

House Bill 2679

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Surplus Line Association of Oregon)

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 surplus lines insurance tax and reporting requirements on independently procured insurance policyholders. Revises calculation of surplus lines premium tax paid by surplus lines licensee. Changes calculation of fire insurance premium tax paid by surplus lines licensee. Allows Director of Department of Consumer and Business Services to waive or modify diligent search requirements for surplus lines insurance by rule under certain circumstances. Waives diligent search requirements for surplus lines insurance for insureds who meet certain qualifications.

A BILL FOR AN ACT

1
2 Relating to insurance; creating new provisions; amending ORS 735.410, 735.425, 735.430 and 735.470;
3 and providing for revenue raising that requires approval by a three-fifths majority.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 731.**

6 **SECTION 2. "Independently procured insurance" means insurance procured directly by
7 an insured from a nonadmitted insurer as defined in ORS 735.405.**

8 **SECTION 3. Section 4 of this 2011 Act is added to and made a part of ORS 735.400 to
9 735.495.**

10 **SECTION 4. (1) Each insured in this state who obtains independently procured insurance,
11 or continues or renews independently procured insurance on properties, risks or exposures
12 located or to be performed in whole or in part in this state, other than insurance procured
13 through a surplus lines licensee, must file, within 30 days after the date the insurance was
14 procured, continued or renewed, a written report with the Director of the Department of
15 Consumer and Business Services showing:**

16 (a) The name and address of the insurer;

17 (b) The subject of the insurance;

18 (c) The amount of premium currently charged; and

19 (d) Additional pertinent information reasonably requested by the director.

20 (2) The insured filing a report under subsection (1) of this section shall, at the time of
21 filing the report, pay the director an amount equal to the tax imposed under ORS 735.470 for
22 the premium reported under subsection (1)(c) of this section. The filing of the report and
23 payment of the tax may be made by a person authorized by the insured to act on the
24 insured's behalf.

25 (3) If an insurance policy for which a report is required to be filed under subsection (1)
26 of this section covers properties, risks or exposures partially located or to be performed in
27 this state, the tax payable shall be computed on the portion of the premium properly at-
28 tributable to the properties, risks or exposures located or to be performed in this state.

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 (4) The director may direct that reports required to be filed under subsection (1) of this
 2 section be filed with the Surplus Line Association of Oregon. The director may require that
 3 such filings be made electronically, but may allow an exemption to this requirement for
 4 cause.

5 **SECTION 5.** ORS 735.470 is amended to read:

6 735.470. (1)(a) The surplus lines licensee shall pay the Director of the Department of Consumer
 7 and Business Services *[an amount equal to the tax that would have been imposed under ORS 731.816*
 8 *(1993 Edition) if that section were in effect and operative, and the tax that is imposed by ORS 731.820,*
 9 *on authorized insurers for the premiums shown in the report required by ORS 735.465]* **a tax equal**
 10 **to two percent of the gross amount of premiums received on exposures located in this state.**

11 **(b) Notwithstanding ORS 731.820, the surplus lines licensee shall also pay a tax equal to**
 12 **0.2 percent of the premium or fees charged by the insurer or the insurer’s agents and other**
 13 **intermediaries for the insurance payable to the office of the State Fire Marshal for the**
 14 **purpose of maintaining the office of the State Fire Marshal and paying the expenses incident**
 15 **thereto.**

16 (c) The *[tax]* **taxes** shall be collected by the surplus lines licensee as specified by the director,
 17 in addition to the *[full amount of the gross premium]* **gross amount of premiums** charged by the
 18 insurer for the insurance. The *[tax]* **taxes** on any portion of the premium unearned at termination
 19 of insurance having been credited by the state to the licensee shall be returned to the policyholder
 20 directly by the surplus lines licensee or through the producing insurance producer, if any. The sur-
 21 plus lines licensee is prohibited from absorbing *[such tax]* **the taxes** and from rebating for any rea-
 22 son, any part of *[such tax]* **the taxes**.

23 (2) The surplus lines *[tax is]* **taxes are** due quarterly on the 45th day following the calendar
 24 quarter in which the premium is collected. The *[tax]* **taxes** shall be paid to and reported on forms
 25 prescribed by the director or upon the director’s order paid to and reported on forms prescribed by
 26 the Surplus Line Association of Oregon.

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

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

32 *[(5)]* (4) The director by rule shall establish procedures for payment of taxes on the Oregon
 33 portion of risks covered by surplus lines insurance policies transacted outside this state that cover
 34 risks with exposures both in this state and outside this state.

35 **(5) As used in this section, “gross amount of premiums” has the meaning given that term**
 36 **in ORS 731.808.**

37 **SECTION 6.** ORS 735.410 is amended to read:

38 735.410. (1) Insurance may be procured through a surplus lines licensee from a nonadmitted
 39 insurer if:

40 (a) The insurer is an eligible surplus lines insurer;

41 (b) A diligent search has first been made among the insurers who are authorized to transact and
 42 are actually writing the particular kind and class of insurance in this state, and it is determined that
 43 the full amount or kind of insurance cannot be obtained from those insurers; and

44 (c) All other requirements of ORS 735.400 to 735.495 are met.

45 (2) Subsection (1) of this section does not apply to a placement of surplus lines insurance outside

1 this state by a nonresident surplus lines licensee or by a nonresident surplus lines insurance pro-
 2 ducer who is not licensed to transact surplus lines insurance in this state when the insurance covers
 3 a risk with exposures both in this state and outside this state, if both of the following conditions
 4 are met:

5 (a) If the nonresident surplus lines licensee or insurance producer is licensed in the state as an
 6 insurance producer to transact surplus lines policies in the state in which the insurance is placed
 7 and is in good standing in that state; and

8 (b) If the surplus lines policy complies with all of the requirements for placement of nonadmitted
 9 insurance in the state in which the insurance is placed.

10 (3) The Director of the Department of Consumer and Business Services by rule may establish
 11 requirements applicable to the placement of surplus lines insurance outside this state by a nonresi-
 12 dent surplus lines licensee or by a nonresident surplus lines insurance producer who is not licensed
 13 in this state, when the insurance covers a risk with exposures both in this state and outside this
 14 state. The rules may include such matters as the procurement of surplus lines insurance, eligibility
 15 of the insurer, the conditions under which surplus lines insurance may be obtained, the necessary
 16 evidence of insurance, filing requirements and other matters necessary for regulation of surplus
 17 lines insurance transactions that affect risk exposures in this state. The rules may not interfere
 18 with or hinder implementation of the federal Gramm-Leach-Bliley Act (P.L. 106-102) with respect to
 19 licensing reciprocity among the states.

20 **(4) The director may waive or modify the provisions of subsection (1)(b) of this section**
 21 **by rule for insureds who:**

22 **(a) Procure insurance through a full-time insurance manager or buyer, or a regularly and**
 23 **continuously retained qualified insurance consultant;**

24 **(b) Have 25 or more employees; and**

25 **(c) Pay a minimum of \$25,000 in total property and casualty premiums for all risks an-**
 26 **nually.**

27 **(5) The provisions of subsection (1)(b) of this section are waived for an insured who:**

28 **(a) Procures insurance through a full-time insurance manager or buyer, or a regularly**
 29 **and continuously retained qualified insurance consultant;**

30 **(b) Has paid, aggregated on a nationwide basis, more than \$100,000 in commercial prop-**
 31 **erty and casualty premiums for all risks in the immediately preceding 12 months; and**

32 **(c) Meets at least one of the following criteria:**

33 **(A) Has a net worth of more than \$20 million, as adjusted in subsection (6) of this section;**

34 **(B) Generates annual revenues of more than \$50 million, as adjusted in subsection (6) of**
 35 **this section;**

36 **(C) Employs more than 500 full-time or full-time equivalent employees or is a member**
 37 **of an affiliated group employing more than 1,000 employees in the aggregate;**

38 **(D) Is a not-for-profit organization or public entity generating annual budgeted expen-**
 39 **ditures of at least \$30 million, as adjusted in subsection (6) of this section; or**

40 **(E) Is a municipality with a population greater than 50,000 persons.**

41 **(6) The amounts in subsection (5)(c)(A), (B) and (D) of this section must be adjusted once**
 42 **every five years beginning in the fifth year after the effective date of this 2011 Act to reflect**
 43 **the percentage change for the preceding five-year period in the Consumer Price Index for**
 44 **All Urban Consumers published by the Bureau of Labor Statistics of the United States De-**
 45 **partment of Labor.**

SECTION 7. ORS 735.425 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) A statement signed by the licensee regarding the insurance, which shall be kept confidential as provided in ORS 705.137, 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 insurance producer to place the coverage with admitted insurers and the results thereof. The statement shall be signed by the producing insurance producer 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 Line 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 producing insurance producer not licensed to transact surplus lines insurance in this state 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.

(4) Facsimile signatures and electronic signatures subject to ORS 84.001 to 84.061 are acceptable and have the same force as original signatures.

(5) The director may waive or modify the provisions of subsection (1)(b) of this section by rule or order for producing insurance producers who are procuring insurance for an insured who:

- (a) Procures insurance through a full-time insurance manager or buyer, or a regularly and continuously retained qualified insurance consultant;**
- (b) Has 25 or more employees; and**
- (c) Pays a minimum of \$25,000 in total property and casualty premiums for all risks annually.**

(6) The provisions of subsection (1)(b) of this section are waived for producing insurance producers who are procuring insurance for an insured who:

- (a) Procures insurance through a full-time insurance manager or buyer, or a regularly and continuously retained qualified insurance consultant;**
- (b) Has paid, aggregated on a nationwide basis, more than \$100,000 in commercial property and casualty premiums for all risks in the immediately preceding 12 months; and**
- (c) Meets at least one of the following criteria:**
 - (A) Has a net worth of more than \$20 million, as adjusted in subsection (7) of this section;**

1 **(B) Generates annual revenues of more than \$50 million, as adjusted in subsection (4) of**
 2 **this section;**

3 **(C) Employs more than 500 full-time or full-time equivalent employees or is a member**
 4 **of an affiliated group employing more than 1,000 employees in the aggregate;**

5 **(D) Is a not-for-profit organization or public entity generating annual budgeted expen-**
 6 **ditures of at least \$30 million, as adjusted in subsection (7) of this section; or**

7 **(E) Is a municipality with a population greater than 50,000 persons.**

8 **(7) The amounts in subsection (6)(c)(A), (B) and (D) of this section must be adjusted once**
 9 **every five years beginning in the fifth year after the effective date of this 2011 Act to reflect**
 10 **the percentage change for the preceding five-year period in the Consumer Price Index for**
 11 **All Urban Consumers published by the Bureau of Labor Statistics of the United States De-**
 12 **partment of Labor.**

13 **SECTION 8.** ORS 735.430 is amended to read:

14 735.430. (1) The Surplus Line Association of Oregon shall be the advisory organization of surplus
 15 lines licensees to:

16 (a) Facilitate and encourage compliance by resident and nonresident surplus lines licensees with
 17 the laws of this state and the rules of the Director of the Department of Consumer and Business
 18 Services relative to surplus lines insurance;

19 (b) Provide means for the examination, which shall remain confidential as provided in ORS
 20 705.137, of all surplus lines coverage written by resident and nonresident surplus lines licensees to
 21 determine whether the coverages comply with the Oregon Surplus Lines Law;

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

24 (d) Receive and disseminate to resident and nonresident surplus lines licensees information rel-
 25 ative to surplus lines coverages; and

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

28 (2) The Surplus Line Association of Oregon shall file with the director:

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

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

31 (c) A current list of members;

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

34 (e) An agreement that the director may examine the Surplus Line Association of Oregon in ac-
 35 cordance with the provisions of this section; and

36 (f) A schedule of fees and charges.

37 (3) The director may make or cause to be made an examination of the Surplus Line Association
 38 of Oregon. The reasonable cost of any such examination shall be paid by the association upon
 39 presentation to it by the director of a detailed account of each cost. The officers, managers, agents
 40 and employees of the association may be examined at any time, under oath, and shall exhibit all
 41 books, records, accounts, documents or agreements governing its method of operation. The director
 42 shall furnish two copies of the examination report to the association and shall notify the association
 43 that it may, within 20 days thereof, request a hearing on the report or on any facts or recommen-
 44 dations therein. If the director finds the association or any member thereof to be in violation of ORS
 45 735.400 to 735.495, the director may issue an order requiring the discontinuance of such violation.

1 (4) The Surplus Line Association of Oregon may charge resident and nonresident surplus lines
2 licensees and nonresident producing insurance producers a fee for reviewing surplus lines policies
3 and for collecting, on behalf of the state, taxes imposed under ORS 735.470. **The association may**
4 **also charge insureds a fee for collecting, on behalf of the state, reports required and taxes**
5 **imposed under section 4 of this 2011 Act.** The association shall adopt bylaws implementing this
6 subsection.

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