to test, review or evaluate the conduct of the financial institution, the transactions of the financial institution or the potential transactions of the financial institution for the purpose of monitoring, improving and enforcing compliance with:

(A) Safe, sound and fair lending practices;

(B) Financial reporting to state or federal regulatory agencies;

(C) The financial institution's own policies and procedures; or

(D) Federal or state statutory or regulatory requirements relating to financial institutions.

(b) "Compliance review document" means any document prepared for or created by a compliance review committee.

SECTION 23. ORS 706.730 is amended to read:

706.730. (1) **The name of a person who is a depositor or debtor of a bank and the amount of the person's deposit or debt are confidential as provided in section 2 of this 2001 Act.** The Director of the Department of Consumer and Business Services or any other person employed by the Department of Consumer and Business Services shall not knowingly disclose the name of a person who is a depositor or debtor of a bank, or the amount of the person's deposit or debt, except that the director or the employee may disclose such information as may be required under ORS 706.720 (5) or as may be necessary in the performance of the director's or employee's official duty including any duty under ORS 295.018.

(2) Subsection (1) of this section does not prohibit disclosure of the name of any debtor or the amount of the person's debt included in reports that are filed under ORS 706.655, if the reports were filed by a banking institution that has been liquidated or is in the process of being liquidated under ORS 711.400 to 711.615 and if disclosure is otherwise allowed under ORS 706.720.

SECTION 24. ORS 722.419 is amended to read:

722.419. (1) Except as provided in subsections (2) and (3) of this section, the records of the Department of Consumer and Business Services pertaining to the administration of this chapter are available for public inspection unless the Director of the Department of Consumer and Business Services determines in the particular instance that the public interest in disclosure of the records is outweighed by the interests of an association or its directors, officers, employees, members and customers in keeping the records confidential, or that the records are exempt from disclosure under ORS 192.501 to 192.505. A determination by the director under this subsection is subject to review under ORS 192.410 to 192.505.

(2) Except as provided in subsections (6) and (7) of this section, the following records of the department pertaining to the administration of this chapter are exempt from disclosure or production **and shall be treated as confidential as provided in section 2 of this 2001 Act:**

(a) Examination reports and work papers, directives, orders and correspondence that relate to examination reports.

(b) Investigatory information concerning persons subject to investigation by the director under ORS 722.024, 722.026, 722.036, 722.134, 722.459 or 722.506, and financial statements of such persons.

(c) Proprietary information.

(d) Audits submitted to the director under ORS 722.434 (3).

(e) Reports submitted to the director under ORS 722.458.

(f) Stockholder lists.

(g) The name of a depositor or debtor described in subsection (3) of this section and the amount of the person's deposit or debt.

(3) The director or any other person employed by the department and acting under this chapter shall not knowingly disclose the name of any person who is a depositor or debtor of an association, or the amount of the person's deposit or debt, except that the director or the employee may disclose such information as may be necessary in the performance of the director's or employee's official duty including any duty under ORS 295.018.

(4) Statements of financial condition filed under ORS 722.434 (1) are not confidential.

(5) A civil penalty imposed by the director shall become subject to public inspection after the

20th day after the director imposes the civil penalty.

(6) Notwithstanding subsection (2) of this section, the director may disclose any record of the section specified in this subsection pertaining to an association that has been liquidated if the director determines in the particular instance that the public interest in disclosure of the record outweighs the interests of the association or its directors, stockholders, officers, employees or customers in keeping the record confidential. Under no circumstances, however, shall the director disclose any such record or portion thereof that contains any proprietary information or any information relating to the individual financial activities or affairs of persons unless the director concludes that those activities or affairs were a direct and substantial contributing factor in the failure of the association. This subsection applies to the following records of the section:

(a) Examination reports and work papers, directives, orders and correspondence relating to examination reports;

(b) Investigatory information concerning persons subject to investigation by the director under ORS 722.024, 722.026, 722.036, 722.134, 722.459 or 722.506;

(c) Audits submitted to the director under ORS 722.434 (3); and

(d) Reports filed under ORS 722.458.

(7) Notwithstanding ORS 40.270, an officer of the department may be examined concerning records that are exempt from disclosure under subsection (1), (2) or (3) of this section and the records are subject to production if the court before which a civil or criminal action is pending finds that such examination and production is essential for establishing a claim or defense. In making a finding under this subsection, if the court views the records, the court shall do so in camera.

(8) **In addition to the authority granted the director in section 2 of this 2001 Act**, all records of the department pertaining to the condition of associations may be furnished to:

(a) Representatives of savings and loan departments of other states.

(b) Representatives of the Federal Housing Finance Board, Washington, D.C., a Federal Home Loan Bank or other federal or state financial agency organized under the laws of the United States or of this state and authorized to loan to or otherwise act as a reserve or insuring agency for savings associations.

(c) The State Treasurer if the association is a depository of public fund deposits.

(9) If the director is requested to disclose any record subject to this section and the record contains both material that is exempt from disclosure under this section or any other provision of law and material that is not exempt from disclosure, the director shall separate the exempt and nonexempt material and shall disclose only the nonexempt material.

SECTION 25. ORS 746.600 is amended to read:

746.600. As used in ORS 746.600 to 746.690 and 750.055:

(1) "Adverse underwriting decision" means, except as provided in subsection (2) of this section, any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:

(a) A declination of insurance coverage.

(b) A termination of insurance coverage.

(c) Failure of an agent to apply for insurance coverage with a specific insurer which the agent represents and which is requested by an applicant.

(d) In the case of life or health insurance coverage, an offer to insure at higher than standard rates.

(e) In the case of other kinds of insurance coverage:

(A) Placement by an insurer or agent of a risk with a residual market mechanism, an unauthorized insurer or an insurer which specializes in substandard risks.

(B) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished.

(2) "Adverse underwriting decision" does not include the following actions, but the insurer or agent responsible for the occurrence of the action shall nevertheless provide the applicant or policyholder with the specific reason or reasons for the occurrence:

(a) The termination of an individual policy form on a class or statewide basis.

(b) A declination of insurance coverage solely because the coverage is not available on a class or statewide basis.

(c) The rescission of a policy.

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

(4) "Agent" means a person licensed by the Director of the Department of Consumer and Business Services as an insurance agent, or a person to whom the director has issued a nonresident broker's permit.

(5) "Applicant" means a person who seeks to contract for insurance coverage, other than a person seeking group insurance coverage which is not individually underwritten.

(6) "Consumer report" means any written, oral or other communication of information bearing on a natural person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used in connection with an insurance transaction.

(7) "Consumer reporting agency" means a person who:

(a) Regularly engages, in whole or in part, in assembling or preparing consumer reports for a monetary fee;

(b) Obtains information primarily from sources other than insurers; and

(c) Furnishes consumer reports to other persons.

(8) "Control" means, and the terms "controlled by" or "under common control with" refer to, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power of the person is the result of a corporate office held in, or an official position held with, the controlled person.

(9) "Declination of insurance coverage" means a denial, in whole or in part, by an insurer or agent of requested insurance coverage.

(10) "Individual" *[means a natural person who]*:

(a) Means, for purposes of ORS 746.600 to 746.690 and 750.055, except as provided in paragraph (b) of this subsection, a natural person who:

[(a)] **(A)** In the case of life or health insurance, is a past, present or proposed principal insured or certificate holder;

[(b)] **(B)** In the case of other kinds of insurance, is a past, present or proposed named insured or certificate holder;

[(c)] **(C)** Is a past, present or proposed policyowner;

[(d)] **(D)** Is a past or present applicant;

1 [(e)] **(E)** Is a past or present claimant; or

2 [(f)] **(F)** Derived, derives or is proposed to derive insurance coverage under an insurance policy
3 or certificate which is subject to ORS 746.600 to 746.690 and 750.055.

4 **(b) Comprises, for purposes of ORS 746.620, 746.630 and 746.665, and for purposes of terms**
5 **defined in this section as those terms are used in ORS 746.620, 746.630 and 746.665, the fol-**
6 **lowing categories of natural persons:**

7 **(A) “Consumer,” which means an individual, or the individual’s representative, who seeks**
8 **to obtain, obtains or has obtained an insurance product or service from a licensee that is to**
9 **be used primarily for personal, family or household purposes, and about whom the licensee**
10 **has personal information.**

11 **(B) “Customer,” which means a consumer who has a continuing relationship with a**
12 **licensee under which the licensee provides one or more insurance products or services to the**
13 **consumer that are to be used primarily for personal, family or household purposes.**

14 (11) “Institutional source” means a person or governmental entity which provides information
15 about an individual to an insurer, agent or insurance-support organization, other than:

16 (a) An agent;

17 (b) The individual who is the subject of the information; or

18 (c) A natural person acting in a personal capacity rather than in a business or professional ca-
19 pacity.

20 (12) “Insurance-support organization” means, except as provided in subsection (13) of this sec-
21 tion, a person who regularly engages, in whole or in part, in assembling or collecting information
22 about natural persons for the primary purpose of providing the information to an insurer or agent
23 for insurance transactions, including:

24 (a) The furnishing of consumer reports to an insurer or agent for use in connection with insur-
25 ance transactions; and

26 (b) The collection of personal information from insurers, agents or other insurance-support or-
27 ganizations for the purpose of detecting or preventing fraud, material misrepresentation or material
28 nondisclosure in connection with insurance underwriting or insurance claim activity.

29 (13) “Insurance-support organization” does not include insurers, agents, governmental insti-
30 tutions, medical care institutions or medical professionals.

31 (14) “Insurance transaction” means any transaction involving insurance primarily for personal,
32 family or household needs rather than business or professional needs and which entails:

33 (a) The determination of an individual’s eligibility for an insurance coverage, benefit or payment;
34 or

35 (b) The servicing of an insurance application, policy or certificate.

36 (15) “Insurer,” as defined in ORS 731.106, includes every person engaged in the business of en-
37 tering into policies of insurance.

38 (16) “Investigative consumer report” means a consumer report, or portion of a consumer report,
39 for which information about a natural person’s character, general reputation, personal character-
40 istics or mode of living is obtained through personal interviews with the person’s neighbors, friends,
41 associates, acquaintances or others who may have knowledge concerning such items of information.

42 **(17) “Licensee” means an insurer, agent or other person authorized or required to be**
43 **authorized, or licensed or required to be licensed, pursuant to the Insurance Code.**

44 [(17)] **(18) “Medical care institution” means a facility or institution which is licensed to provide**
45 **health care services to natural persons, and includes but is not limited to health maintenance or-**

ganizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies and skilled nursing facilities.

[(18)] **(19)** “Medical professional” means a person licensed or certified to provide health care services to natural persons, and includes but is not limited to chiropractors, clinical dieticians, clinical psychologists, dentists, naturopaths, nurses, occupational therapists, optometrists, pharmacists, physical therapists, physicians, podiatrists, psychiatric social workers and speech therapists.

[(19)] **(20)** “Medical record information” means personal information *[which]* **except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:**

[(a) *Relates to an individual's physical or mental condition, medical history or medical treatment; and*

[(b) *Is obtained from a medical professional, a medical care institution, the individual, or the individual's spouse, parent or legal guardian.*]

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(21) “Nonaffiliated third party” means any person except:

(a) An affiliate of a licensee;

(b) A person that is employed jointly by a licensee and by a person that is not an affiliate of the licensee; and

(c) As designated by the director by rule.

[(20)] **(22)** “Personal information” means information which is identifiable with an individual, which is gathered in connection with an insurance transaction and from which information judgments can be made about the individual's character, habits, avocations, finances, occupations, general reputation, credit, health or any other personal characteristics. “Personal information” includes an individual's name and address, **an individual's policy number or similar form of access code for the individual's policy** and “medical record information” but does not include “privileged information” except for privileged information which has been disclosed in violation of ORS 746.665. **“Personal information” does not include information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state or local government records, widely distributed media or disclosures to the public that are required by federal, state or local law.**

[(21)] **(23)** “Policyholder” means a person who:

(a) In the case of individual policies of life or health insurance, is a current policyowner;

(b) In the case of individual policies of other kinds of insurance, is currently a named insured;
or

(c) In the case of group policies of insurance under which coverage is individually underwritten, is a current certificate holder.

[(22)] **(24)** “Pretext interview” means an interview wherein the interviewer, in an attempt to obtain information about a natural person, does one or more of the following:

(a) Pretends to be someone the interviewer is not.

(b) Pretends to represent a person the interviewer is not in fact representing.

(c) Misrepresents the true purpose of the interview.

(d) Refuses upon request to identify the interviewer.

[(23)] **(25)** "Privileged information" means information which is identifiable with an individual and which:

(a) Relates to a claim for insurance benefits or a civil or criminal proceeding involving the individual; and

(b) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or a civil or criminal proceeding involving the individual.

[(24)] **(26)** "Residual market mechanism" means an association, organization or other entity involved in the insuring of risks under ORS 735.005 to 735.145, 737.312 or other provisions of the Insurance Code relating to insurance applicants who are unable to procure insurance through normal insurance markets.

[(25)] **(27)** "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or a nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure of a premium to be paid as required by the policy.

SECTION 26. ORS 746.620 is amended to read:

746.620. (1) [An insurer or agent] **A licensee** shall provide a **clear and conspicuous** notice of information practices to [all applicants or policyholders] **individuals** in connection with insurance transactions under the circumstances and at the times as follows:

[(a) In the case of an application for insurance, a notice shall be provided no later than:]

[(A) At the time of delivery of the insurance policy or certificate, if personal information is collected only from the applicant or from public records; or]

[(B) At the time the collection of personal information is initiated, if personal information is collected from a source other than the applicant or public records.]

[(b) In the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice shall be required in connection with a policy renewal if:]

[(A) Personal information is collected only from the policyholder or from public records; or]

[(B) A notice meeting the requirements of this section has been given within the previous 24 months.]

[(c) In the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for the policy reinstatement or change in insurance benefits is received by the insurer, except that no notice shall be required if personal information is collected only from the policyholder or from public records.]

[(2) The notice required by subsection (1) of this section shall be in writing and shall state:]

[(a) Whether personal information may be collected from persons other than the individual or individuals proposed for coverage;]

[(b) The types of personal information which may be collected and the types of sources and investigative techniques which may be used to collect the information;]

[(c) The types of disclosures identified in ORS 746.665 (1)(b) to (f), (i), (k), (L) and (n) and the circumstances under which these disclosures may be made without prior authorization. However, only those circumstances need be described which occur with such frequency as to indicate a general business practice;]

[(d) A description of the rights established under ORS 746.640 and 746.645 and the manner in which such rights may be exercised; and]

[(e) That information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.]

(a) Except as provided in this paragraph, to a consumer who becomes a customer of the licensee, not later than the date that the licensee establishes a continuing relationship under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes. A licensee may provide the notice within a reasonable time after the date the licensee establishes a customer relationship if:

(A) Establishing the customer relationship is not at the customer's election; or

(B) Providing notice not later than the date that the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) To a consumer other than as described in paragraph (a) of this subsection, before the licensee discloses any personal information about the consumer pursuant to the requirements of ORS 746.665, unless the disclosure meets one or more of the conditions specified in ORS 746.665.

(2) A licensee shall provide a clear and conspicuous notice to a customer that accurately reflects the privacy policies and practices not less than annually during the continuation of the relationship described in subsection (1)(a) of this section. For the purpose of this subsection, a notice is given annually if it is given at least once in any period of 12 consecutive months during which the relationship exists. A licensee may define the period of 12 consecutive months, but the licensee must apply the period to the customer on a consistent basis.

(3) The privacy notice required by subsections (1) and (2) of this section shall be in writing and clear and conspicuous. The notice may be provided in electronic form if the recipient agrees. In addition to any other information the licensee wishes to provide, the notice shall include the following items of information that apply to the licensee and to the individuals to whom the licensee sends the notice:

(a) The categories of personal information that the licensee collects.

(b) The categories of personal information that the licensee discloses.

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses personal information other than persons to whom the licensee discloses information under ORS 746.665.

(d) The categories of personal information about former customers of the licensee that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses personal information about the licensee's former customers, other than persons to whom the licensee discloses information under ORS 746.665.

(e) If a licensee discloses personal information to a nonaffiliated third party under ORS 746.665, a separate description of the categories of information the licensee discloses and the categories of nonaffiliated third parties with whom the licensee has contracted.

(f) An explanation of the individual's right under ORS 746.630 to authorize disclosure of personal information, including the methods by which the individual may exercise that right.

(g) Any disclosure that the licensee makes under section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) regarding the ability to opt out of disclosures of information among affiliates.

(h) The policies and practices of the licensee with respect to protecting the confidentiality and security of personal information.

(i) Any disclosure that the licensee makes under subsection (4) of this section.

(j) A description of the rights established under ORS 746.640 and 746.645 and the manner in which such rights may be exercised.

(4) If a licensee discloses personal information as authorized under ORS 746.665, the licensee need not list those exceptions in the privacy notices required by this section. When describing the categories of parties to whom disclosure is made, the licensee must state only that the licensee makes disclosures to other affiliated parties or nonaffiliated third parties, as applicable, as authorized by law.

[(3)] (5) In lieu of the notice prescribed in subsection [(2)] (3) of this section, the [insurer or agent] licensee may provide to a consumer an abbreviated notice, in writing or in electronic form if the consumer agrees, informing the [applicant or policyholder] consumer that:

(a) Personal information may be collected from persons other than the [individual or individuals] consumer proposed for coverage;

(b) Such information as well as other personal or privileged information subsequently collected by the [insurer or agent] licensee may in certain circumstances be disclosed to third parties without authorization;

(c) A right of access and correction exists with respect to all personal information collected; and

(d) The notice prescribed in subsection [(2)] (3) of this section will be furnished to the [applicant or policyholder] consumer upon request.

(6) The Director of the Department of Consumer and Business Services by rule may apply the categories of consumer and customer as described in ORS 746.600 for the purpose of establishing specific requirements for notice of information practices, authorization for disclosure of personal information, conditions for disclosure of personal information under this section and ORS 746.630 and 746.665, and exceptions. The director shall consider applicable definitions and terms used in the federal Gramm-Leach-Bliley Act (P.L. 106-102), applicable definitions and requirements used in the model "Privacy of Consumer Financial and Health Information Regulation" adopted by the National Association of Insurance Commissioners and other sources as may be needed so that the terms defined in ORS 746.600 and applicable to this section and ORS 746.630 and 746.665:

(a) Facilitate compliance with requirements in federal law and the laws of other states that establish protections of nonpublic personal information; and

(b) Establish separate and discrete requirements relating to the privacy notice and its contents and delivery for customers and consumers, so that the requirements provide reasonable notice and facilitate compliance with requirements in federal law and in the laws of other states.

(7) The director shall determine by rule:

(a) When a privacy notice must be provided to a certificate holder or beneficiary of a group policy and to a third-party claimant.

(b) When the obligation to provide annual notice ceases.

(c) Requirements for revision of the notice by a licensee.

(8) An agent is not subject to the requirements of this section when the insurer on whose behalf the agent acts otherwise complies with the requirements of this section and the agent does not disclose any personal information to any person other than the insurer or its affiliate, or as otherwise authorized by law.

(9) A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is ac-

curate with respect to the licensee and the other institutions. A licensee may also provide a notice on behalf of a financial institution.

[(4)] (10) The obligations imposed by this section upon [an insurer or agent] a licensee may be satisfied by another [insurer or agent] licensee authorized to act on behalf of the first [insurer or agent] licensee.

(11) For purposes of this section and ORS 746.630 and 746.665, an individual is not the consumer of a licensee solely because the individual is covered under a group life or health insurance policy issued by the licensee or is a participant or beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary, if:

(a) The licensee provides to the policyholder the initial, annual and revised notices under this section; and

(b) The licensee does not disclose to a nonaffiliated third party personal information about the individual other than as permitted by ORS 746.665.

(12) When an individual becomes a consumer of a licensee under subsection (11) of this section, this section and ORS 746.630 and 746.665 apply to the licensee with respect to the individual.

SECTION 27. ORS 746.630 is amended to read:

746.630. (1) Notwithstanding any other law of this state, [no insurer, agent] a licensee or insurance-support organization may **not** utilize as its disclosure authorization form in connection with insurance transactions a form or statement which authorizes the disclosure of personal or privileged information about an individual to the [insurer, agent] licensee or insurance-support organization unless the form or statement **is clear and conspicuous, and contains all of the following:**

[(a) Is written in plain language;]

[(b) Is dated;]

[(c) Specifies the types of persons authorized to disclose information about the individual;]

[(d) Specifies the nature of the information authorized to be disclosed;]

[(e) Names the insurer or agent and identifies by generic reference the representatives of the insurer to whom the individual is authorizing information to be disclosed;]

[(f) Specifies the purposes for which the information is collected;]

[(g) Specifies the length of time such authorization will remain valid, which shall be no longer than;]

[(A) In the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement or a request for change in policy benefits;]

[(i) Thirty months from the date the authorization is signed if the application or request involves life or health insurance; or]

[(ii) Twelve months from the date the authorization is signed if the application or request involves other kinds of insurance.]

[(B) In the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:]

[(i) The term of coverage of the policy and the duration of any claim extending after the term of coverage if the claim is for a health insurance benefit; or]

[(ii) The duration of the claim if the claim is not for a health insurance benefit; and]

1 *[(h) Advises the individual or a person authorized to act on behalf of the individual that the indi-*
 2 *vidual or the individual's authorized representative is entitled to receive a copy of the authorization*
 3 *form.]*

4 **(a) The identity of the individual who is the subject of the personal information.**

5 **(b) A general description of the categories of personal information to be disclosed.**

6 **(c) General descriptions of the parties to whom the licensee discloses personal informa-**
 7 **tion, the purpose of the disclosure and how the information will be used.**

8 **(d) The signature of the individual who is the subject of the personal information or the**
 9 **individual who is legally empowered to grant authority and the date signed.**

10 **(e) Notice of the length of time for which the authorization is valid, that the individual**
 11 **may revoke the authorization at any time and the procedure for making a revocation.**

12 **(2) An authorization may not remain valid for more than 24 months.**

13 **(3) An individual who is the subject of personal information may revoke an authorization**
 14 **provided pursuant to this section at any time, subject to the rights of any individual who**
 15 **acted in reliance on the authorization prior to notice of the revocation.**

16 **(4) A licensee shall retain the authorization of an individual or a copy thereof in the re-**
 17 **cord of the individual who is the subject of the personal information.**

18 *[(2)]* **(5) A disclosure authorization obtained by an insurer, agent or insurance-support organ-**
 19 **ization from an individual prior to January 1, 1983, shall be considered to be in compliance with this**
 20 **section.**

21 **SECTION 27a. (1) The amendments to ORS 746.620 and 746.630 by sections 26 and 27 of**
 22 **this 2001 Act apply on and after July 1, 2003, to an insurer with respect to health insurance**
 23 **policies issued by the insurer to which the federal Health Insurance Portability and Ac-**
 24 **countability Act of 1996 (P.L. 104-191) applies. The Director of the Department of Consumer**
 25 **and Business Services may adopt rules that take effect on or after July 1, 2003, with respect**
 26 **to such policies. The rules may:**

27 **(a) Apply the requirements of federal regulations governing privacy adopted under the**
 28 **authority of the federal Health Insurance Portability and Accountability Act of 1996 if the**
 29 **requirements of the federal regulations are more stringent than the requirements of ORS**
 30 **746.620 and 746.630 as amended by sections 26 and 27 of this 2001 Act; or**

31 **(b) Apply the requirements of ORS 746.620 and 746.630 as amended by sections 26 and 27**
 32 **of this 2001 Act.**

33 **(2) Nothing in this section may be construed to exempt an insurer transacting health**
 34 **insurance from other applicable requirements in state or federal law concerning the use of**
 35 **personal information in insurance transactions.**

36 **(3) The director shall determine under subsection (1) of this section whether the re-**
 37 **quirements of the federal regulations are more stringent than the requirements of ORS**
 38 **746.620 and 746.630 as amended by sections 26 and 27 of this 2001 Act on the basis of the**
 39 **federal regulations as a whole. If the director determines that the federal regulations with**
 40 **respect to a particular matter are less stringent than the requirements of ORS 746.620 and**
 41 **746.630 as amended by sections 26 and 27 of this 2001 Act, the director may require compli-**
 42 **ance with the state law on that matter.**

43 **SECTION 28. ORS 746.665 is amended to read:**

44 **746.665. (1) [An insurer, agent] A licensee or insurance-support organization shall not disclose**
 45 **any personal or privileged information about an individual collected or received in connection with**

an insurance transaction unless the disclosure meets one or more of the following conditions:

(a) Is with the written authorization of the individual, and:

(A) If the authorization is submitted by another *[insurer, agent]* **licensee** or insurance-support organization, the authorization meets the requirements of ORS 746.630; or

(B) If the authorization is submitted by a person other than *[an insurer, agent]* **a licensee** or insurance-support organization, the authorization is:

(i) Dated;

(ii) Signed by the individual; and

(iii) Obtained one year or less prior to the date a disclosure is sought pursuant to this subsection.

(b) Is to a person other than *[an insurer, agent]* **a licensee** or insurance-support organization, if the disclosure is reasonably necessary to enable the person to:

(A) Perform a business, professional or insurance function for the disclosing *[insurer, agent]* **licensee** or insurance-support organization and the person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:

(i) Would otherwise be permitted by this section if made by *[an insurer, agent]* **a licensee** or insurance-support organization; or

(ii) Is reasonably necessary for the person to perform its function for the disclosing *[insurer, agent]* **licensee** or insurance-support organization; or

(B) Provide information to the disclosing *[insurer, agent]* **licensee** or insurance-support organization for the purpose of:

(i) Determining an individual's eligibility for an insurance benefit or payment; or

(ii) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction.

(c) Is to *[an insurer, agent]* **a licensee**, insurance-support organization or self-insurer, if the information disclosed is limited to that which is reasonably necessary:

(A) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions; or

(B) For either the disclosing or receiving *[insurer, agent]* **licensee** or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.

(d) Is to a medical care institution or medical professional and discloses only such information as is reasonably necessary to accomplish one or more of the following purposes:

(A) Verifying insurance coverage or benefits.

(B) Informing an individual of a medical problem of which the individual may not be aware.

(C) Conducting an operations or services audit.

(e) Is to an insurance regulatory authority.

(f) Is to a law enforcement or other governmental authority:

(A) To protect the interests of the *[insurer, agent]* **licensee** or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(B) If the *[insurer, agent]* **licensee** or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(g) Is otherwise permitted or required by law.

(h) Is in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(i) Is made for the purpose of conducting actuarial or research studies, if:

(A) No individual may be identified in any resulting actuarial or research report;

(B) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(C) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by [*an insurer, agent*] **a licensee** or insurance-support organization.

(j) Is to a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the [*insurer, agent*] **licensee** or insurance-support organization, if:

(A) Prior to the consummation of the sale, transfer, merger or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger or consolidation; and

(B) The recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by [*an insurer, agent*] **a licensee** or insurance-support organization.

(k) Is to a [*person*] **nonaffiliated third party** whose only use of the information will be in connection with the marketing of a product or service, if **all of the following conditions are met**:

(A) No medical record information, privileged information or personal information relating to an individual's character, personal habits, mode of living or general reputation is disclosed, and no classification derived from such information [*is disclosed*;] **may be disclosed**.

(B) The individual [*has*] **must have** been given **the notice described in ORS 746.620 and** an opportunity to indicate that the individual does not want personal information disclosed for marketing purposes and [*has*] **must have** given no indication that the individual does not want the information disclosed[; *and*]. **The individual need not have been given the opportunity described in this subparagraph if the disclosure is made pursuant to a joint marketing agreement. As used in this subparagraph, "joint marketing agreement" means a formal written contract pursuant to which an insurer jointly offers, endorses or sponsors a financial product or service with a financial institution. When the opportunity is required, the statement that offers the opportunity must state that the insurer may disclose personal information to nonaffiliates and that the individual has a right to indicate that the individual does not want personal information disclosed for marketing purposes, and must describe the method for exercising that right. The statement must be in writing but may be in an electronic form if the individual agrees. The individual who is given the opportunity must be provided a reasonable time to exercise the opportunity. An individual may exercise the opportunity at any time. A statement by an individual barring disclosure of personal information remains effective until the individual who made the statement revokes the statement in writing or, if the individual agrees, in electronic form.**

(C) The person receiving the information [*agrees*] **must agree** not to use it except in connection with the marketing of a product or service.

(L) Is to an affiliate whose only use of the information will be in connection with an audit of the [*insurer or agent*] **licensee** or the marketing of [*an insurance*] **a financial** product or service, and the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons. **This paragraph does not apply to the disclosure of medical record information for the purpose of marketing a financial product or service.**

(m) Is by a consumer reporting agency, and the disclosure is to a person other than [*an insurer*

or agent] **a licensee.**

(n) Is to a group policyholder for the purpose of reporting claims experience or conducting an audit of the [insurer's or agent's] **licensee's** operations or services, and the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit.

(o) Is to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional.

(p) Is to a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(q) Is to a policyholder or certificate holder for the purpose of providing information regarding the status of an insurance transaction.

(2) Personal or privileged information may be acquired by a group practice prepayment health care service contractor from providers which contract with the contractor and may be transferred among providers which contract with the contractor for the purpose of administering plans offered by the contractor. The information may not be disclosed otherwise by the contractor except in accordance with ORS 746.600 to 746.690 and 750.055.

SECTION 28a. ORS 746.680 is amended to read:

746.680. (1) If any insurer, agent or insurance-support organization fails to comply with ORS 746.640, 746.645 or 746.650, any person whose rights granted under those sections are violated may apply to the circuit court for the county in which the person resides, or any other court of competent jurisdiction, for appropriate equitable relief.

(2) [An insurer, agent] **A licensee** or insurance-support organization [which] **that** discloses information in violation of ORS 746.665 shall be liable for damages sustained by the individual about whom the information relates. However, no individual shall be entitled to a monetary award [which] **that** exceeds the actual damages sustained by the individual as a result of the violation of ORS 746.665.

(3) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney fees to the prevailing party.

(4) An action under this section must be brought within two years from the date the alleged violation is or should have been discovered.

(5) Except as specifically provided in this section, there shall be no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of ORS 746.600 to 746.690 and 750.055.

SECTION 28b. Section 28c of this 2001 Act is added to and made a part of ORS 746.600 to 746.690.

SECTION 28c. Nothing in ORS 746.620, 746.630 or 746.665 may be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and no inference may be drawn on the basis of ORS 746.620, 746.630 or 746.665 regarding whether information is transaction information or experience information under section 603 of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

SECTION 29. ORS 706.008 is amended to read:

706.008. As used in the Bank Act, unless the context requires otherwise:

(1) "Bank" means a company, other than an extranational institution, that accepts deposits insured to any extent by the Bank Insurance Fund under the provisions of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, et seq.

(2) "Bank holding company" means any company that is a bank holding company under the

federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

(3) "Bank service corporation" means a corporation, all of the capital stock of which is owned by one or more banking institutions or national banks, that is organized to perform services authorized by ORS 708A.145.

(4) "Banking institution" means an Oregon commercial bank, an Oregon trust company or an Oregon savings bank.

(5) "Company" means an entity that is a company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

(6) "Extranational institution" means a corporation, unincorporated company, partnership or association of two or more persons organized under the laws of a nation other than the United States, any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, that engages directly in a banking business.

(7) "Federal bank" means a national bank or any other bank organized under the laws of the United States.

(8) "Federal savings bank" means a corporation chartered as a federal savings bank under the provisions of 12 U.S.C. 1464.

(9) "Financial holding company" means a company as referred to in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

[(9)] **(10)** "Financial institution" means insured institutions, extranational institutions, credit unions as defined in ORS 723.006, out-of-state credit unions under ORS 723.042 and federal credit unions.

[(10)] **(11)** "In-state federal stock bank" means a federal bank that issues capital stock, the home state of which is Oregon.

[(11)] **(12)** "Institution" means an Oregon commercial bank or an Oregon trust company.

[(12)] **(13)** "Insured institution" means a company, the deposits of which are insured under the provisions of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, et seq.

[(13)] **(14)** "Insured nonstock institution" means an insured institution that does not issue capital stock.

[(14)] **(15)** "Insured stock institution" means an insured institution that issues capital stock.

[(15)] **(16)** "National bank" means a bank that was organized under the provisions of the National Bank Act, as amended, 12 U.S.C. 21, et seq.

[(16)] **(17)** "Non-Oregon institution" means:

(a) An out-of-state state bank engaging in banking business in Oregon;

(b) An out-of-state trust company transacting trust business in Oregon; and

(c) An extranational institution engaging in banking business in Oregon.

[(17)] **(18)** "Nonstock bank" means a bank that does not issue capital stock.

[(18)] **(19)** "Oregon bank" means an Oregon stock bank or Oregon nonstock bank.

[(19)] **(20)** "Oregon commercial bank" means an Oregon stock bank that was chartered under ORS chapter 707 as a bank other than a stock savings bank.

[(20)] **(21)** "Oregon nonstock bank" means a state nonstock bank, the home state of which is Oregon.

[(21)] **(22)** "Oregon operating institution" means:

(a) A bank that is engaging in banking business in this state;

(b) An extranational institution that is engaging in banking business in this state; or

(c) A trust company that is transacting trust business in this state.

1 [(22)] **(23)** “Oregon savings bank” or “savings bank” means an Oregon stock savings bank or an
2 Oregon nonstock bank.

3 [(23)] **(24)** “Oregon stock bank” means a state stock bank, the home state of which is Oregon.

4 [(24)] **(25)** “Oregon stock savings bank” means an Oregon stock bank that was initially chartered
5 as or was converted to a stock savings bank under the Bank Act.

6 [(25)] **(26)** “Oregon trust company” means a trust company that was organized under the pro-
7 visions of ORS chapter 707.

8 [(26)] **(27)** “Out-of-state bank” means an out-of-state state bank or an out-of-state federal bank.

9 [(27)] **(28)** “Out-of-state bank holding company” means a bank holding company whose home
10 state is not Oregon, and that is not the bank holding company of an Oregon stock bank or an in-
11 state federal stock bank.

12 [(28)] **(29)** “Out-of-state federal bank” means a federal bank, the home state of which is a state
13 other than Oregon.

14 **(30) “Out-of-state financial holding company” means a financial holding company whose**
15 **home state is not Oregon, and that is not the financial holding company of an Oregon stock**
16 **bank or an in-state federal stock bank.**

17 [(29)] **(31)** “Out-of-state state bank” means a state bank, the home state of which is a state other
18 than Oregon.

19 [(30)] **(32)** “Out-of-state trust company” means a trust company that was organized under the
20 laws of another state.

21 [(31)] **(33)** “State bank” means a bank that was organized under the laws of a state.

22 [(32)] **(34)** “State nonstock bank” means a nonstock bank that was organized under the laws of
23 a state.

24 [(33)] **(35)** “State stock bank” means a stock bank that was organized under the laws of a state.

25 [(34)] **(36)** “Stock bank” means a bank that issues capital stock.

26 [(35)] **(37)** “Trust company” means any company that is authorized under the provisions of ORS
27 chapter 709 to transact trust business, and includes the trust department of a bank, but does not
28 include a corporation appointed by a United States Bankruptcy Court to serve as a bankruptcy
29 trustee under Title 11, United States Code, when the corporation is acting in its capacity as a
30 bankruptcy trustee.

31 **SECTION 30.** ORS 715.012 is amended to read:

32 715.012. (1) If a company proposes to become a **financial holding company or a** bank holding
33 company of an Oregon stock bank, when the company files its application and any related materials
34 with the Federal Reserve Board, the company shall submit to the Director of the Department of
35 Consumer and Business Services copies of the application and related materials.

36 (2) The director may submit comments and recommendations for approval or disapproval to the
37 Federal Reserve Board concerning any application to become a **financial holding company or a**
38 bank holding company of an Oregon stock bank that is filed with the Federal Reserve Board.

39 (3) Following the filing of an application to become a **financial holding company or a** bank
40 holding company and the submission to the director of the materials described in subsection (1) of
41 this section, the company shall submit to the director copies of any written communications between
42 itself and the Federal Reserve Board that relate to the application, including copies of any written
43 approval or denial of the application. A copy of each such written communication shall be submitted
44 to the director within 10 days after the original thereof is sent or received by the company.

45 **SECTION 31.** ORS 715.017 is amended to read:

1 715.017. An out-of-state **financial holding company or an out-of-state** bank holding company
2 may become the **financial holding company or the** bank holding company of:

3 (1) An Oregon stock bank or an in-state federal stock bank, by itself or together with any
4 predecessor, only if the Oregon stock bank or in-state federal stock bank has been engaged in the
5 business of banking in this state for a period of not less than three years prior to the date on which
6 the out-of-state **financial holding company or the out-of-state** bank holding company becomes the
7 **financial holding company or the** bank holding company of the Oregon stock bank or in-state
8 federal stock bank.

9 (2) An Oregon stock bank organized under ORS 707.025 that has merged with or acquired all
10 or substantially all of the assets and liabilities of an Oregon stock bank or in-state federal stock
11 bank, by itself or together with any predecessor, only if the Oregon stock bank or in-state federal
12 stock bank has been engaged in the business of banking in this state for a period of not less than
13 three years prior to the date on which the out-of-state **financial holding company or the out-of-**
14 **state** bank holding company becomes the **financial holding company or the** bank holding company
15 of the Oregon stock bank.

16 **SECTION 32.** ORS 715.019 is amended to read:

17 715.019. (1) An Oregon nonstock bank may, pursuant to rules adopted by the Director of the
18 Department of Consumer and Business Services, reorganize so that the resulting entities are an
19 Oregon stock savings bank, controlled by a mutual **financial holding company or a mutual** bank
20 holding company. For purposes of this section, a “mutual **financial holding company or a mutual**
21 bank holding company” is a **financial holding company or a** bank holding company that does not
22 issue capital stock. **The mutual financial holding company shall be mutually owned by the**
23 **depositors of the reorganizing Oregon nonstock bank and shareholders of other companies**
24 **under the control of the mutual financial holding company.** The mutual bank holding company
25 shall be mutually owned by the depositors of the reorganizing Oregon nonstock bank.

26 (2) A mutual bank holding company may acquire or invest in the stock of one or more stock
27 savings banks.

28 (3) A mutual bank holding company may merge with or acquire another mutual bank holding
29 company.

30 (4) A mutual bank holding company formed under this section shall be subject to the provisions
31 of this chapter.

32 (5) The director is authorized to adopt rules to carry out the provisions of this section.

33 **SECTION 33.** ORS 715.045 is amended to read:

34 715.045. (1) The Director of the Department of Consumer and Business Services may examine the
35 books, accounts, records and files of a **financial holding company or a** bank holding company of
36 an Oregon stock bank when the director considers it necessary to evaluate the condition of the
37 Oregon stock bank that is a subsidiary of the **financial holding company or the** bank holding
38 company.

39 (2) **The financial holding company or** the bank holding company examined shall pay to the
40 director the actual cost of the examination, as determined by the director.

41 **SECTION 34.** ORS 715.055 is amended to read:

42 715.055. (1) A **financial holding company or a** bank holding company of an Oregon stock bank
43 shall submit to the Director of the Department of Consumer and Business Services copies of all re-
44 ports that the **financial holding company or the** bank holding company is required to submit to
45 the Federal Reserve Board. The copies shall be submitted to the director within the time periods

1 required by applicable federal law and regulation for the filing of the originals with the Federal
2 Reserve Board.

3 (2) The director may call for additional information from a **financial holding company or a**
4 **bank holding company**, in such form as the director may prescribe by rule or order, if the director
5 considers it necessary in order to obtain full knowledge of the condition of the Oregon stock bank
6 which the **financial holding company or the bank holding company** controls. The **financial hold-**
7 **ing company or the bank holding company** shall submit the report to the director within the time
8 period prescribed by the director.

9 (3) If a **financial holding company or a bank holding company** fails to submit a report or ad-
10 ditional information as required by this section, the **financial holding company or the bank hold-**
11 **ing company** shall pay to the director a penalty of up to \$1,000 for each day it fails to comply. If
12 the **financial holding company or the bank holding company** delays or refuses to pay the penalty
13 upon demand by the director, the director may maintain an action in the director's name against the
14 delinquent **financial holding company or bank holding company** for the recovery of the penalty.

15 **SECTION 35.** ORS 715.075 is amended to read:

16 715.075. A **financial holding company or a bank holding company** may acquire and hold all or
17 part of the stock of a corporation which is or may thereafter be licensed under ORS 744.002 as an
18 agent to transact one or more of the classes of insurance described in ORS 744.115 except for title
19 insurance, subject to the following requirements:

20 (1) The acquisition and holding of such stock shall be subject to the approval of the Director
21 of the Department of Consumer and Business Services. The director shall base consideration for
22 approval on the condition of the **financial holding company or the bank holding company**, the
23 adequacy of a formal business plan for the insurance activities and the existence of satisfactory
24 management for the corporation.

25 (2) The director may revoke or restrict the ongoing authority of the **financial holding company**
26 **or the bank holding company** to hold stock in the corporation if the condition of the **financial**
27 **holding company or the bank holding company** or of any bank owned by it substantially deteri-
28 orates or if the insurance activities are adversely affecting the **financial holding company or the**
29 **bank holding company** or any bank owned by it.

30 (3) If the corporation conducts the insurance agency activity in any branch or office in which
31 any bank owned by the **financial holding company or the bank holding company** carries on its
32 banking business, the insurance agency activity shall be physically separated from those parts of the
33 premises in which the bank carries on the banking business.

34 (4) No person who acts on behalf of the corporation to transact insurance, as that term is de-
35 fined in ORS 731.146, shall while employed by the corporation engage on behalf of the **financial**
36 **holding company or the bank holding company** or any bank owned by it in any activities relating
37 to the making of loans or the granting of other credits to the customers of any bank owned by the
38 **financial holding company or the bank holding company**, including but not limited to serving as
39 a loan officer or as a member of a loan committee or any other group charged with approval of loans
40 and other credits.

41 (5) The name of the corporation and any assumed business name used by it shall not be identical
42 to that of any bank owned by the **financial holding company or the bank holding company**.

43 (6) Prior to selling any policy of insurance, the corporation shall give substantially the following
44 notice in writing to the purchaser in at least 10-point boldfaced type:

NOTICE

_____ (Name of corporation licensed as an agent) is owned by _____ (Name of **financial holding company or** bank holding company) which also owns _____ (Name of institution or savings bank). You are not required to purchase any insurance from it as a condition of obtaining any service from or engaging in any transaction with the institution, savings bank, **financial holding company** or bank holding company. Before committing to purchase any policy of insurance, you should shop for the coverage by carefully comparing information obtained from two or more agents on prices, benefits, services, terms of renewal and other policy features. You hereby acknowledge receipt of a copy of this notice.

Customer's signature

Date

(7) For each calendar year during which a **financial holding company or** a bank holding company owns all or part of any corporation licensed under ORS 744.002 as an agent, the **financial holding company or the** bank holding company shall file a written report with the director. The report shall be filed no later than March 31 of the following year and shall disclose the insurance activities of the corporation. The required contents of the report shall be established by the director by rule. The reports filed with the director under this paragraph shall be available for public inspection in the office of the director.

(8) The corporation shall not in any manner use customer information obtained by the institution from another insurance agent to promote, develop or solicit insurance business for the corporation unless the other insurance agent consents to such use of the customer information.

(9) The corporation shall be subject to the limitations applicable to lending institutions under ORS 746.180 and 746.185 to 746.211. For the purpose of this subsection, the term "lending institution" has the meaning set forth in ORS 746.185.

SECTION 36. ORS 715.090 is amended to read:

715.090. (1) A **financial holding company or** bank holding company may share financial and credit information concerning its customers with any company of which it directly or indirectly controls 50 percent or more of the voting shares. Any company so controlled by a **financial holding company or** bank holding company may share information concerning its customers with the **financial holding company or** bank holding company and with any other company so controlled by the same **financial holding company or** bank holding company. This section shall not be construed as otherwise permitting or limiting the sharing or disclosure of information.

(2) For purposes of this section, "customers" includes but is not limited to depositors, borrowers, credit card holders, lessees, purchasers under contracts and applicants for credit.

SECTION 37. ORS 732.528 is amended to read:

732.528. (1) **Except as provided in this subsection,** the Director of the Department of Consumer and Business Services shall approve the proposed activity described in ORS 732.521 (1) within 30 days after filing of the completed statement or, if a hearing is called and held, within 30 days after the record for the hearing is closed, unless the director finds that any of the *[following applies]* **grounds specified in this subsection apply** to the proposed activity. **If a proposed activity described in ORS 732.521 (1) involves a financial holding company or is otherwise subject to the federal Gramm-Leach-Bliley Act (P.L. 106-102), the director shall approve the activity not later than the 60th day before the effective date of the activity unless the director finds that any of the grounds specified in this subsection apply to the proposed ac-**

1 **tivity. The grounds upon which the director may refuse to approve a proposed activity are**
2 **as follows:**

3 (a) The activity is contrary to law or would result in a prohibited combination of risks or classes
4 of insurance.

5 (b) The activity is inequitable or unfair to the policyholders or shareholders of any insurer in-
6 volved or to any other person affected by the proposed activity. However, in connection with an
7 acquisition of the voting securities of an insurer from the shareholders of the insurer, the director
8 shall evaluate the fairness of the proposed acquisition to the shareholders of the insurer to be ac-
9 quired only with respect to any shareholders remaining after consummation of the acquisition who
10 are unaffiliated with the acquiring party or parties.

11 (c) The activity would substantially reduce the security of and service to be rendered to
12 policyholders of any domestic insurer involved, or would otherwise prejudice the interests of such
13 policyholders in this state or elsewhere.

14 (d) The activity provides for a foreign or alien insurer to be an acquiring party, and the director
15 further finds that the insurer cannot satisfy the requirements of this state for transacting an insur-
16 ance business involving the classes of insurance affected by the activity.

17 (e) The activity or its consummation would substantially lessen competition in insurance in this
18 state or tend to create a monopoly.

19 (f) After the change of control or ownership, the domestic insurer to which the activity de-
20 scribed in ORS 732.521 (1) applies would not be able to satisfy the requirements for the issuance of
21 a certificate of authority to transact the line or lines of insurance for which it is currently author-
22 ized.

23 (g) The financial condition of any acquiring party might jeopardize the financial stability of the
24 insurer.

25 (h) The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets
26 or consolidate or merge it with any person, or to make any other material change in its business
27 or corporate structure or management, are unfair and unreasonable to policyholders of the insurer
28 and not in the public interest.

29 (i) The competence, experience and integrity of those persons who would control the operation
30 of the insurer are such that it would not be in the interest of policyholders of the insurer and of the
31 public to permit the activity or its consummation.

32 (j) The activity or its consummation is likely to be hazardous or prejudicial to the insurance-
33 buying public.

34 (k) The activity is subject to other material and reasonable objections.

35 (2) If the director does not approve the proposed activity, the director shall promptly notify each
36 insurer and each acquiring party to the proposed activity in writing, specifying the bases, factors
37 and reasons for the disapproval and giving each insurer and each acquiring party who filed the
38 statement relating to the proposed activity an opportunity to amend the statement, if possible, to
39 obviate the director's objections.

40 (3) Any amendment to the statement filed under ORS 732.523 pursuant to the director's objection
41 shall be filed by the acquiring party or parties filing the statement and, if a hearing was held on the
42 proposed activity, shall be resubmitted at a hearing held pursuant to this section unless the director
43 finds that such a hearing is not necessary for the protection of the policyholders, shareholders or
44 any other person affected by the proposed activity.

45 (4) The director may retain at the acquiring person's expense any actuaries, accountants and

other experts not otherwise a part of the director's staff as may be reasonably necessary to assist the director in reviewing the proposed activity.

(5) The director may establish the effective date of an activity to which ORS 732.521 (1) applies in the order approving the activity.

(6) Any insurer or other party to a proposed activity, including the insurer proposed to be acquired, within 60 days after receipt of a notice of approval or disapproval, may appeal the final order of the director as provided in ORS 183.310 to 183.550. For purposes of the judicial review the specifications required to be set forth in the written notice from the director shall be deemed the findings of fact and conclusions of law of the department.

(7) On petition to the court, the court's power shall extend to affirming the order of the director, modifying all or any part of the director's objections, adding additional objections, approving the proposed activity as submitted or subject to such modifications or changes as the court may find proper, and requiring resubmission to the boards of directors or other governing bodies or for hearing as provided in ORS 732.526.

SECTION 38. ORS 732.548 is amended to read:

732.548. As used in ORS 732.517 to 732.592:

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

(2) "Control," including its use in the terms "controlling," "controlled," "controlled by" and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by ORS 732.568 that control does not exist in fact. The Director of the Department of Consumer and Business Services may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "Insurance holding company system" means two or more affiliated persons, one or more of which is an insurer, **and includes a financial holding company as referred to in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).**

(4) A "subsidiary" of a specified person is an affiliate controlled by the specified person directly or indirectly through one or more intermediaries.

(5) A "voting security" includes any security convertible into a voting security or evidencing a right to acquire a voting security.

SECTION 39. ORS 733.620 is amended to read:

733.620. (1) Funds of an insurer may be invested in stocks (including trust certificates) of solvent corporations organized and carrying on a business under the laws of a sovereign as follows:

(a) Preferred or guaranteed stocks if the corporation is not in default or arrears as to any preferred or guaranteed dividend and has continuously and regularly paid such dividends during the preceding three years or has paid cash dividends for five years on common stock.

(b) Common stocks as provided in paragraph (c) of this subsection if:

(A) The obligations and preferred stock, if any, of such corporation are eligible for investment under ORS 733.510 to 733.780; and

(B) The stock is registered on a national securities exchange regulated under the Securities Exchange Act, or if of a type not commonly so registered is regularly traded on a broad national or regional basis.

(c) Notwithstanding ORS 733.780 (1), not more than 25 percent of admitted assets may be in common stocks that have not paid a cash dividend during each of the five years preceding the date of acquisition.

(2) An insurer shall not invest so as to own or control more than five percent of the voting power outstanding of a corporation, nor shall it invest in the obligations or stocks of a corporation if the insurer, directors, trustees and officers own or control, or as a result thereof shall own and control, in the aggregate more than 50 percent of the voting power. **This subsection does not apply to limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution or any company that controls the depository institution.**

SECTION 39a. ORS 59.015 is amended to read:

59.015. As used in the Oregon Securities Law, unless the context otherwise requires:

(1) "Broker-dealer" means a person who engages, all or part of the time, in effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

(a) An issuer effecting sales in its own securities;

(b) The following institutions:

(A) A financial institution or trust company, as defined in ORS 706.008; or

(B) A **financial holding company or a** bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. section 1730a, holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the **financial holding company**, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, if the appropriate statutory regulatory authority is exercising control over, or is regulating or supervising the person in the sale of securities in accord with the purposes of the Oregon Securities Law;

(c) A person who has no place of business in this state effecting transactions in this state exclusively with broker-dealers;

(d) A person effecting sales exempted by ORS 59.035;

(e) A salesperson, as defined in this section;

(f) A person effecting sales of securities owned by the person registered for sale pursuant to ORS 59.065;

(g) A person effecting sales of securities exempted by ORS 59.025 (7);

(h) A person licensed as a mortgage banker or a mortgage broker under ORS 59.840 to 59.965 when effecting sales of securities involving real estate paper registered for sale pursuant to ORS 59.065; or

(i) A person designated by rule or order by the director.

(2) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(3) "Director" means the Director of the Department of Consumer and Business Services.

1 (4) "Federal covered investment adviser" means a person who is registered as an investment
2 adviser pursuant to section 203 of the Investment Advisers Act of 1940, as amended.

3 (5) "Federal covered security" means any security that is a covered security under section 18
4 of the Securities Act of 1933, as amended, and for which such Act provides that the director may
5 require filing of a notice and payment of a fee.

6 (6) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.

7 (7) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

8 (8)(a) "Investment adviser representative" means any partner, officer, director or person occu-
9 pying a similar status or performing a similar function, or other individual, except clerical or
10 ministerial personnel, who is employed by or associated with:

11 (A) A state investment adviser that is licensed or required to be licensed in this state and who
12 does any of the following:

13 (i) Makes any recommendations or otherwise renders advice regarding securities;

14 (ii) Manages accounts or portfolios of clients;

15 (iii) Determines which recommendation or advice regarding securities should be given;

16 (iv) Solicits, offers or negotiates for the sale of or sells investment advisory services; or

17 (v) Supervises employees acting under this subparagraph; or

18 (B) A federal covered investment adviser, subject to the limitations of section 203A of the In-
19 vestment Advisers Act of 1940, as amended, as the director may designate by rule or order.

20 (b) "Investment adviser representative" does not include a person designated by rule or order
21 of the director.

22 (9) "Issuer" means a person who issues, proposes to issue or has issued a security and includes
23 an issuer to be formed. With respect to certificates of deposit, voting-trust certificates or
24 collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated
25 investment trust not having a board of directors or persons performing similar functions or of the
26 fixed, restricted management or unit type, the "issuer" is the person or persons performing the acts
27 and assuming the duties of depositor or manager pursuant to the provisions of the trust or other
28 instrument or agreement under which the security is issued.

29 (10) "License" means a license as provided under the Oregon Securities Law.

30 (11) "Mortgage banker" means a mortgage banker as defined in ORS 59.840.

31 (12) "Mortgage broker" means a mortgage broker as defined in ORS 59.840.

32 (13) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an
33 offer to buy, a security or interest in a security for value. Every sale or offer of a warrant or right
34 to purchase or subscribe to another security of the same or another issuer, as well as every sale
35 or offer of a security which gives the holder a present or future right or privilege to convert into
36 another security of the same or another issuer, is considered to include an offer of the other secu-
37 rity.

38 (14) "Person" includes an individual, a joint venture, a partnership, a cooperative, a limited li-
39 ability company, an association, a joint stock company, a corporation, a trust, an unincorporated
40 organization or a government or political subdivision of a government.

41 (15) "Real estate paper" means any obligation secured or purportedly secured by an interest in
42 real property. Real estate paper includes, but is not limited to, mortgage-backed securities,
43 collateralized mortgage obligations, and real estate mortgage investment conduits.

44 (16) "Registered" means registered as provided in the Oregon Securities Law.

45 (17)(a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a

1 security or interest in a security for value. Any security given or delivered with, or as a bonus on
2 account of, a purchase of securities or any other thing shall constitute a part of the subject of the
3 purchase and shall have been offered and sold for value. A gift of assessable stock by or for any
4 issuer or promoter shall constitute a sale.

5 (b) For purposes of the authority of the director under ORS 59.245 and 59.255, the terms "sale"
6 and "sell" include the terms "offer" and "offer to sell" as defined in this section.

7 (c) "Sale" and "sell" do not include:

8 (A) A bona fide pledge or loan of securities;

9 (B) A bona fide security dividend, whether the corporation distributing the dividend is the issuer
10 of the security or not, if nothing of value is given by the recipients for the dividend other than
11 payments in connection with the elimination of fractional shares; or

12 (C) An act incident to a judicially approved reorganization in which a security is issued in ex-
13 change for one or more outstanding securities, claims or property interests, or partly in such ex-
14 change and partly for cash.

15 (18)(a) "Salesperson" means:

16 (A) A person, other than a broker-dealer, who represents or purports to represent a broker-
17 dealer, issuer or owner of securities in effecting or attempting to effect in any manner transactions
18 in securities.

19 (B) A person, other than a person licensed as a mortgage banker or mortgage broker under ORS
20 59.840 to 59.965, who represents or purports to represent the issuer, owner, or mortgage banker or
21 mortgage broker licensed under ORS 59.840 to 59.965 in effecting sales of securities or involving real
22 estate paper registered for sale pursuant to ORS 59.065.

23 (b) "Salesperson" does not include:

24 (A) A person who represents an issuer in effecting sales in a security exempted by ORS 59.025;

25 (B) A person who represents an issuer in effecting sales exempted by ORS 59.035;

26 (C) A person who represents an issuer in effecting sales with existing partners or directors of
27 the issuer, if no commission or other remuneration is paid or given directly or indirectly for solici-
28 ting any person in this state;

29 (D) An employee of an institution or organization described in subsection (1)(b) of this section
30 to the extent the employee is not a dual employee of the institution and a broker-dealer;

31 (E) A person effecting transactions in this state limited to those transactions described in sec-
32 tion 15(h)(2) and (3) of the Securities Exchange Act of 1934, as amended; or

33 (F) A person designated by rule or order by the director.

34 (c) A person who is a partner, director or officer of a broker-dealer, issuer or owner of securi-
35 ties, or a person who occupies a similar status or performing similar functions, is a "salesperson"
36 only if the person otherwise comes within this definition.

37 (19)(a) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness,
38 certificate of interest or participation in a pension plan or profit-sharing agreement, collateral-trust
39 certificate, preorganization certificate or subscription, transferable share, investment contract,
40 voting-trust certificate, certificate of deposit for a security, certificate of interest or participation
41 in an oil, gas, or mining title or lease or in payments out of production under such title or lease,
42 real estate paper sold by a broker-dealer, mortgage banker, mortgage broker or a person described
43 in subsection (1)(b) of this section to persons other than persons enumerated in ORS 59.035 (4), or,
44 in general, any interest or instrument commonly known as a "security," or any certificate of interest
45 or participation in, temporary or interim certificates for, receipt for, guarantee of, or warrant or

right to subscribe to or purchase any of the foregoing.

(b) "Security" does not include:

(A) An insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or some other specified period;

(B) A beneficial interest in a voluntary inter vivos trust unless the trust is created solely for the purpose of voting or is part of an attempt to evade the provisions of ORS 59.005 to 59.370; or

(C) A beneficial interest in a testamentary trust.

(20)(a) "State investment adviser" means a person who, for compensation:

(A) Engages all or part of the time of the person, in this state, in the business of advising others, either directly or by mail or through publication or writing, as to the value of securities or as to the advisability of investing in, purchasing or selling securities;

(B) Engages all or part of the time of the person, in this state, in the business of managing an investment or trading account in securities for other persons; or

(C) Issues or promulgates, as part of a regular business in this state, analyses or reports concerning securities.

(b) "State investment adviser" does not include:

(A) An investment adviser representative;

(B) An institution or organization described in subsection (1)(b) of this section;

(C) A licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for such services;

(D) A salesperson licensed to a broker-dealer whose performance of investment advisory services is solely incidental to that person's activities as a salesperson and who receives no special compensation for such services;

(E) A publisher of or contributor to a bona fide newspaper, newsmagazine, investment manual or service, or business or financial publication of general, regular and paid circulation;

(F) A person whose only clients are federal covered investment advisers, state investment advisers, broker-dealers, mortgage bankers, mortgage brokers, banks, savings institutions or trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, as amended, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(G) A duly licensed lawyer, engineer or accountant whose performance of investment advisory services is solely incidental to the practice of the profession;

(H) A person whose advice, analyses or reports relate only to securities exempted by ORS 59.025 (1);

(I) A federal covered investment adviser in compliance with ORS 59.165 (7);

(J) A person, advising others, that has no place of business in this state and during the preceding 12-month period has had fewer than six clients, other than those persons included in subparagraph (F) of this paragraph, who are residents of this state; or

(K) Such other persons as the director may by rule or order designate.

SECTION 40. ORS 59.840 is amended to read:

59.840. As used in ORS 59.840 to 59.965:

(1) "Director" means the Director of the Department of Consumer and Business Services.

(2) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.

- 1 (3) "License" means a license issued to a mortgage banker or mortgage broker under ORS 59.840
2 to 59.965.
- 3 (4) "Mortgage banker":
4 (a) Means any person who for compensation or in the expectation of compensation:
5 (A) Either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage
6 banking loan or a mortgage loan; and
7 (B) Services or sells a mortgage banking loan.
8 (b) Does not include:
9 (A) A financial institution, as defined in ORS 706.008.
10 (B) A **financial holding company or a** bank holding company, as defined in ORS 706.008,
11 holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding
12 company as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an
13 association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the
14 **financial holding company**, bank holding company or savings and loan holding company; or sub-
15 sidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, provided that
16 the appropriate statutory regulatory authority is exercising control over or is regulating or super-
17 vising the persons listed in this subparagraph in their mortgage banking activities in accordance
18 with the purposes of ORS 59.840 to 59.965.
19 (C) A person who makes a loan secured by an interest in real estate with the person's own
20 moneys, for the person's own investment and who is not engaged in the business of making loans
21 secured by an interest in real estate.
22 (D) An attorney licensed in this state who negotiates mortgage banking loans or mortgage loans
23 in the ordinary course of business, unless the business of negotiating mortgage banking loans or
24 mortgage loans constitutes substantially all of the attorney's professional activity.
25 (E) A person who, as seller of real property, receives one or more mortgages or deeds of trust
26 as security for a separate money obligation.
27 (F) An agency of any state or of the United States.
28 (G) A person who receives a mortgage or deed of trust on real property as security for an ob-
29 ligation payable on an installment or deferred payment basis and arising out of materials furnished
30 or services rendered in the improvement of that real property or any lien created without the con-
31 sent of the owner of the real property.
32 (H) A person who funds a mortgage banking loan or mortgage loan which has been originated
33 and processed by a licensee or by an exempt person and who does not maintain a place of business
34 in this state in connection with funding mortgage banking loans or mortgage loans, does not directly
35 or indirectly solicit borrowers in this state for the purpose of making mortgage banking loans or
36 mortgage loans and does not participate in the negotiation of mortgage banking loans or mortgage
37 loans. For the purpose of this subparagraph, "negotiation of mortgage banking loans or mortgage
38 loans" does not include setting the terms under which a person may buy or fund a mortgage banking
39 loan or a mortgage loan originated by a licensee or exempt person.
40 (I) A nonprofit federally tax exempt corporation certified by the United States Small Business
41 Administration and organized to promote economic development within this state whose primary
42 activity consists of providing financing for business expansion.
43 (J) A licensee licensed under ORS chapter 725 or a mortgage broker.
44 (K) A retirement or pension fund.
45 (L) An insurer as defined in ORS 731.106.

(M) A court appointed fiduciary.

(N) Any other person designated by rule or order of the director.

(5) "Mortgage banking loan" means a loan, extension of credit or a retail sales contract that is funded exclusively from the mortgage banker's own resources, which is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate and which is created with the consent of the owner of the real property. For purposes of this subsection, "own resources" means any of the following:

(a) Cash, corporate capital, warehouse credit lines at financial institutions defined in ORS 706.008 or other sources that are liability items of the mortgage banker's financial statements for which its assets are pledged;

(b) Correspondent contracts between the mortgage banker and a bank, savings bank, trust company, savings and loan association, credit union, profit sharing or pension trust, a licensee under ORS chapter 725 or an insurance company; or

(c) The mortgage banker's affiliates' cash, corporate capital, warehouse credit lines at financial institutions defined in ORS 706.008 or other sources that are liability items on the affiliates' financial statements for which the affiliates' assets are pledged. As used in this paragraph, "affiliates" means entities that, directly or indirectly, through one or more intermediaries controls, are controlled by or are under common control with the entity specified.

(6) "Mortgage broker":

(a) Means a person who:

(A) Engages all or part of the time, for the account of others or for the person's own account, in the business of selling real estate paper whether as issuer, agent or principal to persons other than persons enumerated in ORS 59.035 (4);

(B) Engages all or part of the time, for the account of others or for the person's own account, in the business of accepting funds from one or more persons other than persons enumerated in ORS 59.035 (4) for investment in real estate paper; or

(C) For compensation, or in the expectation of compensation, either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan.

(b) Does not include:

(A) A financial institution, as defined in ORS 706.008.

(B) A **financial holding company or a** bank holding company, as defined in ORS 706.008, holding an institution described in subparagraph (A) of this paragraph; a savings and loan holding company as defined in section 408 of the National Housing Act, 12 U.S.C. 1730a (1982), holding an association described in subparagraph (A) of this paragraph; the subsidiaries and affiliates of the **financial holding company**, bank holding company or savings and loan holding company; or subsidiaries and affiliates of institutions described in subparagraph (A) of this paragraph, provided that the appropriate statutory regulatory authority is exercising control over or is regulating or supervising the persons listed in this subparagraph in their mortgage brokering activities in accordance with the purposes of ORS 59.840 to 59.965.

(C) A person who purchases real property and issues an obligation to finance the transaction to the seller incidentally to the sale.

(D) A real estate licensee as defined in ORS 696.010 who performs services solely incidental to the practice of professional real estate activity as defined in ORS 696.010, unless the real estate licensee performs the functions of a mortgage banker or a mortgage broker as defined in this section.

1 (E) A person licensed under the provisions of ORS chapter 725 or a mortgage banker.

2 (F) A person who makes a loan secured by an interest in real estate with the person's own
3 moneys, for the person's own investment and who is not engaged in the business of making loans
4 secured by an interest in real estate.

5 (G) An attorney licensed in this state who negotiates mortgage loans in the ordinary course of
6 business, unless the business of negotiating mortgage loans constitutes substantially all of the at-
7 torney's professional activity.

8 (H) A person who, as seller of real property, receives one or more mortgages or deeds of trust
9 as security for a separate money obligation.

10 (I) An agency of any state or of the United States.

11 (J) A person who receives a mortgage or deed of trust on real property as security for an obli-
12 gation payable on an installment or deferred payment basis and arising out of materials furnished
13 or services rendered in the improvement of that real property or any lien created without the con-
14 sent of the owner of the real property.

15 (K) A person who funds a mortgage loan which has been originated and processed by a licensee
16 or by an exempt person and who does not maintain a place of business in this state in connection
17 with funding mortgage loans, does not directly or indirectly solicit borrowers in this state for the
18 purpose of making mortgage loans and does not participate in the negotiation of mortgage loans.
19 For the purpose of this subparagraph, "negotiation of mortgage loans" does not include setting the
20 terms under which a person may buy or fund a mortgage loan originated by a licensee or exempt
21 person.

22 (L) A nonprofit federally tax exempt corporation certified by the United States Small Business
23 Administration and organized to promote economic development within this state whose primary
24 activity consists of providing financing for business expansion.

25 (M) A person licensed under ORS 822.020 who provides services customarily associated with the
26 retail sales of manufactured dwellings, including communication of generally available information
27 regarding mortgage loans, unless:

28 (i) The person receives from a purchaser a fee or commission as a mortgage broker or mortgage
29 banker that is disclosed in the sales contract, purchase agreement or applicable federal documents;

30 (ii) For the benefit of a potential purchaser, the person completes a loan application form or
31 other document that is part of a mortgage banking loan and completes a good faith estimate under
32 the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

33 (iii) The person solicits or receives credit information from a prospective purchaser for the
34 purpose of making credit decisions; or

35 (iv) The person negotiates with a potential purchaser the terms of a mortgage loan including
36 but not limited to points, interest rates, length of loan or other loan conditions.

37 (N) Any other person designated by rule or order of the director.

38 (7) "Mortgage loan" means a loan, extension of credit or retail sales contract, other than a
39 mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate
40 that is created with the consent of the owner of the real estate.

41 (8) "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust,
42 purchase money security interest arising under an installment sales contract, or equivalent
43 consensual security interest is created or retained in property upon which four or fewer residential
44 dwelling units are planned or situated, including but not limited to individual units or condominiums
45 and cooperatives. As used in this subsection, "residential dwelling unit" means an improvement de-

signed for residential occupancy.

SECTION 41. ORS 98.412 is amended to read:

98.412. (1) The Division of State Lands may require a person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under ORS 98.352.

(2) The division may at reasonable times and upon reasonable notice examine the records of any person to determine whether the person has complied with the provisions of ORS 98.352. The division may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this section.

(3) To the extent possible, the division shall enter into agreements with state and federal agencies that regularly examine the records of financial institutions, trust companies, **financial holding companies** and bank holding companies, as defined in ORS 706.008, and of subsidiaries of such financial institutions, trust companies, **financial holding companies** and bank holding companies. Under the agreements, the state and federal agencies shall examine the records of the financial institution, trust company, **financial holding company**, bank holding company or subsidiary to determine compliance with ORS 98.352. If a state or federal agency does not enter into an agreement with the division under this subsection, the division shall conduct the examination of the records of financial institutions, trust companies, **financial holding companies** and bank holding companies to determine compliance with ORS 98.352.

(4) If a holder fails after August 3, 1983, to maintain the records required by ORS 98.354 and the records of the holder available for the periods subject to ORS 98.302 to 98.436 and 98.992 are insufficient to permit the preparation of a report, the division may require the holder to report and pay the amounts which the division reasonably estimates from the report and available records.

SECTION 42. ORS 205.460 is amended to read:

205.460. (1) A person whose property is subject to an invalid claim of encumbrance may petition the circuit court of the county in which the person resides or in which the property is located for an order, which may be granted ex parte, directing the encumbrance claimant to appear at a hearing before the court and show cause why the claim of encumbrance should not be stricken and other relief provided by this section should not be granted. The court shall schedule the hearing no earlier than seven days after the date of the order. The scheduled date of the hearing shall allow adequate time for notice of the hearing under subsection (4) of this section.

(2) A petition under this section shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the motion is based.

(3) The petition and affidavit described in subsection (2) of this section shall be in substantially the following form:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,)
Petitioner,) Case No. _____
)
) PETITION FOR AN
) ORDER STRIKING

v.) AND RELEASING
) ENCUMBRANCES,
) AWARDING COSTS
) AND ATTORNEY FEES
 _____,) AND ORDER TO
 Respondent.) SHOW CAUSE

Petitioner, _____ (insert name), by and through _____ (insert name and title of attorney for petitioner, if applicable), petitions this court, pursuant to ORS 205.460, for an order striking and releasing purported encumbrances, filed or recorded against Petitioner by Respondent, _____ (insert name or names) filed or recorded in book/reel/volume No. _____ on page _____ or document/fee/ file/instrument/microfilm No. _____ in the _____ (insert name of office where document was filed or recorded), and for an order, pursuant to ORS 205.460, for costs and attorney fees required to bring this action, on the grounds that the purported encumbrances have no basis in law or fact. Petitioner further requests that this court enter an order requiring Respondent to appear before this court and to show cause why the above order should not be entered. Finally, Petitioner requests an order from the court requiring Respondent to pay penalties and damages as provided in ORS 205.470.

DATED this _____ day of _____, _____.

 Petitioner or Petitioner's Attorney

IN THE CIRCUIT COURT OF
 THE STATE OF OREGON
 FOR THE COUNTY OF _____

_____,)
 Petitioner,) Case No. _____
)
) AFFIDAVIT OF
 V.) _____
)
)
 _____,)
 Respondent.)
 _____)
 STATE OF OREGON)
) ss.
 County of _____)

I, _____ (insert name of affiant), after being duly sworn, depose and say:

1. I am the above-entitled petitioner (or the attorney for the petitioner) in this matter.

2. The information contained in this affidavit is of my own personal knowledge.

3. Attached as numbered exhibits are true and correct copies of the following documents that were filed or recorded in the _____ (insert name of office where documents were filed or

recorded) on _____ (insert date):

(List and attach document(s))

4. For any purported encumbrances identified above the following is true. The encumbrance is not authorized by statute, was not entered into consensually, and is not an equitable, constructive or other encumbrance imposed by a court of competent jurisdiction.

DATED this ____ day of _____, ____.

(Petitioner or Petitioner's Attorney)

SUBSCRIBED AND SWORN to before me this ____ day of _____, ____.

NOTARY PUBLIC FOR OREGON

My commission expires: _____

(4) A copy of the petition and the order directing the encumbrance claimant to appear under this section shall be served upon the encumbrance claimant:

(a) By service in the manner provided for personal service of summons under ORCP 7; or

(b) By mailing a true copy of the petition, affidavit and order to the encumbrance claimant at the encumbrance claimant's last-known address, both by first class mail and by certified or registered mail, return receipt requested. A notice mailed under this paragraph is effective on the date that the notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) The order to show cause shall be in substantially the following form and shall clearly state that if the encumbrance claimant fails to appear at the time and place noted, the claim of encumbrance shall be stricken and released and that the encumbrance claimant shall be ordered to pay the costs and reasonable attorney fees incurred by the petitioner at trial and on appeal:

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,)
Petitioner,) Case No. _____

)
) ORDER TO
v.) SHOW CAUSE

)
)
_____,)
Respondent.)

THIS MATTER came before the court on _____ (insert date) on Petitioner's Petition for an Order Striking and Releasing Encumbrances, Awarding Costs and Attorney Fees and Order to Show Cause. The court, having considered the petition, the Affidavit of _____ (insert name) and the attached exhibits, and it appearing to the court that there are sufficient grounds to

1 issue an order to show cause,

2 IT IS HEREBY ORDERED that the Respondent, _____ (insert name), appear before
3 this court on _____ (insert date), at _____ (insert time), to show cause why the pe-
4 tition should not be granted in its entirety.

5
6 IMPORTANT NOTICE:

7 IF YOU FAIL TO APPEAR AT THE ABOVE TIME AND PLACE, THE COURT MAY ENTER
8 AN ORDER STRIKING AND RELEASING YOUR ENCUMBRANCE CLAIMS FILED AGAINST
9 PETITIONER AND YOU MAY BE ORDERED TO PAY COSTS AND REASONABLE ATTORNEY
10 FEES INCURRED BY THE PETITIONER.

11 DATED this ____ day of _____, ____.

12 _____
13 Circuit Court Judge
14

15 (6) If the court determines that the claim of encumbrance is invalid, the court shall issue an
16 order striking and releasing the claim of encumbrance and may award costs and reasonable attorney
17 fees at trial and on appeal to the petitioner to be paid by the encumbrance claimant. If the court
18 determines that the claim of encumbrance is valid, the court shall issue an order so stating and may
19 award costs and reasonable attorney fees at trial and on appeal to the encumbrance claimant to be
20 paid by the petitioner.

21 (7) The procedure set forth in this section is not available against a person lawfully conducting
22 business as:

23 (a) An institution, a savings bank, a national bank, an out-of-state bank, a federal savings bank
24 or an extranational institution, as those terms are defined in ORS 706.008, or a subsidiary of an
25 entity described in this paragraph;

26 (b) A savings association or a federal association, as those terms are defined in ORS 722.004,
27 or a subsidiary of an entity described in this paragraph;

28 (c) A **financial holding company**, a bank holding company, a savings and loan holding company
29 or a subsidiary of a **financial holding company**, a bank holding company or a savings and loan
30 holding company;

31 (d) A credit union, as defined in ORS 723.006, or a federal credit union;

32 (e) A consumer finance company subject to the provisions of ORS chapter 725;

33 (f) A mortgage banker or a mortgage broker, as those terms are defined in ORS 59.840, a mort-
34 gage servicing company or any other mortgage company; or

35 (g) An insurer as defined in ORS 731.106.

36 (8) The procedure set forth in this section is not available against:

37 (a) An officer, agency, department or instrumentality of the federal government;

38 (b) An officer, agency, department or instrumentality of this state; or

39 (c) An officer, agency, department or instrumentality of a political subdivision or public corpo-
40 ration in this state.

41 **SECTION 43.** ORS 294.035 is amended to read:

42 294.035. Subject to ORS 294.040 and 294.135 to 294.155, the custodial officer may, after having
43 obtained a written order from the governing body of the county, municipality, political subdivision
44 or school district, which order shall be spread upon the minutes or journal of the governing body,
45 invest any sinking fund, bond fund or surplus funds in the custody of the custodial officer in the

1 bank accounts, classes of securities at current market prices, insurance contracts and other invest-
 2 ments listed in this section. However, the custodial officer of any county shall make no such in-
 3 vestment of funds belonging to any municipality, political subdivision or school district, unless and
 4 until the custodial officer has received a written order from the governing body of the municipality,
 5 political subdivision or school district to which the funds belong, which order authorizes the custo-
 6 dial officer to invest the funds, and which order has been spread upon the minutes or journal of the
 7 governing body. This section, however, shall not limit the authority of the custodial officer to invest
 8 surplus funds in other investments when the investment is specifically authorized by another statute.
 9 Investments authorized by this section are:

10 (1) Lawfully issued general obligations of the United States, the agencies and instrumentalities
 11 of the United States or enterprises sponsored by the United States Government.

12 (2) Lawfully issued debt obligations of the agencies and instrumentalities of the State of Oregon
 13 and its political subdivisions that have a long-term rating of A or an equivalent rating or better or
 14 are rated on the settlement date in the highest category for short-term municipal debt by a na-
 15 tionally recognized statistical rating organization.

16 (3) Lawfully issued debt obligations of the States of California, Idaho and Washington and poli-
 17 tical subdivisions of those states if the obligations have a long-term rating of AA or an equivalent
 18 rating or better or are rated on the settlement date in the highest category for short-term municipal
 19 debt by a nationally recognized statistical rating organization.

20 (4) Time deposit open accounts, certificates of deposit and savings accounts in insured insti-
 21 tutions as defined in ORS 706.008 that maintain a head office or a branch in this state.

22 (5) Share accounts and savings accounts in credit unions in the name of, or for the benefit of,
 23 a member of the credit union pursuant to a plan of deferred compensation.

24 (6) Fixed or variable life insurance or annuity contracts as defined by ORS 731.170 and guar-
 25 anteed investment contracts issued by life insurance companies authorized to do business in this
 26 state.

27 (7) Trusts in which deferred compensation funds from other public employers are pooled, if:

28 (a) The purpose is to establish a deferred compensation plan;

29 (b) The trust is a public instrumentality of such public employers and described in section (2)(b)
 30 of the Investment Company Act of 1940, 15 U.S.C. 80a-2(b), as amended, in effect on September 20,
 31 1985, or the trust is a common trust fund described in ORS 709.170;

32 (c) Under the terms of the plan the net income from or gain or loss due to fluctuation in value
 33 of the underlying assets of the trust, or other change in such assets, is reflected in an equal increase
 34 or decrease in the amount distributable to the employee or the beneficiary thereof and, therefore,
 35 does not ultimately result in a net increase or decrease in the worth of the public employer or the
 36 state; and

37 (d) The fidelity of the trustees and others with access to such assets, other than a trust com-
 38 pany, as defined in ORS 706.008, is insured by a surety bond that is satisfactory to the public em-
 39 ployer, issued by a company authorized to do a surety business in this state and in an amount that
 40 is not less than 10 percent of the value of such assets.

41 (8)(a) Banker's acceptances, if the banker's acceptances are:

42 (A) Guaranteed by, and carried on the books of, a qualified financial institution;

43 (B) Eligible for discount by the Federal Reserve System; and

44 (C) Issued by a qualified financial institution whose short-term letter of credit rating is rated in
 45 the highest category by one or more nationally recognized statistical rating organizations.

(b) For the purposes of this subsection, “qualified financial institution” means:

(A) A financial institution that is located and licensed to do banking business in the State of Oregon; or

(B) A financial institution that is wholly owned by a **financial holding company or a bank holding company** that owns a financial institution that is located and licensed to do banking business in the State of Oregon.

(c) A custodial officer shall not permit more than 25 percent of the moneys of a local government that are available for investment, as determined on the settlement date, to be invested in banker’s acceptances of any qualified financial institution.

(9)(a) Corporate indebtedness subject to a valid registration statement on file with the Securities and Exchange Commission or issued under the authority of section 3(a)(2) or 3(a)(3) of the Securities Act of 1933, as amended. Corporate indebtedness described in this subsection does not include banker’s acceptances. The corporate indebtedness must be issued by a commercial, industrial or utility business enterprise, or by or on behalf of a financial institution, including a holding company owning a majority interest in a qualified financial institution.

(b) Corporate indebtedness must be rated on the settlement date P-1 or Aa or better by Moody’s Investors Service or A-1 or AA or better by Standard & Poor’s Corporation or equivalent rating by any nationally recognized statistical rating organization.

(c) Notwithstanding paragraph (b) of this subsection, the corporate indebtedness must be rated on the settlement date P-2 or A or better by Moody’s Investors Service or A-2 or A or better by Standard & Poor’s Corporation or equivalent rating by any nationally recognized statistical rating organization when the corporate indebtedness is:

(A) Issued by a business enterprise that has its headquarters in Oregon, employs more than 50 percent of its permanent workforce in Oregon or has more than 50 percent of its tangible assets in Oregon; or

(B) Issued by a holding company owning not less than a majority interest in a qualified financial institution, as defined in subsection (8) of this section, located and licensed to do banking business in Oregon or by a holding company owning not less than a majority interest in a business enterprise described in subparagraph (A) of this paragraph.

(d) A custodial officer shall not permit more than 35 percent of the moneys of a local government that are available for investment, as determined on the settlement date, to be invested in corporate indebtedness, and shall not permit more than five percent of the moneys of a local government that are available for investment to be invested in corporate indebtedness of any single corporate entity and its affiliates or subsidiaries.

(10) Securities of any open-end or closed-end management investment company or investment trust, if the securities are of the types specified in subsections (1) to (3), (8) and (9) of this section and if the investment does not cause the county, municipality, political subdivision or school district to become a stockholder in a joint company, corporation or association. A trust company or trust department of a national bank while acting as indenture trustee may invest funds held by it as indenture trustee in any open-end or closed-end management investment company or investment trust for which the trust company or trust department of a national bank or an affiliate of the trust company or trust department of a national bank acts as investment adviser or custodian or provides other services. However, the securities of the investment company or investment trust in which such funds are invested must be of the types specified in subsections (1) to (3), (8) and (9) of this section and the investment must not cause the county, municipality, political subdivision or school district

1 whose funds are invested to become a stockholder in a joint company, corporation or association.
 2 For purposes of this subsection, companies are affiliated if they are members of the same affiliated
 3 group under section 1504 of the Internal Revenue Code of 1986 (26 U.S.C. 1504).

4 (11) Repurchase agreements whereby the custodial officer purchases securities from a financial
 5 institution or securities dealer subject to an agreement by the seller to repurchase the securities.
 6 The repurchase agreement must be in writing and executed in advance of the initial purchase of the
 7 securities that are the subject of the repurchase agreement. Only securities described in subsection
 8 (1) of this section shall be used in conjunction with a repurchase agreement and such securities shall
 9 have a maturity of not longer than three years. The price paid by the custodial officer for such se-
 10 curities may not exceed amounts or percentages prescribed by written policy of the Oregon Invest-
 11 ment Council or the Oregon Short Term Fund Board created by ORS 294.885.

12 **SECTION 44.** ORS 646.382 is amended to read:

13 646.382. As used in ORS 646.382 to 646.396:

14 (1) "Consumer" means any individual who is solicited to purchase or who purchases the services
 15 of a credit services organization.

16 (2)(a) "Credit services organization" means any person who, with respect to the extension of
 17 credit by others, sells, provides, performs, or represents that the organization can or will sell, pro-
 18 vide or perform, in return for the payment of money or other valuable consideration, any of the
 19 following services:

20 (A) Improving, saving or preserving a consumer's credit record, history or rating.

21 (B) Obtaining an extension of credit for a consumer.

22 (C) Providing advice, assistance, instruction or instructional materials to a consumer with re-
 23 gard to either subparagraph (A) or (B) of this paragraph.

24 (b) "Credit services organization" does not include:

25 (A) Any person authorized to make loans or extensions of credit under the laws of this state or
 26 the United States who is subject to regulation and supervision by this state or the United States
 27 or a lender approved by the Secretary of Housing and Urban Development for participation in any
 28 mortgage insurance program under the National Housing Act.

29 (B) Any financial institution, **financial holding company** or bank holding company as those
 30 terms are defined in ORS 706.008 or any subsidiary or affiliate of a financial institution, **financial**
 31 **holding company** or bank holding company.

32 (C) A mortgage banker or mortgage broker as defined in ORS 59.840.

33 (D) Any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Re-
 34 venue Code, provided that the organization does not require a fee for its services and does not re-
 35 ceive any money or other valuable consideration prior to the rendering of any services by the
 36 organization for the consumer.

37 (E) Any person licensed as a real estate broker by this state if the person is acting within the
 38 course and scope of that license.

39 (F) Any person licensed to practice law in this state if the person renders services within the
 40 course and scope of practice as an attorney.

41 (G) Any broker-dealer registered with the Securities and Exchange Commission or the Com-
 42 modity Futures Trading Commission if the broker-dealer is acting within the course and scope of
 43 that regulation.

44 (H) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15
 45 U.S.C. 1681 et seq.

(1) Any licensee licensed under ORS chapter 725.

(3) "Department" means the Department of Consumer and Business Services.

(4) "Director" means the director of the department or the director's designees.

(5) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family or household purposes.

SECTION 45. ORS 706.005 is amended to read:

706.005. As used in the Bank Act, unless the context requires otherwise:

(1) "Access area" means any paved walkway or sidewalk within 50 feet of an automated teller machine or night deposit facility. "Access area" does not include publicly maintained sidewalks or roads.

(2) "Access device" means:

(a) An "access device" as defined in Federal Reserve Board Regulation E (12 C.F.R. Part 205) adopted under the Electronic Fund Transfer Act (15 U.S.C. 1601, et seq.); or

(b) A key or other mechanism issued by a financial institution to a customer to give the customer access to the institution's or bank's night deposit facility.

(3) "Acquisition transaction" means:

(a) The sale and purchase of all or substantially all of the assets of a bank that is not in the ordinary course of business of such bank; or

(b) The transfer and assumption of all or substantially all of the liabilities of a bank.

(4) "Automated teller machine" or "ATM" means any electronic information processing device located in this state that:

(a) Accepts or dispenses cash in connection with a credit, deposit or convenience account, provides information and initiates transactions in accordance with the request or instruction of a customer or the customer's agent; and

(b) Is unstaffed except for persons installing the device, providing security or providing periodic servicing, maintenance or repair. The term does not include devices used solely to facilitate check guarantees or check authorizations, or used in connection with the acceptance or dispensing of cash on a person to person basis, such as by a store cashier.

(5) "Bank Act" means ORS chapters 706 to 716.

(6) "Banking business" or "business of banking" means the business of receiving or accepting money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a pass book or other writing or evidence, but does not include:

(a) Depositing money or its equivalent in escrow or with an agent, pending investments in real estate or securities for or on account of a principal;

(b) The business of a savings and loan association or a credit union;

(c) Deposits accepted in connection with the purchase or lease of property or services; or

(d) Accepting deposits through an ATM or night deposit facility.

(7) "Banking day" has the meaning given that term in ORS 708A.650.

(8) "Branch" means an office or other place, except a principal place of business or an ATM, at which:

(a) A bank engages in banking business; or

(b) A trust company transacts trust business.

(9) "Candlefoot power" means a light intensity of candles on a horizontal plane at 36 inches above ground level and 5 feet in front of the area to be measured.

1 (10) "Capital debentures" means capital notes, capital debentures and any other form of unse-
2 cured obligations issued by an institution or stock savings bank to evidence borrowings where the
3 rights of the lender are subordinate to the rights of the depositors.

4 (11)(a) "Defined parking area" means that portion of any parking area opened for customer
5 parking that is:

6 (A) Contiguous to the access area of an ATM or night deposit facility;

7 (B) Regularly, principally and lawfully used for parking by users of the ATM or night deposit
8 facility while the users conduct transactions during hours of darkness; and

9 (C) Owned or leased by the operator of the ATM or night deposit facility or owned or controlled
10 by the party leasing the ATM or night deposit facility site to the operator.

11 (b) "Defined parking area" does not include any parking area that is not open or regularly used
12 for parking by users of the ATM or night deposit facility who are conducting transactions during
13 the hours of darkness. A parking area is not open if it is physically closed to access or if conspic-
14 uous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of par-
15 agraph (a) of this subsection and would therefore otherwise be a defined parking area, only the
16 single parking level designated by the operator of the ATM and night deposit facility to be the most
17 directly accessible to the users of the ATM and night deposit facility shall be a defined parking
18 area.

19 (12) "Department" means the Department of Consumer and Business Services.

20 (13) "Director" means the Director of the Department of Consumer and Business Services.

21 (14) "Document of title" means document of title as defined in ORS 71.2010.

22 (15) "Federal Reserve Act" means the Act of Congress approved December 23, 1913 (38 Stat.
23 251), as amended.

24 (16) "Federal Reserve Bank" means the Federal Reserve Banks created and organized under the
25 authority of the Federal Reserve Act.

26 (17) "Federal Reserve Board" means the Federal Reserve Board created and described in the
27 Federal Reserve Act.

28 (18) "Home state" means:

29 (a) With respect to a state bank, the state under the laws of which the state bank is incorpo-
30 rated or otherwise organized;

31 (b) With respect to a federal bank, the state in which the main office of the federal bank is lo-
32 cated;

33 (c) With respect to an extranational institution, the state determined to be the home state by
34 election of the extranational institution, or in default of such election, by the Board of Governors
35 of the Federal Reserve System; and

36 (d) With respect to a **financial holding company or a bank holding company**, the state in which
37 the total deposits of all banking subsidiaries of such company are the largest on the date on which
38 the company becomes a **financial holding company or a bank holding company**.

39 (19) "Hours of darkness" means the period that commences 30 minutes after sunset and ends 30
40 minutes before sunrise.

41 (20) "Loan production office" means a physical location in this state at which representatives
42 of a financial institution hold themselves out to the public as providing loan origination services,
43 leasing services or services of a similar nature, but at which representatives of the financial insti-
44 tution do not conduct banking business.

45 (21) "Merger" includes consolidation.

(22) "Night deposit facility" means a receptacle that is provided by a financial institution for the use of the institution's customers in delivering cash, checks and other items to the financial institution.

(23) "Obligations" includes:

(a) The direct liability of the maker or acceptor of paper discounted with or sold to an institution;

(b) The liability of the drawer, indorser or assignor;

(c) If obligations of a copartnership or association, the obligations of the several members of the copartnership or association;

(d) If obligations of a corporation, the obligations of all subsidiaries of the corporation in which the corporation owns or controls 50 percent or more of the capital stock; and

(e) The liability of a lessee under a lease.

(24) "Officer" of a banking institution means a chief executive officer, president, any vice president, secretary, treasurer or cashier.

(25) "Operator" means any financial institution or other business entity, or any person who operates an ATM or night deposit facility.

(26) "Paid-in capital" means the aggregate amount received by an institution or stock savings bank from the issuance of its stock or transferred from retained earnings.

(27) "Person" means an individual, corporation, limited liability company, partnership, association, joint stock company, business trust or unincorporated organization.

(28) "Stockholders' equity" means the aggregate of paid-in capital and retained earnings of an institution or Oregon stock savings bank.

(29) "Trust business" means:

(a) Acting as a trustee of a trust, as defined in ORS 128.005;

(b) Acting as a fiduciary, as defined in ORS 125.005;

(c) Acting as a personal representative, as defined in ORS 111.005;

(d) Acting as a receiver, trustee or assignee for the benefit of creditors; or

(e) Acting in a court-appointed position of trust or any other position of trust.

SECTION 46. ORS 706.690 is amended to read:

706.690. (1) If the Director of the Department of Consumer and Business Services determines that the condition of an institution or Oregon stock savings bank is such that any transfer of the capital stock of the institution or Oregon stock savings bank would jeopardize the interest of its depositors, the director shall notify the institution or Oregon stock savings bank in writing that when any shares of the capital stock of the institution or Oregon stock savings bank are to be transferred on the books or records of the institution or Oregon stock savings bank, the officer proposing to make the transfer shall report in writing to the director the proposed transfer of stock. A transfer of stock shall not be made, after the date such a notice is issued, unless the transfer agent first obtains the written consent of the director. The director shall notify the institution or Oregon stock savings bank of the director's decision within 30 days after receiving the report.

(2) If a director or officer of an institution or Oregon stock savings bank, a transfer agent, vendee or vendor has reason to believe that a transfer of stock creates or changes a controlling interest in an institution or Oregon stock savings bank, that person shall immediately notify the director of the transfer. A transfer that creates a controlling interest in, or changes the control of, an institution or Oregon stock savings bank shall not be entered upon the books of the institution or Oregon stock savings bank or become effective until:

(a) Notice has been received at the office of the director; and

(b) The sale, exchange or other disposition has been approved in writing by the director.

(3) For purposes of this section, a controlling interest of an institution or Oregon stock savings bank exists if a person, directly or indirectly, acting through one or more other persons, owns or has power to vote 25 percent or more of any class of voting stock of an institution or Oregon stock savings bank or of a corporation that is or becomes a **financial holding company or a bank holding company** as defined in ORS 706.008 unless:

(a) The stock of the institution or Oregon stock savings bank is held in a fiduciary capacity and not for the benefit of the person or of the stockholders, employees or members of the person; or

(b) The stock is acquired, not as a means of circumventing ORS chapter 715, but by the person in the ordinary course of business to secure or collect a debt previously contracted in good faith and the person disposes of the stock within two years after the acquisition of the stock. The director may extend the period if an extension will not be detrimental to the public interest or in contravention of any other law.

(4) The director shall approve or disapprove the transfer in accordance with the standards provided by ORS 707.080 (1). The director also may disapprove a transfer under subsection (2) of this section if any of the reasons stated by ORS 707.145 apply to the proposed new owner of the shares.

(5) Notwithstanding subsections (2) to (4) of this section, if the person acquiring a controlling interest in an institution or Oregon stock savings bank is or will through such acquisition become a **financial holding company or a bank holding company**, the provisions of ORS chapter 715 apply to the change in controlling interest in lieu of the provisions of subsections (2) to (4) of this section.

SECTION 47. ORS 708A.120 is amended to read:

708A.120. (1) An institution shall not invest any of its assets in the capital stock of any other corporation, except:

(a) In the capital stock of the Federal Reserve Bank.

(b) In stock acquired or purchased to save a loss on a preexisting debt. The stock shall be sold within two years of the date acquired or purchased. The Director of the Department of Consumer and Business Services may extend the time if the director finds that an extension will not be detrimental to the public interest and will not contravene any other law.

(c) In the capital stock of any safe deposit company doing an exclusive safe deposit business on premises owned or leased by the institution upon 30 days' advance notice to the director subject to the same limitations applicable to a national bank.

(d) In the capital stock of agricultural and livestock finance companies, subject to the same limitations applicable to national banks and to the approval of the director.

(e) In the capital stock, eligible for purchase by national banks, of small business investment companies, but the aggregate investment in the stock shall not exceed two percent of the capital of the institution.

(f) In the common stock of any federally chartered corporation that is chartered for the purpose of providing secondary markets for the sale of mortgages by institutions.

(g) In the stock of the Federal Home Loan Bank.

(h) In the capital stock of a corporation exclusively engaged in a trust business or a banker's bank, subject to the same limitations applicable to national banks.

(i) In the capital stock of bank service corporations as provided in ORS 708A.130 to 708A.145.

(j) In the capital stock of a community development corporation as provided in ORS 708A.150.

(k) If a trust company is not engaged in a banking business and if the investment is first ap-

1 proved by the director, the trust company may invest an amount not to exceed 20 percent of the
2 capital of the trust company:

3 (A) In the capital stock of a subsidiary investment company defined in the Investment Company
4 Act of 1940, as amended; or

5 (B) In a company one of the purposes of which is to act as a federal covered investment adviser
6 or a state investment adviser, as defined in ORS 59.015, with all the powers customarily exercised
7 by a federal covered investment adviser or a state investment adviser.

8 (L) In adjustable rate preferred stock of the Student Loan Marketing Association established in
9 20 U.S.C. 1087-2, but the aggregate investment in the stock shall not exceed 15 percent of the capital
10 of the institution.

11 (m) In the capital stock of a company acquired for the purpose of strengthening the institution's
12 capital structure or the elimination of undesirable assets as provided in ORS 708A.125.

13 (n) In the capital stock of banks and corporations engaged in international or foreign banking
14 or foreign banking in a dependency or insular possession of the United States, as provided in ORS
15 708A.155.

16 (o) In the capital stock of a corporation created to establish ATMs as provided in ORS 708A.160.

17 (2) An institution may invest its assets in shares of any mutual fund, the assets of which are
18 invested solely in obligations of the type described in and limited under ORS 708A.115.

19 (3) An institution may, subject to the approval of the director, acquire or continue to hold the
20 fully paid stock of a corporation, one of the purposes of which is to assist the institution in handling
21 real estate, claims, judgments or other assets or in holding title to the assets.

22 (4) An institution may acquire or continue to hold the fully paid stock of a corporation the
23 purpose of which is to permit the institution to engage in any business in which a **financial holding**
24 **company, a bank holding company or a nonbank subsidiary of a financial holding company or a**
25 **bank holding company** is authorized to engage. This subsection does not apply unless the institution
26 is the owner of at least 80 percent of the common stock of the subsidiary corporation, except qual-
27 ifying shares of directors.

28 (5) An institution may, subject to the approval of the director and to rules promulgated by the
29 director, acquire and continue to hold at least 80 percent of the fully paid stock of a corporation
30 engaged in any business in which an institution is authorized to engage. Except as otherwise per-
31 mitted by statute or rule, the investment limitations applicable to the institution apply to the sub-
32 sidiary.

33 (6) An institution may, subject to the approval of the director and under rules promulgated by
34 the director, acquire and continue to hold all the fully paid stock of a subsidiary corporation en-
35 gaged in the business of purchasing the stock of the institution for purposes of holding that stock
36 and making a market for that stock, if not more than 20 percent of the net profit of the banking
37 institution is disbursed to the subsidiary in any one fiscal year. Except as otherwise permitted by
38 statute or rule, the investment limitations applicable to the institution apply to the subsidiary. Ac-
39 quisitions under this subsection shall not exceed 15 percent of the capital of the institution.

40 (7) An institution may acquire and hold all or part of the stock of a corporation that is or may
41 thereafter be licensed under ORS 744.002 as an agent to transact one or more of the classes of in-
42 surance described in ORS 744.115, except for title insurance, subject to the following requirements:

43 (a) The acquisition and holding of such stock shall be subject to the approval of the director.
44 The director shall base consideration for approval on the condition of the institution, the adequacy
45 of a formal business plan for the insurance activities, and the existence of satisfactory management

1 for the corporation.

2 (b) The director may revoke or restrict the ongoing authority of the institution to hold stock in
3 the corporation if the condition of the institution substantially deteriorates or if the insurance ac-
4 tivities are adversely affecting the institution.

5 (c) If the corporation conducts the insurance agency activity in a branch or office in which the
6 institution carries on its banking business, the insurance agency activity shall be physically sepa-
7 rated from those parts of the premises in which the institution carries on the banking business.

8 (d) No person who acts on behalf of the corporation to transact insurance, as that term is de-
9 fined in ORS 731.146, shall while employed by the corporation engage on behalf of the corporation
10 in any activities relating to the making of loans or to the granting of other credits to the customers
11 of the corporation, including but not limited to serving as a loan officer or as a member of a loan
12 committee or other group charged with approval of loans and other credits.

13 (e) The name of the corporation and any assumed business name used by it shall not be identical
14 to that of the institution.

15 (f) Prior to selling any policy of insurance, the corporation shall give substantially the following
16 notice in writing to the purchaser in at least 10-point boldfaced type:

18 NOTICE

19 _____ (Name of corporation licensed as an agent) is owned by _____ (Name
20 of institution). You are not required to purchase any insurance from it as a condition of obtaining
21 any service from or engaging in any transaction with the institution. Before committing to purchase
22 any policy of insurance, you should shop for the coverage by carefully comparing information ob-
23 tained from two or more agents on prices, benefits, services, terms of renewal and other policy fea-
24 tures. You hereby acknowledge receipt of a copy of this notice.

25 _____
26 Customer's signature

27 _____
Date

28
29 (g) For each calendar year during which an institution owns all or part of any corporation li-
30 censed under ORS 744.002 as an agent, the institution shall file a written report with the director.
31 The report shall be filed no later than March 31 of the following year and shall disclose the insur-
32 ance activities of the corporation. The required contents of the report shall be established by the
33 director by rule. The reports filed with the director under this paragraph shall be available for
34 public inspection in the office of the director.

35 (h) The corporation shall not in any manner use customer information obtained by the institu-
36 tion from another insurance agent to promote, develop or solicit insurance business for the corpo-
37 ration unless the other insurance agent consents to such use of the customer information.

38 (i) The corporation shall be subject to the limitations applicable to lending institutions under
39 ORS 746.180 and 746.185 to 746.211. For the purpose of this paragraph, the term "lending
40 institution" has the meaning set forth in ORS 746.185.

41 (8) An institution may invest up to 15 percent of its capital in the stock of the Oregon Capital
42 Corporation authorized to be created under ORS 284.750 to 284.795, 315.504, 317.084, 317.267 and
43 318.031.

44 **SECTION 48.** ORS 708A.200 is amended to read:

45 708A.200. Nothing in ORS 708A.005, 708A.010, 715.075, 716.594, 716.610, 744.066, 744.115, 746.195

and 746.211 shall be construed to permit a banking institution, **a financial holding company**, a bank holding company or any subsidiary of a banking institution, **financial holding company** or bank holding company to act as insurer, as defined in ORS 731.106.

SECTION 49. ORS 708A.565 is amended to read:

708A.565. Investments in stock of a company that engages in activities in which a **financial holding company**, a bank holding company or a non-banking subsidiary of a **financial holding company** or bank holding company could engage under ORS 708A.120 (4) shall be carried on the books of the institution at a value not exceeding 15 percent of the stockholders' equity of the institution.

SECTION 50. ORS 717.210 is amended to read:

717.210. (1) ORS 717.200 to 717.320, 717.900 and 717.905 do not apply to:

(a) Any company that accepts deposits in this state and that is insured under the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq., as amended.

(b) Credit unions or trust companies.

(c) The United States Government or any department, agency or instrumentality thereof.

(d) The United States Postal Service.

(e) Any state or political subdivision of a state.

(f) The provision or electronic transfer of government benefits for any federal, state or county government or other agency as defined in the Federal Reserve Board Regulation E (12 C.F.R. part 205), by a contractor for and on behalf of the United States Government or any department, agency or instrumentality of the United States, or any state or any political subdivision of a state.

(g) The provision or handling of electronic or other transfer of escrowed moneys by an escrow agent licensed under ORS 696.511.

(h) Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in ORS 717.270.

(i) Any bank holding company as defined in the federal Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq., as amended, **or any financial holding company as defined in ORS 706.008.**

(j) Any savings and loan holding company as defined in 12 U.S.C. 1467a (a)(1)(D), as amended.

(2) The Director of the Department of Consumer and Business Services by rule or order may modify or waive the application of ORS 717.200 to 717.320, 717.900 and 717.905 to any person or group of persons if the director determines that adequate regulation of the person or group of persons is provided by law or by another agency of this state.

(3) The director by rule or order may temporarily suspend the application of ORS 717.200 to 717.320, 717.900 and 717.905 to any person or group of persons while the director considers whether an exemption should be granted and during the pendency of any rulemaking proceeding proposing to create an exemption.

SECTION 51. ORS 744.061 is amended to read:

744.061. Nothing in the Insurance Code shall be construed to limit or prohibit the licensing of a banking institution, as defined in ORS 706.008, a corporation owned in whole or part by a banking institution under ORS 708A.120, 716.588 or 716.594, or a corporation owned in whole or part by a **financial holding company** or a bank holding company, as defined in ORS 706.008, as an agent to transact one or more of the classes of insurance described in ORS 744.115, except for title insurance.

SECTION 52. ORS 746.182 is amended to read:

746.182. (1) Prior to selling any policy of insurance, other than a policy for a class of insurance referred to in subsection (2) of this section:

(a) Any agent that is an institution as defined in ORS 706.008, shall give the purchaser the notice required under ORS 708A.005 (2)(e);

(b) Any agent that is a corporation, all or part of the stock of which is held by an institution, shall give the purchaser the notice required under ORS 708A.120 (7)(f);

(c) Any agent that is a corporation, all or part of the stock of which is held by a **financial holding company or a bank holding company** as defined in ORS 706.008, shall give the purchaser the notice required under ORS 715.075 (6);

(d) Any agent that is a corporation, all or part of the stock of which is held by a savings bank, as defined by ORS 706.008, shall give the purchaser the notice required under ORS 716.594 (6); and

(e) Any agent that is a savings bank, as defined in ORS 706.008, shall give the purchaser the notice required under ORS 716.610 (10)(e).

(2) The requirement under subsection (1) of this section does not apply to any policy for live-stock insurance, mortgage insurance, motor vehicle physical damage insurance, credit life insurance, credit health insurance, credit involuntary unemployment insurance, credit insurance or lender's property insurance, as these classes of insurance are described in ORS 744.115.

SECTION 52a. ORS 746.185 is amended to read:

746.185. As used in ORS 746.185 to 746.211, "lending institution" means a financial institution, **financial holding company** or bank holding company as those terms are defined in ORS 706.008.

SECTION 53. ORS 803.092 is amended to read:

803.092. (1) Except as otherwise provided in this section, upon the transfer of any interest in a vehicle covered by an Oregon title the transferee shall submit an application for title to the Department of Transportation. Such application shall be submitted to the department within 30 days of the date of transfer of interest.

(2) Notwithstanding subsection (1) of this section, application is not required under this section when:

(a) The change involves only a change in the security interest where the security interest holder or lessor is a financial institution, a **financial holding company** or a bank holding company, as those terms are defined in ORS 706.008, a licensee under ORS chapter 725, or any subsidiary or affiliate of any of the foregoing and the transfer of the interest of the security interest holder or lessor:

(A) Results from the merger, conversion, reorganization, consolidation or acquisition of the security interest holder or lessor;

(B) Is to an entity that is a member of the same affiliated group as the security holder or lessor; or

(C) Is made in connection with a transfer in bulk.

(b) The vehicle is transferred to a vehicle dealer and the vehicle will become part of the dealer's inventory for resale. Upon the transfer of a vehicle to a dealer, however, the dealer shall immediately notify the department of such transfer. This exemption from the requirement to apply for title does not apply if the department determines that application for title is necessary in order to comply with odometer disclosure requirements. If the department determines that application for title is not required, it may require filing of documents under ORS 803.126.

(c) The vehicle is to be titled in another jurisdiction.

(d) The vehicle has been totaled, wrecked, dismantled, disassembled, substantially altered or destroyed, in which case the provisions of ORS 819.010, 819.012, 819.014 or 822.135 relating to notice and surrender of title documents shall be complied with.

1 (e) The transfer involves the creation or termination of a leasehold interest in a vehicle that is
2 proportionally registered under ORS 826.009 or 826.011, if the department is furnished with satis-
3 factory proof of the lease.

4 (3) Except as provided in subsection (2) of this section, the transferee shall:

5 (a) Submit an application that meets requirements for title under ORS 803.045 and 803.050 and
6 any applicable rules of the department.

7 (b) Submit the title transfer fees as required under ORS 803.090.

8 (c) Comply with the provisions of ORS 803.065 and any applicable rules of the department under
9 that statute and submit the duplicate or replacement title fee as provided under ORS 803.090, if the
10 transfer includes an application for duplicate or replacement title and transfer of title.

11 (d) Submit an odometer disclosure containing information required by the department for the
12 kind of transaction involved.

13 (e) Submit any late presentation of certificate of title fee as provided under ORS 803.090 if such
14 fee is required under ORS 803.105.

15 (4) For purposes of this section:

16 (a) "Affiliated group" has the meaning given to the term in section 1504(a) of the Internal Re-
17 venue Code of 1986, as amended (26 U.S.C. 1504(a)).

18 (b) A "transfer in bulk" is:

19 (A) The sale or assignment of, the grant of a security interest in, or any other transfer of either
20 a group of loans secured by vehicles, leases of vehicles or both or a participation or other interest
21 in the group of loans;

22 (B) The creation of asset-backed securities or other securing of assets involving the loans or
23 leases; or

24 (C) Any similar transaction involving the loans or leases.

25 **SECTION 54.** ORS 803.220 is amended to read:

26 803.220. (1) A person commits the offense of unlawful failure to notify the Department of
27 Transportation of a name and address change if the person:

28 (a) Has any interest in a vehicle registered or titled by this state that is shown on the title;

29 (b) Changes names, by marriage or otherwise, from that shown on the title or changes the per-
30 son's address from that shown on the registration; and

31 (c) Does not comply with the requirements under this section.

32 (2) To comply with the requirements of this section, a person must do all the following:

33 (a) The person must notify the department of the change. Notice of a change of name or address
34 must be given to the department within 30 days of the change.

35 (b) If the person changes names, by marriage or otherwise, from that shown on the title and a
36 certificate of title is being held by a security interest holder, the person must notify the security
37 interest holder within 30 days after the change who, in turn, must notify the department in a timely
38 manner.

39 (c) Any time the name is changed from that on the title, any certificate of title that has been
40 issued must be submitted to the department with the notice and the appropriate fee under ORS
41 803.090.

42 (3) A person may obtain a new certificate of title reflecting a change of name or address by
43 making application therefor and paying the appropriate fee under ORS 803.090.

44 (4) If title has been issued in a form other than a certificate, a person requesting a change in
45 name shall provide authorization from the primary security interest holder, if any, to have the title

changed. If the authorization is not received, the department shall continue to reflect the previous name on the title. Nothing in this subsection precludes the department from including the new name in records maintained in conjunction with title whether or not authorization is received.

(5) Upon receipt of notice of a change and any authorization required under this section, the department shall note the change in its records. Upon receipt of the notice and the fee required under ORS 803.090, the department shall issue a new certificate of title indicating the change.

(6) This section does not apply to a change of name or address of a security interest holder or lessor that is a financial institution, a **financial holding company** or a bank holding company, as those terms are defined in ORS 706.008, a licensee under ORS chapter 725, or any subsidiary or affiliate of any of the foregoing.

(7) The offense described in this section, unlawful failure to notify the department of a name or address change, is a Class D traffic violation.

SECTION 55. ORS 310.651 is amended to read:

310.651. For purposes of ORS 310.652:

(1) "Evidence of debt" means all bonds, notes, demands, claims, deposits or investments however evidenced and whether secured by mortgage, deed of trust, judgment or otherwise or not so secured, and includes but is not limited to:

(a) Personal and business notes receivable.

(b) Mortgage notes receivable.

(c) Commercial paper.

(d) Conditional sales contracts (written agreements whereby title to the property remains with the seller until the goods are paid for).

(e) Notes and other receivables, evidenced by written agreement, due from affiliated companies.

(f) Participation certificates.

(g) Bonds and debentures of both domestic and foreign corporations.

(h) Bonds and evidence of debt of other states and their political subdivisions.

(i) Bonds, debentures and capital notes (not certificates of deposit) issued by banks and other organizations in direct competition with banks.

(j) Cashiers' checks, treasurers' checks, certified checks, purchase drafts and similar instruments drawn for the benefit or convenience of any party or parties other than banks.

(k) Investment contracts and accumulation plans issued by investment syndicates, investment brokers and other similar companies.

(L) Loans, advances, demands, claims and other receivables which are evidenced by written agreement.

(2) "Funds on deposit" means all funds accrued or accruing by virtue of the death of the insured or the original maturity of a policy contract where the party or parties entitled to receive such funds might withdraw same at their option upon stipulated notice.

(3) "Money on deposit" means money, whether actually within or without this state, having a business, commercial or taxable situs in this state, without deduction for any indebtedness or liabilities of the taxpayer, and includes but is not limited to:

(a) Amounts in checking and savings accounts.

(b) Certificates of deposit.

(c) Payroll and escrow accounts.

(d) Deposits as of any one or more of the four quarterly valuation dates.

(e) Deposits of trustees, executors, administrators and other fiduciaries.

(f) Social security and withholding tax accounts.

(g) Accommodation loan accounts.

(h) Deposits of savings and loan or building and loan associations.

(i) Deposits of insurance companies.

(4) "Money on hand" includes but is not limited to:

(a) Currency and bills of exchange.

(b) Money in cash registers.

(c) Petty cash.

(d) Deposits in transit.

(e) Money in safe deposit boxes.

(5) "Shares of stock" includes but is not limited to:

(a) Capital stock, common stock and preferred stock of both domestic and foreign corporations.

(b) Shares of stock held in brokerage accounts, including shares purchased on margin.

(c) Unregistered stock, restricted stock, letter stock and stocks owned in "closed" corporations.

(d) Shares in mutual funds and investment trusts.

(e) Shares of stock in banks (including national banks).

(f) Shares of stock in holding companies, including **financial holding companies**, bank **holding companies** and insurance holding companies.

(g) Stocks held by trustees or guardians which should be reported under the names of the beneficiary.

(h) Stocks held by executors or administrators of estates which should be reported in the name of the estate.

(i) Stocks owned by minor children which should be reported under the minor's name, in care of the parent or guardian.

(j) Stocks owned by investment clubs which should be reported in the name of the investment club.

(k) Stocks acquired by purchase, gift, inheritance or any other means, even if the stock certificates have not been received and are not in the taxpayer's possession as of the asset determination date.

(L) Shares of stock owned by or registered to residents of this state even though the stock certificates may be physically located in another state.

SECTION 56. ORS 706.015 is amended to read:

706.015. References in the Bank Act to federal statutes and regulations shall, except as otherwise provided in the Bank Act, be construed to refer to the statutes or regulations as they are in effect on [October 23, 1999] **January 1, 2002**. The Director of the Department of Consumer and Business Services may adopt rules providing that one or more of the federal statutes and regulations shall be construed to refer to the statutes and regulations as they are in effect on a later date.

SECTION 57. ORS 731.450 is amended to read:

731.450. **Except as authorized by the federal Gramm-Leach-Bliley Act (P.L. 106-102)**, [no] **an** insurer [shall] **may not** engage in any business except the making of insurance or a kind of business related to the insurance business. However, a foreign or alien insurer may engage, outside this state, in any business permitted by its articles of incorporation and the laws of the state of its domicile; and a title insurer also may engage in business as an escrow agent; provided, however, that a title insurer engaging in business as an escrow agent shall be subject to the provisions of ORS 696.505 to 696.590 in respect to its escrow activities.

SECTION 58. ORS 707.262 is amended to read:

707.262. (1) Subject to any provisions set forth in its articles of incorporation and subject to preemptive rights, if any, of existing shareholders, an institution or Oregon stock savings bank may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the institution or Oregon stock savings bank shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the institution or Oregon stock savings bank on the exercise of any such right or option.

(2) *[No such]* The rights or options *[shall]* **described in subsection (1) of this section may not** be issued to a director, officer or employee of the institution or Oregon stock savings bank or of any subsidiary thereof unless the issuance:

(a) **Is to all shareholders of the institution, Oregon stock savings bank or subsidiary thereof;**

(b) Is approved at the annual meeting or a special meeting by the holders of at least two-thirds of the outstanding shares entitled to vote thereon~~], or unless such issuance~~; **or**

(c) Is pursuant to a plan previously so approved.

(3) In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for *[such]* **the rights or options described in subsection (1) of this section** shall be conclusive.

SECTION 59. ORS 731.740 is repealed.

SECTION 60. Sections 61 and 62 of this 2001 Act are added to and made a part of ORS chapter 656.

SECTION 61. Insurers and their assigned claims agents shall maintain the confidentiality of worker medical and vocational claim records. Worker medical and vocational claim records may not be disclosed to persons other than the worker unless the disclosure is:

(1) Made with the consent of the worker or the worker's beneficiary;

(2) Reasonably necessary for the insurer or its assigned claims agent to manage, defend or adjust claims, suits or actions or to perform any other function required by or arising out of ORS chapter 654, 655 or 656 or the insurance contract;

(3) To detect or prevent criminal activity, fraud, material misrepresentation or nondisclosure;

(4) Pursuant to a written agreement that requires the receiving party to maintain the confidentiality of the records; or

(5) Otherwise required or permitted by law.

SECTION 62. (1) A cause of action in the nature of defamation, invasion of privacy or negligence may not arise against:

(a) Any insurer or assigned claims agent for disclosing worker medical and vocational claim records in accordance with section 61 of this 2001 Act; or

(b) Any person for furnishing worker medical and vocational claim records to an insurer or assigned claims agent in accordance with section 61 of this 2001 Act.

(2) Subsection (1) of this section does not apply to the disclosure or furnishing of false information with malice or willful intent to injure any person.

SECTION 63. ORS 656.268 is amended to read:

656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and as near as possible to a condition of self support and maintenance as an able-bodied worker. The insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the Department of Consumer and Business Services, and determine the extent of the worker's permanent disability, provided the worker is not enrolled and actively engaged in training according to rules adopted by the director pursuant to ORS 656.340 and 656.726, when:

(a) The worker has become medically stationary and there is sufficient information to determine permanent impairment;

(b) The accepted injury is no longer the major contributing cause of the worker's combined or consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because the accepted injury is no longer the major contributing cause of the worker's combined or consequential condition or conditions, and there is sufficient information to determine permanent impairment, the likely impairment and adaptability that would have been due to the current accepted condition shall be estimated; or

(c) Without the approval of the attending physician, the worker fails to seek medical treatment for a period of 30 days or the worker fails to attend a closing examination, unless the worker affirmatively establishes that such failure is attributable to reasons beyond the worker's control.

(2) If the worker is enrolled and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately reduced by any sums earned during the training.

(3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors shall be furnished to the worker *[and to the employer]*, if requested by the worker *[or employer]*.

(4) Temporary total disability benefits shall continue until whichever of the following events first occurs:

(a) The worker returns to regular or modified employment;

(b) The attending physician advises the worker and documents in writing that the worker is released to return to regular employment;

(c) The attending physician advises the worker and documents in writing that the worker is released to return to modified employment, such employment is offered in writing to the worker and the worker fails to begin such employment; or

(d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld or terminated under ORS 656.262 (4) or other provisions of this chapter.

(5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's disability in closure of the claim shall be pursuant to the standards prescribed by the Director of the Department of Consumer and Business Services. The insurer or self-insured employer shall issue a notice of closure of such a claim to the worker, to the worker's attorney if the worker is represented, and to the director. The notice must inform:

(A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissatisfied with the terms of the notice;

(B) The worker of the amount of any further compensation, including permanent disability compensation to be awarded; of the duration of temporary total or temporary partial disability compensation; of the right of the worker to request reconsideration by the director under this section within 60 days of the date of the notice of claim closure; of the aggravation rights; and of such other information as the director may require; and

(C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204

1 and 656.208.

2 (b) If the worker has returned to work but the insurer or self-insured employer has not issued
3 a notice of closure, the worker may request closure. Within 10 days of receipt of a written request
4 from the worker, the insurer or self-insured employer shall issue a notice of closure if the require-
5 ments of this section have been met or a notice of refusal to close if the requirements of this section
6 have not been met. A notice of refusal to close shall advise the worker of the decision not to close;
7 of the right of the worker to request a hearing pursuant to ORS 656.283 within 60 days of the date
8 of the notice of refusal to close the claim; of the right to be represented by an attorney; and of such
9 other information as the director may require.

10 (c) If a worker objects to the notice of closure, the worker first must request reconsideration
11 by the director under this section. The request for reconsideration must be made within 60 days of
12 the date of the notice of closure.

13 (d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant
14 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing
15 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close
16 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid
17 to the worker in an amount equal to 25 percent of all compensation determined to be then due the
18 claimant.

19 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
20 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
21 for either a scheduled or unscheduled permanent disability and the worker is found upon reconsi-
22 deration to be at least 20 percent permanently disabled, a penalty shall be assessed against the
23 insurer or self-insured employer and paid to the worker in an amount equal to 25 percent of all
24 compensation determined to be then due the claimant. If the increase in compensation results from
25 new information obtained through a medical arbiter examination or from the adoption of a tempo-
26 rary emergency rule, the penalty shall not be assessed.

27 (6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be
28 held on each notice of closure. At the reconsideration proceeding, the worker or the insurer or
29 self-insured employer may correct information in the record that is erroneous and may submit any
30 medical evidence that should have been but was not submitted by the attending physician at the
31 time of claim closure. If the director determines that a claim was not closed in accordance with
32 subsection (1) of this section, the director may rescind the closure.

33 (b) If necessary, the director may require additional medical or other information with respect
34 to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

35 (c) In any reconsideration proceeding under this section in which the worker was represented
36 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,
37 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-
38 pensation awarded to the worker.

39 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
40 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
41 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-
42 endar days if within the 18 working days the department mails notice of review by a medical arbiter.
43 If an order on reconsideration has not been mailed on or before 18 working days from the date the
44 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
45 where a notice for medical arbiter review was timely mailed or the director postponed the recon-

1 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
2 in subsection (7) of this section when reconsideration is postponed further because the worker has
3 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
4 any further proceedings shall occur as though an order on reconsideration affirming the notice of
5 closure was mailed on the date the order was due to issue.

6 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
7 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
8 to subsection (5)(c) of this section. The insurer may fully participate in the reconsideration pro-
9 ceeding.

10 (f) Any medical arbiter report may be received as evidence at a hearing even if the report is
11 not prepared in time for use in the reconsideration proceeding.

12 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
13 656.283 within 30 days from the date of the reconsideration order.

14 (7)(a) If the basis for objection to a notice of closure issued under this section is disagreement
15 with the impairment used in rating of the worker's disability, the director shall refer the claim to
16 a medical arbiter appointed by the director.

17 (b) If neither party requests a medical arbiter and the director determines that insufficient
18 medical information is available to determine disability, the director may refer the claim to a med-
19 ical arbiter appointed by the director.

20 (c) At the request of either of the parties, a panel of three medical arbiters shall be appointed.

21 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
22 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
23 director in consultation with the Board of Medical Examiners for the State of Oregon and the
24 committee referred to in ORS 656.790.

25 (e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform
26 such tests as may be reasonable and necessary to establish the worker's impairment.

27 (B) If the director determines that the worker failed to attend the examination without good
28 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall
29 postpone the reconsideration proceedings for up to 60 days from the date of the determination that
30 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this
31 or any prior opening of the claim until such time as the worker attends and cooperates with the
32 examination or the request for reconsideration is withdrawn. Any additional evidence regarding
33 good cause must be submitted prior to the conclusion of the 60-day postponement period.

34 (C) At the conclusion of the 60-day postponement period, if the worker has not attended and
35 cooperated with a medical arbiter examination or established good cause, there shall be no further
36 opportunity for the worker to attend a medical arbiter examination for this claim closure. The re-
37 consideration record shall be closed, and the director shall issue an order on reconsideration based
38 upon the existing record.

39 (D) All disability benefits suspended pursuant to this subsection, including all disability benefits
40 awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Com-
41 pensation Board or upon court review, shall not be due and payable to the worker.

42 (f) The costs of examination and review by the medical arbiter or panel of medical arbiters shall
43 be paid by the insurer or self-insured employer.

44 (g) The findings of the medical arbiter or panel of medical arbiters shall be submitted to the
45 director for reconsideration of the notice of closure.

1 (h) After reconsideration, no subsequent medical evidence of the worker's impairment is admis-
2 sible before the director, the Workers' Compensation Board or the courts for purposes of making
3 findings of impairment on the claim closure.

4 (i)(A) When the basis for objection to a notice of closure issued under this section is a disa-
5 greement with the impairment used in rating the worker's disability, and the director determines
6 that the closure was not made pursuant to this section, the director is not required to appoint a
7 medical arbiter prior to the completion of the reconsideration proceeding.

8 (B) If the worker's condition has substantially changed since the notice of closure, upon the
9 consent of all the parties to the claim, the director shall postpone the proceeding until the worker's
10 condition is appropriate for claim closure under subsection (1) of this section.

11 (8) No hearing shall be held on any issue that was not raised and preserved before the director
12 at reconsideration. However, issues arising out of the reconsideration order may be addressed and
13 resolved at hearing.

14 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
15 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
16 any permanent disability payments due under the closure shall be suspended, and the worker shall
17 receive temporary disability compensation while the worker is enrolled and actively engaged in the
18 training. When the worker ceases to be enrolled and actively engaged in the training, the insurer
19 or self-insured employer shall again close the claim pursuant to this section if the worker is med-
20 ically stationary or if the worker's accepted injury is no longer the major contributing cause of the
21 worker's combined or consequential condition or conditions pursuant to ORS 656.005 (7). The closure
22 shall include the duration of temporary total or temporary partial disability compensation. Perma-
23 nent disability compensation shall be redetermined for unscheduled disability only. If the worker has
24 returned to work or the worker's attending physician has released the worker to return to regular
25 or modified employment, the insurer or self-insured employer shall again close the claim. This notice
26 of closure may be appealed only in the same manner as are other notices of closure under this
27 section.

28 (10) If the attending physician has approved the worker's return to work and there is a labor
29 dispute in progress at the place of employment, the worker may refuse to return to that employment
30 without loss of reemployment rights or any vocational assistance provided by this chapter.

31 (11) Any notice of closure made under this section may include necessary adjustments in com-
32 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
33 bility payments prematurely made, crediting temporary disability payments against current or future
34 permanent or temporary disability awards or payments and requiring the payment of temporary
35 disability payments which were payable but not paid.

36 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
37 compensation benefits or payments against any further workers' compensation benefits or payments
38 due a worker from that insurer or self-insured employer when the worker admits to having obtained
39 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
40 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
41 fits or payments obtained through fraud by a worker shall not be included in any data used for
42 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
43 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
44 Corporation or the director.

45 (13)(a) An insurer or self-insured employer may offset any compensation payable to the worker

1 to recover an overpayment from a claim with the same insurer or self-insured employer. When
2 overpayments are recovered from temporary disability or permanent total disability benefits, the
3 amount recovered from each payment shall not exceed 25 percent of the payment, without prior
4 authorization from the worker.

5 (b) An insurer or self-insured employer may suspend and offset any compensation payable to the
6 beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused
7 by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the
8 death of the worker.

9 (14) Conditions that are direct medical sequelae to the original accepted condition shall be in-
10 cluded in rating permanent disability of the claim unless they have been specifically denied.

11 **SECTION 64. This 2001 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect**
13 **on its passage.**
14
