

House Bill 2215

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski)

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 **as introduced**.

Imposes motor vehicle liability insurance surcharge. Limits surcharge to that portion of gross amount of premiums not allocable to insurance mandated to lawfully own, operate, maintain or use motor vehicle. Requires Director of Department of Consumer and Business Services to collect surcharge.

Establishes Motor Vehicle Insurance Surcharge Fund. Continuously appropriates fund to Department of State Police for state police patrol services.

Applies surcharge to premiums for policies issued or renewed on or after effective date of Act.

A BILL FOR AN ACT

1
2 Relating to insurance surcharges; creating new provisions; amending ORS 731.292, 731.836 and
3 735.470; appropriating money; and providing for revenue raising that requires approval by a
4 three-fifths majority.

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

6 **SECTION 1. Sections 2 to 5 of this 2007 Act are added to and made a part of ORS chapter**
7 **731.**

8 **SECTION 2. As used in sections 2 to 5 of this 2007 Act:**

9 (1) **"Gross amount of premiums"** has the meaning given that term in ORS 731.808.

10 (2) **"Insurer of motor vehicles"** means an insurer that issues motor vehicle liability in-
11 surance policies designed to insure motor vehicles or drivers of motor vehicles against
12 damages for liability on account of accidents arising out of the ownership, operation, main-
13 tenance or use of motor vehicles.

14 **SECTION 3. (1) For the privilege of insuring motor vehicles in this state, each insurer**
15 **of motor vehicles in this state shall pay a surcharge. The surcharge shall be a percentage**
16 **of the gross amount of premiums that are derived from the motor vehicle liability insurance**
17 **policies covering direct domestic risks during each calendar year quarter in excess of the**
18 **coverage required to comply with the minimum financial and future responsibility require-**
19 **ments of ORS chapter 806, the uninsured motorist coverage requirements in ORS 742.502 and**
20 **the personal injury protection benefit requirements in ORS 742.520. The Director of the De-**
21 **partment of Consumer and Business Services shall determine the percentage rate for the**
22 **surcharge annually. The rate shall be determined so that the amount to be collected each**
23 **year is the amount estimated to be required in the Motor Vehicle Insurance Surcharge Fund**
24 **for distribution under section 10 of this 2007 Act. In determining the percentage rate, the**
25 **director must use the most recent premium data approved by the director.**

26 (2) **Notwithstanding subsection (1) of this section, the surcharge imposed may not exceed**
27 **four percent of the annual gross amount of premiums written by an insurer of motor vehi-**
28 **cles or the insurance producers of the insurer from all motor vehicle liability insurance.**

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 (3) Not later than the 45th day after the end of each calendar year quarter, each insurer
 2 of motor vehicles shall pay to the director the amount of the surcharge owing for the quar-
 3 ter and shall file with the payment a verified report of all motor vehicle liability insurance
 4 policies issued or renewed in this state during that quarter on a form prescribed by the di-
 5 rector. The report shall include, in addition to any other information required by the direc-
 6 tor:

7 (a) The gross amount of premiums that are derived from the motor vehicle liability in-
 8 surance policies covering direct domestic risks during that calendar year quarter by the
 9 insurer; and

10 (b) That portion of the gross amount of premiums that is allocable to motor vehicle in-
 11 surance coverage that exceeds the coverage required to comply with the minimum financial
 12 and future responsibility requirements of ORS chapter 806, the uninsured motorist coverage
 13 requirements in ORS 742.502 and the personal injury protection benefit requirements in ORS
 14 742.520 required to lawfully own, operate, maintain or use a motor vehicle in this state.

15 (4) If the director determines that the surcharge paid by an insurer of motor vehicles
 16 under this section is incorrect, the director shall charge or credit the insurer with the dif-
 17 ference between the correct amount of surcharge and the amount actually paid.

18 (5) Each surcharge imposed under this section is in addition to and not in lieu of any tax,
 19 assessment or other surcharge imposed on an insurer. An offset against corporate excise
 20 taxes imposed under ORS chapter 317 may not be made for the surcharge imposed under this
 21 section. Surcharges collected under this section may not be considered gross premiums for
 22 any purpose.

23 (6) Each surcharge imposed under this section shall be separately stated on premium
 24 billing statements.

25 **SECTION 4.** On or before April 1 of each year, each insurer of motor vehicles that owed
 26 any surcharge under section 3 of this 2007 Act during the preceding year shall submit an
 27 annual report to the Director of the Department of Consumer and Business Services, on a
 28 form prescribed by the director, that reconciles any underpayment or overpayment of sur-
 29 charges during the preceding year. The director shall verify the amounts of surcharges
 30 underpaid or overpaid and collect or return any difference so determined.

31 **SECTION 5.** If an insurer of motor vehicles ceases to do business in this state, ceases
 32 to issue motor vehicle insurance policies or otherwise ceases to collect premiums on motor
 33 vehicle liability insurance policies, the insurer shall determine the amount of surcharge due
 34 under section 3 of this 2007 Act, immediately file a return reporting the amount of surcharge
 35 due and pay the surcharge due.

36 **SECTION 6.** The first calendar year quarter for which a surcharge must be paid under
 37 section 3 of this 2007 Act is the quarter ending on March 31, 2008.

38 **SECTION 7.** ORS 731.292 is amended to read:

39 731.292. (1) Except as provided in subsections [(2) and (3)] (2), (3) and (4) of this section, all fees,
 40 charges and other moneys received by the Department of Consumer and Business Services or the
 41 Director of the Department of Consumer and Business Services under the Insurance Code shall be
 42 deposited in the fund created by ORS 705.145 and are continuously appropriated to the department
 43 for the payment of the expenses of the department in carrying out the Insurance Code.

44 (2) All taxes, fines and penalties paid pursuant to the Insurance Code shall be paid to the di-
 45 rector and after deductions of refunds shall be paid by the director to the State Treasurer, at the

1 end of every calendar month or more often in the director's discretion, for deposit in the General
 2 Fund to become available for general governmental expenses.

3 (3) All premium taxes received by the director pursuant to ORS 731.820 shall be paid by the
 4 director to the State Treasurer for deposit in the State Fire Marshal Fund.

5 **(4) All surcharges received by the director pursuant to sections 2 to 5 of this 2007 Act**
 6 **shall be paid by the director to the State Treasurer for deposit in the Motor Vehicle Insur-**
 7 **ance Surcharge Fund established under section 10 of this 2007 Act.**

8 **SECTION 8.** ORS 731.836 is amended to read:

9 731.836. The Director of the Department of Consumer and Business Services shall commence an
 10 action for the recovery of taxes **or surcharges** payable under ORS 731.820, 731.824, 731.828 and
 11 731.859 **and section 3 of this 2007 Act** not later than the later of the following:

12 (1) Five years after the date such taxes **or surcharges** were payable to the director under such
 13 sections; or

14 (2) Three years after the date on which the report of examination by the domiciliary state of the
 15 insurer, disclosing that such taxes **or surcharges** were owing by the insurer under such sections,
 16 was filed with the director.

17 **SECTION 9.** ORS 735.470 is amended to read:

18 735.470. (1) The surplus lines licensee shall pay the Director of the Department of Consumer and
 19 Business Services an amount equal to the tax *[which]* **that** would have been imposed under ORS
 20 731.816 (1993 Edition) if that section were in effect and operative, and the *[tax which is]* **amount**
 21 **of taxes and surcharges that are** imposed by ORS 731.820 **and section 3 of this 2007 Act**, on
 22 authorized insurers for the premiums shown in the report required by ORS 735.465. The tax shall
 23 be collected by the surplus lines licensee as specified by the director, in addition to the full amount
 24 of the gross premium charged by the insurer for the insurance. The tax on any portion of the pre-
 25 mium unearned at termination of insurance having been credited by the state to the licensee shall
 26 be returned to the policyholder directly by the surplus lines licensee or through the producing in-
 27 surance producer, if any. The surplus lines licensee is prohibited from absorbing such tax and from
 28 rebating for any reason, any part of such tax.

29 (2) The surplus lines tax is due quarterly on the 45th day following the calendar quarter in
 30 which the premium is collected. The tax shall be paid to and reported on forms prescribed by the
 31 director or upon the director's order paid to and reported on forms prescribed by the surplus lines
 32 association.

33 (3) Notwithstanding subsection (2) of this section, if a surplus lines license is terminated or
 34 nonrenewed for any reason, the taxes described in this section are due on the 30th day after the
 35 termination or nonrenewal.

36 (4) In applying ORS 731.816 (1993 Edition) for purposes of this section, the rate shall be two
 37 percent rather than two and one-quarter percent.

38 (5) The director by rule shall establish procedures:

39 **(a)** For payment of taxes on the Oregon portion of risks covered by surplus lines insurance
 40 policies transacted outside this state that cover risks with exposures both in this state and outside
 41 this state; **and**

42 **(b) With respect to the surcharge imposed by section 3 of this 2007 Act, for determining**
 43 **the amount of surcharge payable by surplus lines licensees so that the amount is consistent**
 44 **with the surcharge imposed by section 3 of this 2007 Act on insurers of motor vehicles who**
 45 **are not surplus lines licensees.**

1 **SECTION 10.** (1) The Motor Vehicle Insurance Surcharge Fund is established, separate
2 and distinct from the General Fund. Interest earned by the Motor Vehicle Insurance Sur-
3 charge Fund shall be credited to the Motor Vehicle Insurance Surcharge Fund.

4 (2) Moneys in the Motor Vehicle Insurance Surcharge Fund shall be distributed quarterly
5 as follows:

6 (a) Amounts needed to reimburse the Department of Consumer and Business Services for
7 expenses in administering sections 2 to 5 of this 2007 Act are continuously appropriated to
8 the department;

9 (b) Amounts needed to reimburse the General Fund for reductions in revenue caused by
10 the effect of sections 2 to 5 of this 2007 Act on the retaliatory tax imposed under ORS 731.854
11 and 731.859 shall be transferred to the General Fund; and

12 (c) The remaining balance, not to exceed \$20 million in any year, is continuously appro-
13 priated to the Department of State Police for the purpose of funding patrol services activities
14 and operations.

15 (3) Any balance remaining after distribution under subsection (2) of this section shall be
16 transferred to the General Fund.

17 **SECTION 11.** Sections 2 to 5 of this 2007 Act and the amendments to ORS 735.470 by
18 section 9 of this 2007 Act apply to motor vehicle liability insurance policies that are issued
19 or renewed on or after the effective date of this 2007 Act.
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