

TESTIMONY ON HB 2679

Before the Senate Revenue Committee

By: Jim Markee

Representing: Surplus Line Association of Oregon

June 1, 2011

Madam Chair and members of the Committee, I am Jim Markee, today representing the Surplus Line Association of Oregon in support of HB 2679A. This bill is the product of extensive work by our association and the Insurance Division, working together, to bring Oregon statutes into alignment with new federal provisions created by the Dodd-Frank bill, recently enacted by Congress. The federal provisions become effective in July of this year, so it is important that we align our statutes to these provisions in this session of the legislature.

The federal provisions regarding surplus line insurance that are contained in the Dodd-Frank bill will change the way in which multi-state policies are taxed. Under present law, when a multi-state surplus lines insurance policy is written, the insurance producer (formerly called insurance agent), figures out what percentage of liability to assign to each state, and the appropriate percentage of premium to be charged for each state's liability. Each state's premium tax is then calculated by the insurance producer, and sent to each state. Under the Dodd-Frank provisions, only the home state of the insured can tax the policy. This means that the entire policy for liability in all states with corresponding liability will be taxed by the home state. The Dodd-Frank bill contemplates that all fifty states will sign a uniform interstate agreement under which they will agree to forward each state's tax when they are the home state and have taxed a multi-state policy. This fundamental change requires that Oregon have statutory authority to tax the entirety of these policies, and that they have the authority to enter into the prescribed interstate agreements. The provisions of HB 2679 give Oregon that authority. Additionally, the bill provides a streamlining of the method of taxation, in which the two separate taxes presently collected on these policies, are combined into one number, which is revenue neutral, but much less complicated. The tax will be calculated at 2.3% of premium, with 2% accruing to the general fund, and .3% accruing to the fire marshal's office. Under the current law, premium is taxed at 2% plus an amount for the fire marshal's office which is calculated under a complicated formula based on varying percentages of various types of coverage. The new method of taxation will result in the same amount of money to the general fund and the fire marshal, but under a much simplified method of collection.

HB 2679 additionally makes some related changes to Oregon statutes that are somewhat technical, but necessary. Currently, Oregon lacks the statutory authority to collect a premium tax on "independently procured" surplus lines policies. These are policies that are purchased directly from a surplus lines insurance company without benefit of an insurance producer. Allowing these policies to go untaxed represents a loss of revenue to the state of Oregon. The bill grants Oregon statutory authority to collect the premium tax on these policies, and sets out criteria for in-house or retained insurance consultants who may place such insurance in the surplus lines market.

The bill also makes changes in the "diligent search" requirement which are required by the Dodd-Frank bill. The Dodd-Frank bill prohibits states from requiring a diligent search to determine if the insurance is available in the admitted market for certain large corporate policies. Most states have similar exemptions to the diligent search requirement for large policies, but most state's exemptions are broader than the federal requirement. HB 2679 adopts an exemption to the diligent search requirement that is slightly broader than the federal requirement, but somewhat stricter than many other states.

The bill provides for increased capital and surplus requirements of surplus lines insurers in Oregon as well. This provision will maintain and enhance the high standards that Oregon requires of Surplus Lines insurers who do business in Oregon.

HB 2679 passed out of the House Revenue Committee with a unanimous vote, and passed the House floor 50-7 with 3 absent. It requires a three fifths majority because of its revenue impact, but its provisions are revenue neutral except for the provision authorizing taxation on independently procured insurance. That provision is estimated to increase state revenue by less than \$12,000.00 per year.

It has been our pleasure to work so closely with the Insurance Division on these amendments. We believe that HB 2679 as passed by the House will bring Oregon into alignment with the new federal provisions concerning surplus lines insurance, and is good policy. We very much appreciate the work of the Insurance Division and their attitude of inclusion throughout this process.

Thanks for the opportunity to present this testimony. I will be happy to answer any questions you may have. We urge your support of this bill.

HB 2679 conforms Oregon law to new federal provisions contained in the Dodd-Frank bill.

Surplus Lines Insurance: Covers exposures not traditionally covered by admitted carriers. Types of exposure sold by these companies include Amusement Parks, Airport expansions projects, some builders defect insurance, and utility companies. Northwest Natural Gas routinely buys Surplus Lines Insurance. **Lloyds of London** is the most famous Surplus Line Company.

Dodd/Frank bill enacted by Congress last year includes section changing the way States may tax multi-state Surplus Lines Insurance policies.

Current Law for multi-state Surplus lines policies:

- Insurance producer (agent) who writes policy calculates tax for each state based on percentage of risk and premium for each state and sends tax to each state.
- Every state has a premium tax on Surplus Lines Insurance. Oregon taxes at 2% of premium plus small amount for fire marshal tax.
- Insurance producer (agent) must diligently search the admitted market for coverage before placing insurance with surplus lines insurance company.

Dodd/Frank federal provisions effective July 21, 2011:

- Only the home state of the insured may tax the policy, but may tax for all states if authorized by their state to do so.
- Contemplates that states will enter compacts with each other to share taxes collected, based on reciprocal agreement, and share of premium and risk.
- Prohibits states to require a diligent search by insurance producer (agent), of admitted market prior to placing insurance in Surplus Lines market for high premium policies of large multi-state corporations.
- Allows taxation of "independently procured" surplus lines insurance if authorized by state. Independently procured simply means the company buying the insurance bought directly from the surplus lines insurance company. Large Multi-National Corporations often buy surplus lines insurance directly from the carrier.

HB 2679A Provisions:

- Authorizes Oregon to tax entire premium of multi-state surplus lines policy if Oregon is the home state of insured at current rate of 2% plus small fire marshal tax of .3%.
- Simplifies and streamlines calculation of fire marshal tax.
- Authorizes Oregon to tax Independently Procured surplus lines insurance.
- Authorizes Oregon to enter into interstate compacts or agreements to enable reciprocal sharing of premium taxes with other states.
- Exempts large corporate policies from requirement of a diligent search of admitted market prior to placing policy with surplus lines company.
- Increase capital and surplus requirements for surplus lines insurers to conform to National Association of Insurance Commissioners model act.

HB 2679A will conform Oregon law to new federal law. The bill is revenue neutral except for a small increase expected from taxing independently procured insurance. The Surplus Lines Association of Oregon estimates **new revenue of less than \$12,000.00 per year.**

The bill is a collaboration between the industry and Department of Consumer and Business Services