

# Oregon Producer Compensation



***Rules & guidelines***



Oregon Insurance Division

Oregon law allows insurance producers to charge fees (incidental charges or service fees) to consumers only in limited circumstances. This guide provides general information based on Oregon Administrative Rules (OAR) 836-071-0260 through 836-071-0277. Violations of these rules may result in enforcement action, including revocation of your producer and consultant license.

*The questions and answers that follow anticipate some typical issues that arise when an insurance producer charges a fee in one of those circumstances. However, to avoid violations, refer to the rules and laws cited in this guide.*

### **Do the rules apply to all insurance producers, including independent insurance producers, direct writers, and captive producers?**

Yes, all are subject to the rules to the same extent as any other producers. This means that disclosure of both fees and commissions is required. (ORS 744.093)

### **Does the disclosure requirement apply to registered or licensed broker/dealers?**

Yes, the disclosure requirements apply when a broker/dealer is also licensed as an insurance producer or insurance consultant and receives compensation from the consumer under the insurance producer or insurance consultant license. (OAR 836-071-0260, 836-071-0263, 836-071-0267 and 836-071-0277)

### **Are fees allowed on personal lines business?**

Fees are only allowed on personal lines to the extent permitted by OAR 836-071-0267 (outlined later in this document). No other producer fees may be applied to personal lines business.

### **Do the rules apply to insurance transactions in the residual market?**

Yes, there is no distinction between the residual market (for individuals and businesses having difficulty obtaining coverage) and the voluntary market.

### **Does a producer have to disclose fees when processing a policy renewal?**

Yes, a renewal is considered to be a purchase of insurance.

## **At what point must a producer disclose fees to a consumer?**

Disclosure must be made before the placement of and payment for insurance. (OAR 836-071-0260)

## **What requirement must be met in order to receive compensation from a prospective insured?**

Before the placement of and payment for insurance, the producer must do all of the following:

- a) Obtain the prospective insured's documented acknowledgement that the compensation will be received by the insurance producer or affiliate.
- b) Disclose the amount of compensation from the insurer or other third party for the placement. If the amount of compensation is not known at the time of disclosure, the insurance producer must disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.
- c) Disclose the nature of the work that the insurance producer or affiliate will perform on behalf of the prospective insured.

## **Can a producer charge a service fee for filing proof-of-coverage certificates of liability insurance with the Construction Contractors Board (CCB)?**

No. This service is a usual and customary service provided by a producer. The incidental service fee for issuing certificates applies only after the first 20 certificates in any one policy period. [OAR 836-071-0267 (1)]

## **When can a producer charge a service fee?**

Except as authorized in ORS 744.091 and ORS 744.093, a producer can charge a service fee only when the service he or she is providing is in addition to what is usual and customary practice of insurance producers under similar circumstances. The disclosure of the charge and the reason for it must be documented before the placement of and payment for insurance.

# Applicable Laws and Rules

## **744.053 – Requirements to be licensed as insurance producer for class of insurance.**

A person may not sell, solicit, or negotiate insurance in this state for any class or classes of insurance unless the person is licensed as an insurance producer for that class or those classes in accordance with ORS 744.052 to 744.089.

## **744.091 – Additional conditions under which person licensed as insurer or insurance producer may charge commission or service fee; rules.**

- (1)** An insurer or insurance producer may charge a commission, a service fee, or a combination of the two when transacting insurance in other than the following categories of insurance:
  - (a)** Insurance that covers an individual's person, property or liability;
  - (b)** Life or health insurance for groups of fewer than 51 lives; or
  - (c)** Insurance on a commercial or public entity paying combined annual premiums of less than \$100,000 for the insurance.
  
- (2)** An insurer or insurance producer may charge a commission or service fee other than the commission or fee filed in accordance with ORS 737.205 only if the insurer or insurance producer has a written agreement with the prospective insured prior to the binding or issuance of an insurance policy. The Director of the Department of Consumer and Business Services may establish by rule minimum conditions for written agreements entered into under this subsection. An insurer or insurance producer who enters into a written agreement as provided in this subsection is not in violation of ORS 746.035 or 746.045. [2003 c.364 §17b]

## **744.605 – Insurance consultant’s license required.**

- (1)** A person shall not act as an insurance consultant unless the person holds a valid license issued by the Director of the Department of Consumer and Business Services that authorizes the person to act as an insurance consultant. For purposes of this section, a person acts as an insurance consultant if:
- (a)** The person purports or offers to engage in any of the activities described in paragraph (b) of this subsection by using, in conjunction with the person’s name, the title or designation of insurance planner, consultant, adviser or counselor, or financial and insurance planner, consultant, adviser or counselor, or any similar title or designation; or
  - (b)** The person, for compensation other than commission from the sale of insurance, engages, attempts to engage, or offers to engage in any of the following activities:
    - (A)** Acting as a consultant regarding insurance.
    - (B)** Giving advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages of insurance that may be issued in this state.
    - (C)** In any other manner providing information about insurance.
- (2)** For the purposes of subsection (1)(b) of this section, compensation includes consideration paid for financial and other related services provided by the person in connection with services referred to in subsection (1)(b) of this section.

# Fees and Disclosure; Incidental Charges

## **OAR 836-071-0260 – Fees Charged by Insurance Producers**

When an insurance producer or any affiliate of the insurance producer receives any compensation authorized under ORS 735.455 (Surplus Lines), 744.091, or ORS 744.093 from a prospective insured for transacting insurance, neither the insurance producer nor the affiliate may accept or receive any compensation from an insured or other third party for the placement of insurance for the prospective insured unless the insurance producer, prior to the placement of and payment for insurance for the prospective insured has:

- d)** Obtained the prospective insured's documented acknowledgement that the compensation will be received by the insurance producer or affiliate.
- e)** Disclosed the amount of compensation from the insurer or other third party for the placement. If the amount of compensation is not known at the time of disclosure, the insurance producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount; and
- f)** Disclosed the nature of the work that the insurance producer or affiliate will perform on behalf of the prospective insured.

When an insurance producer or any affiliate of the insurance producer receives any compensation authorized under ORS 735.455, 744.091, or 744.093 from a prospective insured for transacting insurance and receives no compensation from an insurer or other third party for placement of insurance for the prospective insured, the insurance producer or affiliate must obtain the prospective insured's documented acknowledgement that the compensation will be received by the insurance producer and must disclose the nature of the work that the insurance producer or affiliate will perform on behalf of the prospective insured.

A person is not a prospective insured if the person is:

- a)** A participant or beneficiary of an employee benefit plan.
- b)** Covered by a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the insurance producer or affiliate.

This does not apply to any of the following:

- a)** An insurance producer when the insurance producer acts only as an intermediary between an insurer and the prospective insured's insurance producer, such as a managing general agent, a wholesale insurance producer under ORS 744.093, a surplus lines licensee when transacting insurance with a producing insurance producer under 735.455, or a sales manager.
- b)** An insurance producer with respect to an incidental charge that is received from the prospective insured and is authorized under OAR 836-071-0267 (Personal and Commercial Lines incidental charges).
- c)** A reinsurance intermediary.
  - (a)** "Affiliate" means a person that controls, is controlled by or is under common control with the insurance consultant or insurance producer.
  - (b)** "Compensation from an insurer or other third party" means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration, whether or not payable pursuant to a written agreement.
  - (c)** "Compensation from a prospective insured" does not include any fee or amount collected by or paid to the insurance producer that does not exceed an amount established by the director of the Department of Consumer and Business Services.

## **OAR 836-071-0263 – Fees Charged by Insurance Consultants or Insurance Producers**

- (1)** When an insurance consultant or an affiliate of an insurance consultant receives from a prospective insured any compensation authorized under the Insurance Code or rules adopted thereunder, neither the insurance consultant nor the affiliate may accept or receive any compensation from an insurer or other third party for services provided to the prospective insured in addition to the compensation paid by the prospective insured unless the insurance consultant, prior to the transaction:
  - (a)** Has obtained the prospective insured’s documented acknowledgment that the compensation will be received by the insurance consultant or affiliate; and
  - (b)** Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the insurance consultant shall disclose the specific method for calculating the compensation, and, if possible, a reasonable estimate of the amount.
- (2)** When an insurance producer or an affiliate of an insurance producer receives any compensation otherwise authorized under the Insurance Code or OAR 836-071-0269 to 836-071-0277 from a prospective insured, neither the insurance producer nor the affiliate may accept or receive any compensation from an insurer or other third party for the placement of insurance in the same or related transaction unless the insurance producer, prior to the prospective insured’s purchase of insurance, has:
  - (a)** Obtained the prospective insured’s documented acknowledgment that the compensation will be received by the insurance producer or affiliate; and

- (b) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the insurance producer shall disclose the specific method for calculating the compensation, and, if possible, a reasonable estimate of the amount.
- (3) A person is not a prospective insured for the purpose of this rule if the person is merely:
  - (a) A participant or beneficiary of an employee benefit plan; or
  - (b) Covered by a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the insurance producer or affiliate.
- (4) This rule does not apply to:
  - (a) An insurance producer with respect to a transaction to which ORS 735.455, 744.091, or 744.093 applies;
  - (b) An insurance producer when the insurance producer acts only as an intermediary between an insurer and the prospective insured's insurance producer, such as a managing general agent, a wholesale insurance producer under ORS 744.093, a surplus lines licensee when transacting insurance with a producing insurance producer under ORS 735.455 or a sales manager;
  - (c) An insurance producer with respect to an incidental charge that is received from the prospective insured and is authorized under OAR 836-071-0267; or
  - (d) A reinsurance intermediary.

### **OAR 836-071-0267 – Incidental Charges for Customer Services; Personal, Commercial Lines**

- (1) This rule establishes incidental charges that an insurance producer may impose for customer services in connection with the transaction of

insurance. For the purpose of this rule, personal lines insurance is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

- (2)** An insurance producer may impose an incidental charge established in this rule on a customer only if the insurance producer has given written notice to the customer that the insurance producer may impose incidental charges authorized by this rule. The notice must disclose all incidental charges that the insurance producer may impose and the service provided for each incidental charge. The insurance producer must give the notice to a customer before providing any service for which an incidental charge may be imposed, but not later than at the time of application or the renewal before the insurance producer commences imposing the incidental charges. The written notice requirement does not apply to the binding or issuance of a policy. At the time an insurance producer charges an incidental charge under this rule, the insurance producer must clearly disclose to the customer the amount of the incidental charge and the service for which the incidental charge is imposed.
- (3)** An insurance producer may impose an incidental charge for rewriting or reinstating a policy that was cancelled by the insurer because of an action or inaction of the customer, such as nonpayment of premium or failure to renew according to policy terms, as provided in this section. An insurance producer may not impose the incidental charge for the first rewriting or reinstatement of the policy. The incidental charges are as follows:

  - (a)** A charge not to exceed \$25 for personal lines insurance.
  - (b)** A charge not to exceed \$100 for commercial insurance.
- (4)** An insurance producer may impose an incidental charge for taking a payment of premium in cash, in an amount not to exceed \$10.

- (5) An insurance producer may impose an incidental charge as authorized by ORS 30.701 for handling and collecting on a check from a customer that is returned for insufficient funds.
- (6) An insurance producer may impose an incidental charge for the actual cost of providing photographic or inspection services to a customer in connection with issuing or amending insurance coverage, but the incidental charge may not exceed:

  - (a) \$7.50 for the services in connection with issuing or amending personal insurance coverage.
  - (b) \$45 for the services in connection with issuing or amending commercial insurance coverage.
- (7) An insurance producer may impose an incidental charge for the actual cost of obtaining a motor vehicle report from the Motor Vehicle Division of the Oregon Department of Transportation or from the comparable agency in another state.
- (8) An insurance producer may impose an incidental charge not to exceed \$5 for preparing a duplicate insurance identification card at the request of a customer, when the customer requests the preparation of the card instead of waiting for the insurance identification card prepared by the insurer.
- (9) An insurance producer may impose an incidental charge not to exceed \$10 for each endorsement to a personal lines insurance policy that is in addition to the first six other endorsements by the insurance producer to the policy within a six-month period.
- (10) An insurance producer may impose an incidental charge not to exceed \$5 for obtaining a duplicate SR22 filing on behalf of a customer when the customer has lost or misplaced the original SR22 filing.

- (11) An insurance producer may impose an incidental charge not to exceed \$5 for each certificate of commercial insurance coverage issued by the insurance producer that is in addition to the first 20 certificates requested by the customer for the commercial insurance policy during a policy period.

OAR 836-071-0267 — Service Incidental Charges	
Rewriting or reinstating a policy (canceled due to nonpayment or failure to renew). Does not apply to first rewrite or reinstatement.	Up to \$25 personal lines; up to \$100 commercial insurance
Accepting cash payments	Maximum \$10
Handling NSF checks	Maximum \$25 (ORS 30.071)
Photo/inspection services	Maximum \$7.50 personal lines; up to \$45 commercial lines
Obtaining motor vehicle reports	Limited to amount charged by DMV
Duplicate insurance cards	Maximum \$5
Endorsements (after first six in a six-month period)	Maximum \$10
Duplicate SR22 filing (if original is lost)	Maximum \$5
Certificate of commercial insurance coverage (after first 20 certificates in any one policy period)	Maximum \$5

## **836-071-0269 – Insurance Producer Service Fees**

- (1)** OAR 836-071-0269 to 836-071-0277 regulate the charging of service fees by insurance producers.
- (2)** ORS 737.025 states, in part, that the purpose of Insurance Code Chapter 737 (Rates and Rating Organization) is “to promote the public welfare by regulating insurance rates to the end they shall not be excessive, inadequate, or unfairly discriminatory.” ORS 737.205 requires every insurer to file its rates with the Director of the Department of Consumer and Business Services. ORS 746.015 prohibits unfair discrimination “between risks of essentially the same hazard in the application of rates for insurance policies or in any other terms or conditions thereof.” The Director finds that, with respect to personal lines of insurance, it is reasonable and customary for the public to consider all of the charges made by the insurer or its insurance producer to be either an insurance premium charge or a premium financing charge.
- (3)** OAR 836-071-0269 to 836-071-0277 are issued under the general rulemaking authority of ORS 731.244:
  - (a)** With respect to personal lines insurance coverages to give effect to the rate regulatory provisions of ORS Chapter 737 and the anti-discrimination provisions of ORS 746.015; and
  - (b)** With respect to commercial lines insurance coverage to give effect to the provisions of ORS 746.015 (Discriminations), 746.405 to 746.530 (Premium Financing) and 742.009 (relating to necessary information for insureds). Formerly: OAR 836-030-0050

## **836-071-0272 – Scope of OAR 836-071-0269 to 836-071-0277; Definitions**

- (1)** OAR 836-071-0269 to 836-071-0277 do not apply to the transaction of life insurance, mortgage insurance, or title insurance.

- (2) "Service fee" means a charge made by an insurance producer with respect to an insurance transaction to a party other than the insurer, which charge is not a part of the insurer's rate filing under ORS Chapter 737. "Service fee" does not include finance or service charges governed by 746.405 to 746.530 (Premium Financing). Formerly: OAR 836-030-0055

### **836-071-0274 – Service Fees Prohibited on Personal Lines**

Except as provided in OAR 836-071-0267, a service fee may not be charged with respect to the transaction of insurance covering an individual's person, property, or liability. Coverage of several individuals as members of the same family or household is considered individual coverage for the purpose of this rule.

### **836-071-0277 – Service Fees Allowed on Commercial Lines; Conditions**

- (1) Service fees may be charged with respect to the transaction of insurance that covers other than an individual's person, property, or liability.
- (2) Except as authorized in ORS 744.091 and 744.093, a service fee may be charged only in those instances where the insurance producer has provided service additional to what is the usual and customary practice of insurance producers under similar circumstances. The insurance producer must give a written explanation of the charge and the reason for it to the person charged. If OAR 836-071-0260 or 836-071-0263 applies to the transaction in which a service fee is charged under this rule, the insurance producer may include the written explanation with the disclosure required by 836-071-0260 or 836-071-0263 or provide the written explanation separately.
- (3) A service fee may not be charged with respect to arranging the financing of premium payments. This does not preclude finance charges by insurance producers on their own accounts, or service charges by premium finance companies, which conform to the provisions of ORS 746.405 to 746.530.



Oregon Insurance Division  
350 Winter St. NE  
P.O. Box 14480  
Salem, Oregon 97309-0405