

Senate confirms Greenfield as director of DCBS

Mike Greenfield of Salem is the new director of the Department of Consumer and Business Services (DCBS). Greenfield, who most recently served as deputy secretary of state, replaces Kerry Barnett, who left the position in January. The Oregon Senate approved Greenfield's appointment in June.

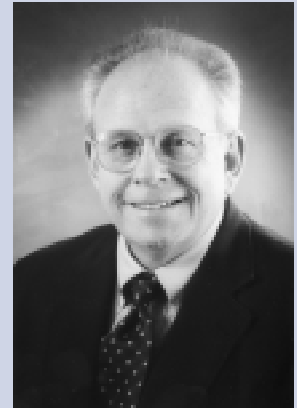
The director also serves as state insurance commissioner.

DCBS programs have an impact on virtually every business in Oregon and play a critical role in serving consumers and workers from all walks of life," Governor **John Kitzhaber** said. "Mike knows how to bring together the diverse

interests needed to keep those programs successful," he added.

Greenfield has served as deputy secretary of state since 1991 and was legislative administrator from 1986 to 1991. He also serves as the chair of the Oregon Commission on Children and Families and as a board member of a Salem charter school.

DCBS is the state's largest regulatory and consumer protection agency. The department regulates insurance, banking, securities, building codes, occupational safety and health, workers' compensation, and real estate appraisers. It also includes energy conservation, consumer protection, and education programs.



Mike Greenfield

Premium trust account tracks insured's financial activities

Editor's note: Each year the Insurance Division disciplines a number of agents who fail to establish and maintain a premium trust account. The following article explains basic requirements of the account.

Generally, insurance agents must use a premium trust account. Trust accounts protect consumers by requiring an agent to properly handle the insured's premiums while the funds are in the agent's hands.

Trust accounts are governed by ORS 744.225, and OAR 836-074-0005 to 836-074-0050. These generally require an agent to:

- Have one or more financial accounts into which the agent deposits all insurance premiums received by the agent. Premiums deposited into the account must be accessible at all times.
 - Not deposit or keep in a premium trust account money that is not insurance premiums or intended for certain permitted contingencies.
 - Keep all premiums in the trust account until they are forwarded to the insurer, agent or premium finance company that is entitled to them, or returned to the insured.
 - Keep adequate records of all deposits and withdrawals of the trust account and the reason for each deposit and withdrawal. Each check or other instrument drawn on a trust account must clearly identify that it is drawn on an insurance premium trust account. The records must be accessible to the division for examination and audit for three years from the date of policy expiration.
- Oregon law permits large insurance agencies to have a certificate of deposit from a federally insured financial institution in lieu of maintaining a trust account.

Trust account questions?

For more information about premium trust accounts, please:

- See Questions & Answers on Page 5 of this issue of the *Oregon Insurance Regulator*.
- Review ORS 744.225 and OAR 836-074-0005 to 836-074-0050.
- Call the Insurance Division at (503) 947-7235.

Incorrect life illustration filings cause problems

Oregon's adoption of the National Association of Insurance Commissioners' (NAIC) life insurance illustration model became effective July 1, 1997. The administrative rules, OAR 836-051-0500 to 836-051-0600, have only a few changes from the model.

The Insurance Division continues to receive numerous questions and incorrect filings. Please check your filings and marketing practices against the following:

Policy filings

1. If a policy will be marketed with an illustration, a sample illustration must be included in the filing or received before the policy can be approved.
2. Oregon requires the policy to be filed with only guaranteed elements. However, non-guaranteed elements can be illustrated according to the rule.

Please see LIFE, Page 5

INSURANCE DIVISION FOCUS

Consumer Assistance Unit handles more than 4,000 insurance complaints each year

A woman with an aggressive form of leukemia is scheduled for a bone marrow transplant. Five days before the transplant, her insurance company tells her it made a mistake in agreeing to pay the entire cost. She'll have to come up with \$45,000—money she doesn't have. And the cancer center won't proceed without guaranteed payment.

Fortunately, the woman turns to the Oregon Insurance Division's Consumer Assistance Unit. After compliance officer **Nancy Nevins** intervenes, the insurer agrees to pay the entire cost of the transplant, as originally promised.

Most cases handled by the Consumer Assistance Unit don't have potential life and death implications, but every complaint is important.

The Insurance Division resolves more than 4,000 complaints each year, with the biggest share involving auto insurance. Statistics from 1996, the latest year available, show 4,449 complaints closed, with 2,469 relating to auto insurance.

In addition to complaints, the Consumer Assistance Unit also responds to more than 25,000 insurance questions each year.

Most inquiries and complaints are handled by phone, although some consumers visit the division's office in Salem to discuss their problems in person. Here's how the process works:

- A consumer files a complaint with the Insurance Division in writing, by phone, by fax or through the Internet.

- Consumer Assistance sends a summary of the complaint to the company and requests a response within 21 days.
- A compliance officer reviews the company's response.
- If the company's response is adequate, the response and an explanatory letter are sent to the consumer.
- If the response isn't adequate, the compliance officer works with the consumer and insurance company to try to resolve the problem.
- If a law has been broken, the matter is referred to the Insurance Division's Enforcement Unit for investigation.

Larry Culbertson, manager of Consumer Assistance, says his staff represents the interests of consumers in disagreements with insurance companies or agents. However, safeguards are built into the complaint process so that both sides have an opportunity to be heard.

"Our job is to gather information from both parties, evaluate it, and then decide how to proceed," he said. "We try to be as objective as possible in every case."

Complaint statistics from 1996 show that consumers received some form of relief in 41 percent of cases, while companies were upheld 30 percent of the time. Twenty-one percent of cases were closed without settlement because questions of fact couldn't be resolved, and the remaining cases were closed for other reasons.

Larry Culbertson heads experienced staff

Larry Culbertson, an 11-year Insurance Division veteran, manages the Consumer Assistance Unit, which is part of the Consumer Protection Section. Compliance officers and their areas of expertise are:

- **Fred Lindgren**, senior compliance officer, property and casualty
- **Dennis W. Kuckartz**, CIC, life and health
- **Russel W. Kennel**, CPCU, property and casualty

- **Greg Ledbetter**, property and casualty
- **Nancy A. Nevins**, health
- **Jan White**, CPIW, property and casualty
- **Gail Worden**, health
- **Gary Stephenson**, property and casualty

Support staff members are:

- Jo Teal
- Margaret Ahlberg

Agents advised not to delegate authority to unlicensed individuals

The Insurance Division advises agents that Oregon law prohibits them from authorizing anyone without a license to transact insurance on their behalf. Violating the law could result in license revocation, a fine or both.

The division has received reports of agents who have been delegating authority to transact insurance to unlicensed individuals such as automobile salespersons.

ON THE WEB

Here are some of the new items on the Oregon Insurance Division's Internet site <www.cbs.state.or.us/external/ins>:

- **Insurance Agent Search Page**
Search for an active insurance agent, adjuster or consultant by name, location or license class. You can also download the file, which is updated weekly.
- **Insurance Division Laws and Rules**
Search the Oregon Revised Statutes (ORS) and Insurance Division administrative rules (adopted and proposed). You can also find the schedule for any rulemaking hearings.

Sign up now for last law review session

Register now to attend the remaining session of *Oregon Law and Regulation Review*, Thursday, November 12. This is a free continuing education course. It will be from 1-4 p.m. in Room 260 of the Labor & Industries Building, 350 Winter St. NE, in Salem.

Pre-registration is required. The Licensing Unit will include a course registration form with the renewal notice it sends you two months before your renewal date. Please use this form if possible. However, if you'd like to take the course before receiving your renewal notice, you may request a registration form by calling (503) 947-7981.

ADMINISTRATOR'S COLUMN

Insurance industry must be ready for the Year 2000



Nancy Ellison

With the possible exception of Michael Jordan's future plans, few issues have generated as much speculation recently as the Year 2000 problem, also known as Y2K. Doomsayers predict Y2K will cause crashed computer systems, darkened cities, snarled traffic, grounded airplanes, and silenced telephones. Others say we'll wake up to a few inconveniences on Jan. 1, 2000, but things won't be quite that bad.

Although no one knows for sure what will happen, potential Y2K problems can be minimized with comprehensive planning. As Insurance Division administrator, I want to make sure Oregon insurance companies are taking the necessary measures to become "Year 2000 compliant." Year 2000 compliant means fault-free processing of data by all hardware and software products, including manipulation of date-related data.

Like most businesses today, insurers rely heavily on computers to perform numerous calculations and transactions, including policy periods, interest, investments, claims processing, underwriting, due dates, personnel benefits, and accounting. Y2K problems could impact all of these, resulting in major operational and solvency consequences for the insurance industry.

In September 1997, I sent a letter to all domestic insurance companies reminding them of potential problems relating to Y2K. I asked companies to inventory and assess their computer and support systems that were date dependent and to budget sufficient funds to make them Year 2000 compliant.

In addition, I suggested that insurers extend their review to affiliate companies, MGAs, major producers, trading partners (such as depository banks and phone carriers), and any policyholders who might require extra loss-control support.

In March 1998, I followed up with a survey asking domestic insurers to certify that they were Year 2000 compliant or indicate when they would become compliant. I pointed out that the Insurance Division would not waive enforcement of insurance laws and regulations because of a company's failure to ensure that its internal systems are fully functional in the Year 2000.

All responding domestic insurers certified they were compliant or would be compliant by December 1999. We will be periodically monitoring the progress of those companies still working toward Y2K compliance. In addition, we have added questions to our financial examinations to help us assess each company's readiness for Year 2000 issues.

I'm pleased that Oregon insurers are devoting significant time and resources to addressing Y2K. While I can't guarantee that none of our domestics will encounter problems Jan. 1, 2000, I believe we have taken the steps necessary to ensure that such problems will be minimized.

Nancy Ellison
Deputy Insurance Commissioner
Administrator, Insurance Division

Education providers required to meet deadlines

Imagine completing a continuing education course but not getting credit because the provider missed the course registration deadline.

Obviously, you wouldn't be too happy. But who's to blame?

The responsibility for registering a course belongs to the provider. OAR 836-071-0235 says a provider must apply to the Director to register each course offered for continuing education credit. The application has to include a course outline showing instruction in 50-minute time periods.

The provider is required to give the Director the meeting times and places of a course no later than seven days before the course will be held. The provider has to resubmit a registered course for review if the course content substantially changes.

A number of providers have asked for exceptions to the seven-day rule after miss-

ing the deadline, arguing that agents would be hurt if they didn't receive continuing education credit. However, the fact remains that it's the provider's responsibility to comply with the rule.

"The rule was adopted to give us time to evaluate courses and assign credit hours," said Insurance Division Administrator **Nancy Ellison**. "Unfortunately, some providers think the deadline applies to somebody else. They're learning the hard way that seven days means seven days."

Ellison said the Insurance Division plans to amend the rule to require providers to register courses at least 21 days in advance. She said the extra time is needed so division staff can more thoroughly evaluate course offerings and make sure they meet content requirements under OAR 836-071-0230. A hearing on the amended rule is planned for Sept. 9.

Margarita Nuñez heads Agent Licensing Unit

Margarita Nuñez has been named manager of the Agent Licensing Unit. Nuñez joined the Insurance Division in July 1997 as an investigator.



Margarita Nuñez

She plans to "streamline our agent licensing processes as much as possible."

Nuñez previously was a life and health underwriter for State Farm in Salem and an environmental claims adjuster for Fireman's Fund in California.

Misappropriation, illegal withholding can 'total' agent's career

By Mitchel Curzon

The Oregon Insurance Code and related administrative rules regulate commercial insurance in Oregon. While they may seem voluminous (some 1,000 pages), their intent is to protect the insurance-buying public. Failure to comply with those requirements that apply to agents can be like hitting a "pothole" on your road to a successful career as an insurance agent.

One of the potholes to avoid involves Oregon Revised Statutes (ORS) 744.013(2)(d). The law says that an agent shall not:

- Withhold insurance premiums from the person entitled to the premiums after they are to be paid to such person; or
- Use insurance premiums for a purpose other than for which they were received.

An insurance agent is an intermediary between the insurer that provides insurance and the insured that purchases it. The agent generally represents the insurer in the course of selling the insurance to an insured, although in some cases the agent may represent the insured or even both the insurer and insured. In any case, premiums received by an agent initially belong to either the insurer or the insured, but never to the agent. The agent receives such premiums as a "fiduciary," one in a position of trust for and on behalf of the insurer or insured. Therefore, an agent must know and follow the instructions of the insurer or insured in handling premiums.

Sometimes these instructions are expressed in the agent's agency contract with an insurer. Sometimes the instructions are implied from the way an insurer has allowed an agent to operate. Other times, the instructions are expressed or implied from statements by the insured to the agent.

One way an agent breaches these instructions is by receiving premiums but failing to pay them to the person entitled to them when due. The Insurance Code calls this illegal withholding. Another way an agent fails to comply with these instructions is by receiving premiums but using them, even for a short time, to pay

another insured's premiums, or even worse, to pay the agent's business or personal expenses. The Insurance Code calls this misappropriation.

During the last eight months, the Insurance Division has initiated administrative action against some 19 agents for misconduct. Eight of these agents, or 42 percent, misappropriated or illegally withheld insurance premiums. All eight have had or are proposed to have their licenses revoked.

In one case, the agent collected insurance premiums in cash totaling about \$424 from four different insureds. The agent was required by the agency to deposit all premium payments into the agency's trust account. However, the agent had some expensive personal habits so she kept the cash and spent it. The agent had used the money for a purpose other than for which she received it. The Insurance Division revoked the agent's license and she also was convicted by a state court of second degree theft.

In another case, the agent collected an insurance premium check for about \$1,500 from an insured. The check was made payable to the agency the agent worked for. The agent was required by the agency to deposit all premium payments into the agency's trust account. However, the agent was having some financial difficulties at the time so he cashed the check and used the money to pay some personal expenses. Although the agent subsequently repaid the money to the agency, he had used the money for a purpose other than for which he received it. The Insurance Division has proposed to revoke this agent's license.

We encourage agents to handle insurance premiums with care. If you have any questions about how to handle premiums, please call the Insurance Division for assistance. We will be happy to help clarify the requirements.

Mitchel Curzon is an administrative law specialist for the Oregon Insurance Division.

POTHOLES ON THE ROAD TO SUCCESS

Rates and Forms, Health Unit now one section



Ed Nieubuurt

The Health Unit and the Rates and Forms Section have been combined.

"It makes sense to merge these two operations, since both deal with policy forms and rates," Insurance Division Administrator Nancy Ellison said.

Ellison named Ed Nieubuurt to head the consolidated section. Nieubuurt joined the Insurance Division in 1993 as project

director of the 24-hour Coverage Pilot Program, and was manager of Health Programs from August 1995 to June 1998.

The section is divided into two units.

Maxi McKibben will be assistant manager of the Health Unit. Rates and Forms analysts are **David Bolton, Brenda Etzel,** and **Bill Sandhu.**

Donna Bleiler will be assistant manager of the Life/Property & Casualty Unit. Rates and Forms analysts are **Gail Duncan, Janice Hart, Rolf Junge,** and **Jan Vitus.**

Agents need NASD license to sell variable annuities

OAR 836-071-0185 requires an agent who solicits, places, or procures variable annuity contracts or policies to hold an NASD Series 1, 6, 7, 8, 24, 26 or 40 license. The license is required for both individual and group, qualified and non-qualified issues.

Agents are responsible for having a license; however, insurers are held accountable for marketing their products through appropriately licensed agents. Violations could carry a civil penalty of up to \$10,000 per occurrence for an insurer or agency, and \$1,000 for an individual agent.

QUESTIONS & ANSWERS: Premium Trust Accounts

Q: *When do I have to deposit premiums into the trust account?*

A: Within seven days of receipt.

Q: *May I keep premiums in a trust savings account and transfer money to my operating checking account to write checks?*

A: No. ORS 744.225 prohibits commingling premiums with any other money. However, you can transfer premiums from a trust savings account to a trust checking account.

Q: *When can I withdraw my commissions from the trust account?*

A: When your commissions become "earned." Ask the insurance company paying the commissions when they are considered to be earned.

Q: *An insurance company I represent credits return premiums and unearned commissions on my premium and commission statement. How and when do I pay the insured back?*

A: You must deposit the equivalent of the credit in money into your trust account within seven days of receiving the credit and pay the money to the insured within 30 days of receiving the credit.

Q: *Can I apply refunds to other policies my customer has coming due?*

A: Yes, but only if the customer instructs you to apply a refund to another policy. Your client's file should reflect any instructions he or she has given you.

Q: *What kind of records must I keep?*

A: OAR 836-074-0045 requires an agent to use:

- An accounting system that isolates trust accounts from operating accounts and provides a means of tracing any transaction back to its origin or forward to its final entry, such as is accomplished by a conventional double-entry bookkeeping system.
- A recordkeeping system, either manual or electronic, that provides an audit trail so that details underlying the summary data, such as invoices,

checks and statements, may be identified and made available on request.

Q: *Are there situations when I don't have to deposit premiums into my trust account?*

A: Yes. OAR 836-074-0025(2)-(3) allows you to receive a check or money order, made payable to you or the insurer, and forward it to the insurer or other person entitled to the money, without depositing it in your trust account.

Q: *What do I do with return premiums and my unearned commissions if I can't locate the insured?*

A: You must keep the money in your trust account until you either:

- Return the funds to the insurer, or
- Send the money to the Oregon Division of State Lands in accordance with the Uniform Disposition of Unclaimed Property Act, ORS 98.302 to 98.436.

PERSONNEL

Nancy Ellison was named Deputy Insurance Commissioner. She also will retain the title of administrator, Insurance Division.

Neeraj Gupta was promoted to chief examiner in the Company Regulation Section. He had been a supervising examiner.

Rosemarie Fipps was promoted to user support analyst in the Administrative Services Section. She had been an office specialist 2 in Company Regulation.

Day Marshall was promoted to office specialist 2 in the Rates and Forms Section. She had been an office specialist 1 in Company Regulation.

New Insurance Division employees are:

- **Rick Frawley**, insurance financial analyst, Company Regulation
- **Kathleen Kalk**, market conduct examiner, Market Conduct Unit
- **Russ Kennel**, compliance officer, Consumer Assistance Unit
- **Shawn Landon**, office specialist, Company Regulation
- **Ed Lanssens**, mediator, Hearings Unit
- **Patricia McCarter**, investigator, Investigations and Enforcement Unit
- **Gary Stephenson**, compliance officer, Consumer Assistance Unit
- **Gail Worden**, compliance officer, Consumer Assistance Unit

Life illustration filings, continued from Page 1

3. The illustration takes the place of the Statement of Policy Cost and Benefit Information. These are two separate disclosure forms, so do not mix the titles of these forms when filing.

4. If the policy is not illustrated, the Statement of Policy Cost and Benefit Information is still required and can only demonstrate guaranteed elements. If non-guaranteed elements are demonstrated, a life illustration is required with the filing.

Annual actuarial certifications

1. Copies of illustrations used must be retained by the insurer for three years after the policy is no longer in force. These records must be accessible for market conduct examinations.

2. The rule requires an annual certification "for all policy forms for which illustrations are used." The Insurance Division will accept a certification for all applicable policies. If more than one certification is needed, the related policies must be listed on each certification submitted.

The listing should include the policy number, title, and approval date. If any changes have occurred during the year, such as discontinuing a policy that was identified as illustrated, these changes should be noted to update the record.

3. The annual certification must be provided to the Director by a date determined by the insurer. If this date needs to be changed in the future, the insurer must notify the Insurance Division by the current date and include an explanation. See OAR 836-051-0590(7) for more information.

4. Some insurers included forms such as Applications and Waiver of Premium Riders on their initial list of forms being actively marketed with illustrations on July 1, 1997. The illustration rule refers to policies and certificates, not other types of forms. When submitting the Annual Certification, insurers should indicate corrections to their initial list to avoid any problems during a market conduct exam.

ADMINISTRATIVE ACTIONS

The Insurance Division took the following actions since February 1998 against agents and companies:

Dennis F. Allen

9401 Sterling Creek Road
Jacksonville, OR 97530

Violation: Sold annuities issued on a policy form not approved in Oregon. Made misrepresentations on an insurance application.
Penalty: \$4,000 civil penalty.

Amerifirst Insurance Co.

Vencor, Inc.
Louisville, KY 40202

Violation: Failed to file 1996 audited financial statement in accordance with the applicable filing instructions.
Penalty: \$1,500 civil penalty.

Richard A. Bauer

PO Box 20070
Keizer, OR 97307

License issued subject to probation due to previous action revoking license.

Matthew S. Chiarella

13800 Parkcenter Lane, #728
Tuftin, CA 92782

Violation: Filed a license application containing a statement he knew was false or misleading. Failed to respond to an inquiry from the Director.
Penalty: License revoked.

John C. Cameron

13127 NE Halsey, #3
Portland, OR 97320

Violation: In default on student loan.
Penalty: License suspended April 3, 1998.

Denise I. Dodge

3945 SE 80th, #8
Portland, OR 97206

Violation: In default on student loan.
Penalty: License suspended April 3, 1998.

Foremost Signature Insurance Co.

Foremost Insurance Group
Grand Rapids, MI 49501

Violation: Did not make an appropriate reply to a claimant within 20 working days. Did not complete its claim investigation within 45 days after receipt of notification.
Penalty: \$8,000 civil penalty.

Grace M. Gerdes

13845 SW Ashbury Lane
Tigard, OR 97223

Violation: Filed a license renewal application containing several statements she knew were false or misleading.
Penalty: \$1,000 civil penalty.

Globe Life and Accident Insurance Co.

Oklahoma City, OK 73184

Violation: Disseminated a misleading advertisement to the public by mail.
Penalty: \$1,000 civil penalty.

Hartford Accident and Indemnity Co.

Hartford CT 06115

Violation: In determining whether to issue an auto insurance policy, considered information in the nonemployment driving record of an individual beyond that permitted by ORS 746.265.
Penalty: \$5,000 civil penalty.

Insurance Network, Inc.

Portland OR 97202

Violation: Principal's license had been previously revoked.
Penalty: License revoked.

Key Title Co.

Salem, OR 97301

Violation: Entered into title transactions in Curry County without using a qualifying title plant. Did not respond promptly to an inquiry from the Director.
Penalty: \$15,000 civil penalty.

Jodi A. MacDiarmid

8740 W. Berwyn
Chicago, IL 60656

Violation: Filed a license application containing a statement she knew was false or misleading.
Penalty: License revoked.

Pamela J. Molloy

605 Umatilla St., Apt. 101
Umatilla, OR 97882

Violation: Misappropriated to her own use money belonging to an insurer.
Penalty: License revoked.

Mutual of Omaha Insurance Co.

Omaha, NE 68175

Violation: Issued policies using unapproved individual health insurance rates.
Penalty: \$10,000 civil penalty.

New York Life Insurance Co.

New York, NY 10010

Violation: Failed to respond promptly to an inquiry from the Director.
Penalty: \$2,000 civil penalty.

Regence Blue Cross Blue Shield of Oregon

Portland, OR 97201

Violation: Engaged in improper conduct by failing to disclose or pass along the benefits of health care provider discounts to its insureds in Oregon from July 1989 to June 1995.
Penalty: \$100,000 civil penalty.

Steven W. Satre

19855 SW Rosa Road
Aloha, OR 97007

Violation: Failed to perform the duties of an agent involving an insurance transaction; engaged in fraudulent or dishonest conduct not related to the business of an insurance agent; convicted by final judgment for a misdemeanor involving moral turpitude.
Penalty: License revoked.

James S. Scales II

154 SE 83rd
Portland, OR 97216

Violation: Misstatement on application. Also failed to notify the Director within 30 calendar days of change of business address under his insurance agent license.
Penalty: \$1,000 civil penalty.

John A. Scott

PO Box 8539
Medford, OR 97504

Violation: Failed to comply with a child support payment agreement.
Penalty: License suspended Aug. 26, 1997. Suspension lifted: Feb. 27, 1998.

Stephen G. Sperb

13350 SW 6th St.
Beaverton, OR 97005

Violation: In default on student loan.
Penalty: License suspended April 3, 1998. Suspension lifted: May 4, 1998.

Krista J. Sproul

1206 Lincoln Street
Oregon City, OR 97045

Violation: In default on student loan.
Penalty: License suspended April 3, 1998.

The following organizations were each issued \$100 civil penalties for failing to file their annual statements by the due date:

- Catholic Relief Services
US Catholic Conference, Inc.
Baltimore, MD 21201
- Good Samaritan Foundation
Portland, OR 97219
- National Multiple Sclerosis Society
New York, New York 10017
- North American Baptist, Inc.
Oakbrook Terrace, IL 60181
- Simpson College
Redding, CA 96003
- Southwestern Oregon Community
College Foundation
Coos Bay, OR 97420

Please see ACTIONS, page 7

Oregon Insurance Code, rules are available now

Copies of the 1998 Oregon Insurance Code are available for \$8.50 in person or \$10.50 by mail. Insurance Division administrative rules are available for \$12 in person or \$17 by mail. A one-year subscription to the rulemaking mailing list is \$35.

To order copies or for information, please call **Sue Munson**, (503) 947-7272, or write to: Administrative Rules Coordinator, Oregon Insurance Division, 350 Winter St. NE, Room 440-1, Salem, OR 97310-0765.

ACTIONS, continued from Page 6

- Terwilliger Plaza, Inc.
Portland, OR 97201
- Western Baptist College
Salem, OR 97302
- Western Conservative Baptist Seminary
Portland, OR 97215
- Willamette University
Salem, OR 97301

The following organizations were each issued \$200 civil penalties for failing to file their annual statements by the due date:

- Boy Scouts of America
Irving, TX 75015
- Salem Hospital
Salem, OR 97301

The following organizations were each issued \$500 civil penalties for failing to file their annual statements by the due date:

- The Trust for Public Land
San Francisco, CA 94105
- Warner Pacific College
Portland, OR 97215

ADMINISTRATIVE RULES

Administrative rules recently adopted by the Oregon Insurance Division are summarized below. To request a copy of a rule, please call **Sue Munson**, administrative rules coordinator, (503) 947-7272, or write to: Administrative Rules Coordinator, Oregon Insurance Division, 350 Winter St. NE, Room 440-1, Salem, OR 97310-0765. Be sure to include the rule ID number with your request. There is no charge.

ID 3-1998 — Amends 836-020-0740, -225, 836-080-0230, -0235. Standardizes the period within which an insurer must respond to and resolve a health insurance claim when coordination of benefits is involved. Also standardizes terminology used for counting days in rules governing claims practices generally.

Adopted: Feb. 9, 1998
Effective: Feb. 9, 1998

ID 4-1998 (temporary) — Amends 836-052-0225, -0230. Temporary rules govern use of durational limits on mental health benefits that HMOs may provide in group health insurance coverages and the use of actuarially equivalent mental health services provided by other insurers pursuant to contracts with providers.

Adopted: Feb. 12, 1998
Effective: Feb. 13, 1998, - Aug. 10, 1998

ID 5-1998 — Adopts 836-053-0016, -0021, -0026. Amends 836-053-0010-0030, -0040, -0050, -0060, -0070, -0210, -0220, -0230-0250, -0410, -0430, -0440, -0460, -0700, -0730, -0750, -0760, -0780, -0790. Repeals 836-053-0240, -0450, -0770. Rules relating to health insurance; including small group plans, general group plans, individual plans and portability plans; and preexisting conditions, renewability, enrollment and other matters.

Adopted: March 6, 1998
Effective: March 6, 1998

ID 6-1998 (temporary) — Adopts 836-006-0020. Temporary rule establishes the procedure for determining portion of corporate excise tax allocable to a domestic insurer that is a member of foreign reciprocal or interinsurance exchange filing a consolidated excise tax return, for the purpose of determining the retaliatory tax owed by foreign insurers belonging to the exchange and writing Oregon premiums.

Adopted: March 20, 1998
Effective: March 23, 1998, - Sept. 15, 1998

ID 7-1998 — Adopts OAR 836-005-0107. Adopts by reference the Oregon Attorney General's model rules of procedures under the Administrative Procedures Act as published in the Oregon AG's Administrative Law Manual dated 9/15/97.

Adopted: April 13, 1998
Effective: April 15, 1998

ID 8-1998 (temporary) — Adopts 836-005-0500, -0510, -0520, -0530, -0540, -0560. Establishes confidentiality of communications in mediations conducted by the Insurance Division in connection with workers' compensation insurance premium audit disputes and establishes exemption of communications from disclosure in subsequent judicial or administrative proceedings.

Adopted: May 15, 1998
Effective: May 15 - Nov. 6, 1998

ID 9-1998 — Amends 836-042-0015 and -0215. Adopts temporary amendments to rules governing experience rating modifications for workers' compensation insurance.

Adopted: July 27, 1998
Effective: July 28, 1998

ID 10-1998 — Amends 836-054-0050, -0060, -0065. Repeals 836-054-0080, -0100, -0105. Corrects obsolete statutory references and updates applicable reporting form. The other rules were repealed because statutes they implemented were repealed in 1997.

Adopted: July 27, 1998
Effective: July 28, 1998

KEY CONTACTS

Administration

Information (503) 947-7980
FAX (503) 378-4351
Internet www.cbs.state.or.us/external/ins

Administrator Nancy Ellison
Deputy Admin. ... Charles Nicoloff

Admin. Services & Operations

Information (503) 947-7980
Manager Elaine Day

Agent Licensing

Information (503) 947-7981
Manager Margarita Nuñez

Consumer Protection/Complaints

Information (503) 947-7984
Manager Joel Ario

Rates & Forms

Information (503) 947-7983
Manager Ed Nieuburt

• Health

Information (503) 947-7985
Asst. Mgr. Maxi McKibben

• Life/Property & Casualty

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Asst. Mgr. Donna Bleiler

WORKERS' COMPENSATION

Spitulski Enterprises, Inc. (INS 95-06-008, May 8, 1998)

The employer sold ice cream, frozen confectionery products and beverage products on consignment to street vendors and to individuals who leased scooters from him. The employer challenged the insurer's premium assessment on payments to those individuals, contending they were not "workers" under the workers' compensation law and, even if they were "workers," they were not subject to the requirements of workers' compensation coverage.

The employer provided the scooter lessees with everything they needed to sell the products, except gas, oil and insurance. The employer advertised the products, set the price and provided the lessees with promotional stickers. The employer testified that the "independent contractor agreement," which scooter lessees were required to sign, was never enforced but had been continued in case it was needed to enforce its terms.

The DCBS Director found the agreement gave the employer the right to control how the scooter lessees' work was performed even if the agreement was never enforced. Terms included the right to require the lessees to work full-time and to sell only for the employer. The agreement also allowed the employer to render whatever assistance, supervision and review the employer determined was reasonable and necessary. Finding that only one of the four "right to control" factors indicated an independent contractor status and that the terms of the

agreement strongly established the employer's right to control the scooter lessees, the director concluded that the lessees were "workers."

With respect to the street vendors, the Director found the "right to control" test was inconclusive because two factors indicated employee status and two indicated independent contractor status. In applying the "relative nature of the work" test, the Director determined that they were "workers." The work they performed was repetitive and unskilled. They were an integral part of the employer's business and were not a separate enterprise. Because the income they generated from selling products was minimal, they couldn't be expected to carry the burden of a workers' compensation injury.

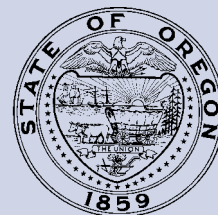
Finally, the Director examined whether the scooter lessees and street vendors qualified for an exemption as casual workers, sole proprietors or partners under ORS 656.027 (1993). The Director concluded that their work was in the course of the employer's business so they weren't exempt as casual workers. They also weren't exempt under the sole proprietor and partner provisions because they did not qualify as independent contractors.

To request a copy of a final order, please call **Rebecca Osborne**, (503) 947-7264, or write to: Oregon Insurance Division, 350 Winter St. NE, Room 440-6, Salem, OR 97310-0765. Be sure to include the case number with your request. There is no charge.

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