

HB 2679-2  
(LC 445)  
4/15/11 (GHH/ps)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2679**

1 On page 1 of the printed bill, line 2, after "ORS" delete the rest of the  
2 line and insert "731.144, 735.405, 735.410, 735.415, 735.425, 735.430, 735.435,  
3 735.450, 735.455, 735.460, 735.465, 735.470, 735.485 and 735.490;"

4 Delete lines 8 to 28 and delete pages 2 through 6 and insert:

5 **"SECTION 3.** Sections 4, 5 and 7 of this 2011 Act are added to and  
6 made a part of ORS 735.400 to 735.495.

7 **"SECTION 4.** For purposes of carrying out the Nonadmitted and  
8 Reinsurance Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B), the  
9 Director of the Department of Consumer and Business Services is au-  
10 thorized to enter into a compact or to otherwise establish procedures  
11 with other states to allocate among the states the premium taxes paid  
12 to an insured's home state.

13 **"SECTION 5.** (1) Each insured in this state who obtains independ-  
14 ently procured insurance, or continues or renews independently pro-  
15 cured insurance on Oregon home state risks, other than insurance  
16 procured through a surplus lines licensee, shall file, within 30 days  
17 after the date the insurance was procured, continued or renewed, a  
18 written report with the Director of the Department of Consumer and  
19 Business Services showing:

20 **"(a)** The name and address of the insurer;

21 **"(b)** The subject of the insurance;

22 **"(c)** The amount of premium currently charged; and

1       “(d) Additional pertinent information reasonably requested by the  
2 director.

3       “(2) The insured filing a report under subsection (1) of this section  
4 shall pay, at the time of filing the report, the director an amount  
5 equal to the taxes imposed under ORS 735.470 for the premium re-  
6 ported under subsection (1)(c) of this section. The filing of the report  
7 and payment of the taxes may be made by a person authorized by the  
8 insured to act on the insured’s behalf.

9       “(3)(a) The director may require that reports filed under subsection  
10 (1) of this section be filed with the Surplus Line Association of Oregon.  
11 The director may require that such filings be made electronically, but  
12 may allow an exemption to this requirement for good cause shown.

13       “(b) The director may require that amounts to be paid to the di-  
14 rector under subsection (2) of this section be paid to the Surplus Line  
15 Association of Oregon.

16       “**SECTION 6.** ORS 735.405 is amended to read:

17       “735.405. As used in ORS 735.400 to 735.495:

18       “(1) ‘Admitted insurer’ means an insurer authorized to do an insurance  
19 business in this state.

20       “(2) ‘Affiliated group’ means any group of entities that, with respect  
21 to an insured, exercise control over the insured, are under the control  
22 of the insured, or are under common control with the insured.

23       “[(2)] (3) ‘Capital’ means funds paid in for stock or other evidence of  
24 ownership.

25       “(4) ‘Control’ means a situation where a controlling entity:

26       “(a) Directly, or acting through one or more other persons, owns  
27 or has the power to vote 25 percent or more of any class of voting se-  
28 curities of the controlled entity; or

29       “(b) Directs in any manner the election of a majority of directors  
30 or trustees of the controlled entity.

1       **“[(3)] (5) ‘Eligible surplus lines insurer’ means a nonadmitted insurer with**  
2 **which a surplus lines licensee may place surplus lines insurance.**

3       **“(6) ‘Exempt commercial purchaser’ means any person purchasing**  
4 **commercial insurance that, at the time of placement:**

5       **“(a) Employs or retains a qualified risk manager to negotiate in-**  
6 **surance coverage;**

7       **“(b) Has paid aggregate nationwide commercial property and casu-**  
8 **alty insurance premiums in excess of \$100,000 in the immediately pre-**  
9 **ceding 12 months; and**

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

11       **“(A) The person possesses a net worth in excess of \$10 million, as**  
12 **such amount is adjusted pursuant to section 7 of this 2011 Act.**

13       **“(B) The person generates annual revenues in excess of \$20 million,**  
14 **as such amount is adjusted pursuant to section 7 of this 2011 Act.**

15       **“(C) The person employs more than 50 full-time or full-time equiv-**  
16 **alent employees for each insured or is a member of an affiliated group**  
17 **employing more than 100 employees in the aggregate.**

18       **“(D) The person is a not-for-profit organization or public entity**  
19 **generating annual budgeted expenses of at least \$30 million, as such**  
20 **amount is adjusted pursuant to section 7 of this 2011 Act.**

21       **“(E) The person is a municipality with a population in excess of**  
22 **50,000 individuals.**

23       **“[(4)] (7) ‘Export’ means to place surplus lines insurance with a nonad-**  
24 **mitted insurer.**

25       **“(8) ‘Home state’ means, with respect to an insured:**

26       **“(a) The state in which an insured maintains the insured’s principal**  
27 **place of business or, in the case of an individual, the individual’s**  
28 **principal residence;**

29       **“(b) If 100 percent of the insured risk is located out of the state**  
30 **described in paragraph (a) of this subsection, the state to which the**

1 greatest percentage of the insured's taxable premium for that insur-  
2 ance contract is allocated; or

3       “(c) If two or more insureds from an affiliated group are named as  
4 insureds on a single nonadmitted insurance contract, the state, as  
5 determined pursuant to paragraph (a) or (b) of this subsection, of the  
6 member of the affiliated group that has the greatest percentage of  
7 premium attributed to it under the insurance contract.

8       “[(5)] (9) ‘Kind of insurance’ means one of the types of insurance required  
9 to be reported in the annual statement [which] that must be filed with the  
10 Director of the Department of Consumer and Business Services by authorized  
11 insurers.

12       “[(6)] (10) ‘Nonadmitted insurer’ means an insurer not authorized to do  
13 an insurance business in this state. [This definition shall include] ‘Nonad-  
14 mitted insurer’ includes insurance exchanges as authorized under the laws  
15 of various states. ‘Nonadmitted insurer’ does not include a risk re-  
16 tention group as defined in ORS 735.305.

17       “(11) ‘Premium tax’ means any tax, assessment or other charge  
18 imposed by this state directly or indirectly based upon any payment  
19 made as consideration for insurance in an insurance contract.

20       “[(7)] (12) ‘Producing insurance producer’ means the individual insurance  
21 producer dealing directly with the party seeking insurance.

22       “(13) ‘Qualified risk manager’ means, with respect to a policyholder  
23 of commercial insurance, a person who meets all of the following re-  
24 quirements:

25       “(a) The person is an employee of, or third party consultant re-  
26 tained by, the commercial policyholder.

27       “(b) The person provides skilled services in:

28       “(A) Loss prevention;

29       “(B) Loss reduction; or

30       “(C) Risk and insurance coverage analysis and purchase of insur-

1   **ance.**

2       **“(c) The person has:**

3       **“(A) A bachelor’s degree, from an accredited college or university,**  
4 **in risk management, business administration, finance, economics or**  
5 **any other field determined by an insurance commissioner or other**  
6 **regulatory official of this or any other state to demonstrate minimum**  
7 **competence in risk management, and has:**

8       **“(i) Three years of experience in risk financing, claims adminis-**  
9 **tration, loss prevention, risk and insurance coverage analysis, or pur-**  
10 **chasing commercial lines of insurance; or**

11       **“(ii) Any designation, certification or license issued by a national**  
12 **insurance certification organization that is determined by the Director**  
13 **of the Department of Consumer and Business Services to demonstrate**  
14 **minimum competency in risk management;**

15       **“(B) At least seven years of experience in risk financing, claims**  
16 **administration, loss prevention, risk and insurance coverage analysis,**  
17 **or purchasing commercial lines of insurance, and has a designation,**  
18 **certification or license specified in sub-subparagraph (c)(A)(ii) of this**  
19 **subsection;**

20       **“(C) At least 10 years of experience in risk financing, claims ad-**  
21 **ministration, loss prevention, risk and insurance coverage analysis or**  
22 **purchasing commercial lines of insurance; or**

23       **“(D) A graduate degree, from an accredited college or university,**  
24 **in risk management, business administration, finance, economics or**  
25 **any other field determined by the director to demonstrate minimum**  
26 **competence in risk management.**

27       **“[(8)] (14) ‘Surplus’ means funds over and above liabilities and capital of**  
28 **the insurer for the protection of policyholders.**

29       **“[(9)] (15) ‘Surplus lines licensee’ means an insurance producer licensed**  
30 **under ORS chapter 744 to place insurance on *[risks resident, located or to be***

1 performed in this state with nonadmitted insurers eligible to accept such in-  
2 surance] Oregon home state risks with nonadmitted insurers.

3 **“SECTION 7. Beginning on January 1, 2015, and each fifth January**  
4 **1 occurring thereafter, the amounts in ORS 735.405 (6)(c)(A), (B) and**  
5 **(D) shall be adjusted to reflect the percentage change for such five-**  
6 **year period in the Portland-Salem, OR-WA, Consumer Price Index for**  
7 **All Urban Consumers for All Items as published by the Bureau of La-**  
8 **bor Statistics of the United States Department of Labor.**

9 **“SECTION 8. ORS 735.470 is amended to read:**

10 **“735.470. (1)(a) The surplus lines licensee shall pay the Director of the**  
11 **Department of Consumer and Business Services [an amount equal to the tax**  
12 **that would have been imposed under ORS 731.816 (1993 Edition) if that section**  
13 **were in effect and operative, and the tax that is imposed by ORS 731.820, on**  
14 **authorized insurers for the premiums shown in the report required by ORS**  
15 **735.465.] a surplus lines premium tax equal to two percent of the gross**  
16 **amount of premiums received on Oregon home state risks as shown**  
17 **in the report required by ORS 735.465.**

18 **“(b) Notwithstanding ORS 731.820, the surplus lines licensee shall**  
19 **also pay to the director a tax equal to 0.3 percent of the premium or**  
20 **fees charged by the insurer or the insurer’s insurance producer and**  
21 **other intermediaries for the insurance, for the purpose of maintaining**  
22 **the office of the State Fire Marshal and paying the expenses incident**  
23 **thereto.**

24 **“(c) The [tax] taxes shall be collected by the surplus lines licensee as**  
25 **specified by the director, in addition to the [full amount of the gross**  
26 **premium] gross amount of premiums charged by the insurer or the**  
27 **insurer’s insurance producer and other intermediaries for the insurance.**  
28 **The [tax] taxes on any portion of the premium unearned at termination of**  
29 **insurance having been credited by the state to the licensee shall be returned**  
30 **to the policyholder directly by the surplus lines licensee or through the**

1 producing insurance producer, if any. The surplus lines licensee is prohibited  
2 from absorbing [*such tax*] **the taxes**, and from rebating for any reason, any  
3 part of [*such tax*] **the taxes**.

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

9 “(3) Notwithstanding subsection (2) of this section, if a surplus lines li-  
10 cense is terminated or nonrenewed for any reason, the taxes described in this  
11 section are due on the 30th day after the termination or nonrenewal.

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

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

18 “(4) For the purposes of carrying out the Nonadmitted and Rein-  
19 surance Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B), the di-  
20 rector may collect taxes on 100 percent of the gross amount of  
21 premiums on Oregon home state risks. If the director enters into a  
22 compact or otherwise establishes procedures with other states pursu-  
23 ant to section 4 of this 2011 Act, the director by rule shall establish  
24 procedures to facilitate the reporting, collection, payment, allocation  
25 and disbursement of premium taxes on Oregon home state risks that  
26 also include risks allocable to other states.

27 “(5) As used in this section, ‘gross amount of premiums’ has the  
28 meaning given that term in ORS 731.808.

29 “**SECTION 9.** ORS 735.410 is amended to read:

30 “735.410. (1) Insurance may be procured through a surplus lines licensee

1 from a nonadmitted insurer if:

2 “(a) The insurer is an eligible surplus lines insurer;

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

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

8 “[*(2) Subsection (1) of this section does not apply to a placement of surplus  
9 lines insurance outside this state by a nonresident surplus lines licensee or by  
10 a nonresident surplus lines insurance producer who is not licensed to transact  
11 surplus lines insurance in this state when the insurance covers a risk with  
12 exposures both in this state and outside this state, if both of the following  
13 conditions are met:*]

14 “[*(a) If the nonresident surplus lines licensee or insurance producer is li-  
15 censed in the state as an insurance producer to transact surplus lines policies  
16 in the state in which the insurance is placed and is in good standing in that  
17 state; and]*

18 “[*(b) If the surplus lines policy complies with all of the requirements for  
19 placement of nonadmitted insurance in the state in which the insurance is  
20 placed.*]

21 **“(2) Subsection (1)(b) of this section does not apply to a surplus  
22 lines licensee seeking to procure or place nonadmitted insurance in  
23 this state for an exempt commercial purchaser if:**

24 **“(a) The surplus lines licensee procuring or placing the surplus lines  
25 insurance has disclosed to the exempt commercial purchaser that such  
26 insurance may or may not be available from the admitted market that  
27 may provide greater protection with more regulatory oversight; and**

28 **“(b) The exempt commercial purchaser has subsequently requested  
29 in writing that the surplus lines licensee procure or place such insur-  
30 ance from a nonadmitted insurer.**



1       “(3) The Director of the Department of Consumer and Business Services  
2 by rule may establish requirements applicable to the placement of surplus  
3 lines insurance [*outside this state*] **on Oregon home state risks** by a non-  
4 resident surplus lines licensee. [*or by a nonresident surplus lines insurance*  
5 *producer who is not licensed in this state, when the insurance covers a risk*  
6 *with exposures both in this state and outside this state. The rules may include*  
7 *such matters as the procurement of surplus lines insurance, eligibility of the*  
8 *insurer, the conditions under which surplus lines insurance may be obtained,*  
9 *the necessary evidence of insurance, filing requirements and other matters*  
10 *necessary for regulation of surplus lines insurance transactions that affect risk*  
11 *exposures in this state.] The rules may not interfere with or hinder imple-*  
12 *mentation of the federal Gramm-Leach-Bliley Act (P.L. 106-102) with respect*  
13 *to licensing reciprocity among the states, or the Nonadmitted and Rein-*  
14 **insurance Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B).**

15       “**SECTION 10.** ORS 735.415 is amended to read:]

16       “735.415. (1) A surplus lines licensee may not place any coverage with a  
17 nonadmitted insurer unless at the time of placement the nonadmitted insurer  
18 has done all of the following:

19       “[(a) *Established satisfactory evidence of good repute and financial integ-*  
20 *riety.*]

21       “(a) **Obtained authorization to write the kind of insurance to be**  
22 **placed by the surplus lines licensee by the insurance supervisory offi-**  
23 **cial in the insurer’s domiciliary jurisdiction.**

24       “(b) Qualified under one of the following subparagraphs:

25       “(A) Has capital and surplus or its equivalent under the laws of its  
26 domiciliary jurisdiction that equals **the greater of** either the minimum  
27 capital and surplus requirements [*under the laws of this state*] **of its**  
28 **domiciliary jurisdiction** or [*\$5*] **\$15 million**, except that the requirements  
29 of this [*paragraph*] **subparagraph** may be satisfied by an insurer possessing  
30 less than [*\$5 million*] **the minimum** capital and surplus upon an affirmative

1 finding of acceptability by the Director of the Department of Consumer and  
2 Business Services. The finding shall be based upon such factors as quality  
3 of management, capital and surplus of any parent company, company under-  
4 writing profit and investment income trends, **market availability** and com-  
5 pany record and reputation within the industry. In no event shall the  
6 director make an affirmative finding of acceptability when the [*surplus*  
7 *lines*] **nonadmitted** insurer's capital and surplus is less than [~~\$3~~] **\$4.5**  
8 million.

9       “(B) [*Except as otherwise provided in subparagraph (C) of this*  
10 *paragraph,*] In the case of an alien insurer, **in addition to the require-**  
11 **ments in subparagraph (A) of this paragraph,** maintains in the United  
12 States an irrevocable trust fund in either a national bank or a member of  
13 the Federal Reserve System, in an amount not less than [~~\$1.5~~] **\$5.4** million  
14 for the protection of all its policyholders in the United States and such trust  
15 fund consists of cash, securities, irrevocable letters of credit, or of invest-  
16 ments of substantially the same character and quality as those which are  
17 eligible investments for the capital and statutory reserves of admitted  
18 insurers authorized to write like kinds of insurance in this state. Such trust  
19 fund, which shall be included in any calculation of capital and surplus or its  
20 equivalent, shall have an expiration date which at no time shall be less than  
21 five years.

22       “(C) In the case of a group of insurers that includes incorporated and  
23 individual unincorporated underwriters **that are not listed in accordance**  
24 **with subparagraph (E) of this paragraph,** maintains a trust fund of not  
25 less than [~~\$50~~] **\$100** million as security to the full amount thereof for all  
26 policyholders and creditors in the United States of each member of the  
27 group, and such trust shall likewise comply with the terms and conditions  
28 established in subparagraph (B) of this paragraph for alien insurers, except  
29 that the incorporated members of the group [*shall*] **may** not be engaged in  
30 any business other than underwriting as a member of the group and shall

1 be subject to the same level of solvency regulation and control by the group's  
2 domiciliary regulators as are the unincorporated members.

3 “(D) In the case of an insurance exchange created by the laws of indi-  
4 vidual states, maintains capital and surplus, or the substantial equivalent  
5 thereof, of not less than [~~\$15~~] **\$75** million in the aggregate. For insurance  
6 exchanges that maintain funds for the protection of all insurance exchange  
7 policyholders, each individual syndicate shall maintain minimum capital and  
8 surplus, or the substantial equivalent thereof, of not less than [~~\$1.5~~] **\$5**  
9 million. In the event the insurance exchange does not maintain funds for the  
10 protection of all insurance exchange policyholders, each individual syndicate  
11 shall meet the minimum capital and surplus requirements of subparagraph  
12 (A) of this paragraph.

13 “(E) Is [*on the most current list of alien insurers approved by*] **listed on**  
14 **the NAIC Quarterly Listing of Alien Insurers maintained by** the Na-  
15 tional Association of Insurance Commissioners and meets additional re-  
16 quirements regarding the use of the list established by rule of the director.

17 “(c) Unless qualified under paragraph (b)(E) of this subsection, provided  
18 to the director no more than six months after the close of the period reported  
19 upon a certified copy of its current annual statement that is:

20 “(A) Filed with and approved by the regulatory authority in the domicile  
21 of the nonadmitted insurer;

22 “(B) Certified by an accounting or auditing firm licensed in the jurisdic-  
23 tion of the insurer's domicile; or

24 “(C) In the case of an insurance exchange, an aggregate combined state-  
25 ment of all underwriting syndicates operating during the period reported.

26 “(2) When a nonresident surplus lines licensee [*or nonresident surplus*  
27 *lines insurance producer who is not licensed to transact surplus lines insur-*  
28 *ance in this state*] places surplus lines insurance outside this state that cov-  
29 ers [*a risk with exposures both in this state and outside this state*] **an Oregon**  
30 **home state risk**, the licensee or insurance producer is [*not*] subject to the

1 requirements of subsection (1) of this section. *[if the nonadmitted insurer*  
2 *with which the coverage is placed:]*

3 “*[(a) Meets the requirements for nonadmitted placement of insurance in the*  
4 *state in which the insurance is placed; or]*

5 “*[(b) Is an authorized or admitted insurer in the state in which the insur-*  
6 *ance is placed.]*

7 “**SECTION 11.** ORS 735.425 is amended to read:

8 “735.425. (1) Within 90 days after the placing of any surplus lines insur-  
9 ance in this state **on an Oregon home state risk**, each surplus lines  
10 licensee shall file with the Director of the Department of Consumer and  
11 Business Services:

12 “(a) A statement signed by the licensee regarding the insurance, which  
13 shall be kept confidential as provided in ORS 705.137, including the follow-  
14 ing:

15 “(A) The name and address of the insured;

16 “(B) The identity of the insurer or insurers;

17 “(C) A description of the subject and location of the risk;

18 “(D) The amount of premium charged for the insurance; and

19 “(E) Such other pertinent information as the director may reasonably re-  
20 quire.

21 “(b) A statement on a standardized form furnished by the director, as to  
22 the diligent efforts by the producing insurance producer to place the cover-  
23 age with admitted insurers and the results thereof. The statement shall be  
24 signed by the producing insurance producer and shall affirm that the insured  
25 was expressly advised prior to placement of the insurance that:

26 “(A) The surplus lines insurer with whom the insurance was to be placed  
27 is not licensed in this state and is not subject to its supervision; and

28 “(B) In the event of the insolvency of the surplus lines insurer, losses will  
29 not be paid by the state insurance guaranty fund.

30 “(2) **A surplus lines licensee placing nonadmitted insurance in this**

1 state for an exempt commercial purchaser satisfies the requirements  
2 of subsection (1)(b) of this section if the surplus lines licensee provides  
3 proof of compliance with ORS 735.410 (2).

4 “[2)] (3) The director may direct that filings required under subsection  
5 (1) of this section be made to the Surplus Line Association of Oregon. The  
6 director may also require that such filings be made electronically but may  
7 exempt a licensee from the requirement for good cause shown.

8 “[3)] (4) A nonresident surplus lines licensee **who places a surplus lines**  
9 **policy on an Oregon home state risk shall satisfy the requirements in**  
10 **ORS 735.410 and the filing requirements in subsections (1) and (2) of**  
11 **this section.** *[or nonresident producing insurance producer not licensed to*  
12 *transact surplus lines insurance in this state who places a surplus lines policy*  
13 *on a risk with exposures located both in this state and outside this state shall*  
14 *satisfy filing requirements established by the director by rule. The director*  
15 *shall ensure that the rules facilitate interstate regulation of surplus lines in-*  
16 *urance transactions.]*

17 “[4)] (5) Facsimile signatures and electronic signatures subject to ORS  
18 84.001 to 84.061 are acceptable and have the same force as original signa-  
19 tures.

20 **“SECTION 12.** ORS 735.430 is amended to read:

21 “735.430. (1) The Surplus Line Association of Oregon shall be the advisory  
22 organization of surplus lines licensees to:

23 “(a) Facilitate and encourage compliance by resident and nonresident  
24 surplus lines licensees with the laws of this state and the rules of the Di-  
25 rector of the Department of Consumer and Business Services relative to  
26 surplus lines insurance;

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

1       “(c) Communicate with organizations of admitted insurers with respect to  
2 the proper use of the surplus lines market;

3       “(d) Receive and disseminate to resident and nonresident surplus lines  
4 licensees information relative to surplus lines coverages; and

5       “(e) **At the request of the director**, receive and collect on behalf of the  
6 state and remit to the state premium receipts [*tax*] **taxes** for surplus lines  
7 insurance **pursuant to ORS 735.470 or section 5 of this 2011 Act.**

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

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

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

12       “(c) A current list of members;

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

16       “(e) An agreement that the director may examine the Surplus Line Asso-  
17 ciation of Oregon in accordance with the provisions of this section; and

18       “(f) A schedule of fees and charges.

19       “(3) The director may make or cause to be made an examination of the  
20 Surplus Line Association of Oregon. The reasonable cost of any such exam-  
21 ination shall be paid by the association upon presentation to it by the di-  
22 rector of a detailed account of each cost. The officers, managers, agents and  
23 employees of the association may be examined at any time, under oath, and  
24 shall exhibit all books, records, accounts, documents or agreements govern-  
25 ing its method of operation. The director shall furnish two copies of the ex-  
26 amination report to the association and shall notify the association that it  
27 may, within 20 days thereof, request a hearing on the report or on any facts  
28 or recommendations therein. If the director finds the association or any  
29 member thereof to be in violation of ORS 735.400 to 735.495, the director may  
30 issue an order requiring the discontinuance of such violation.

1       “(4)(a) The Surplus Line Association of Oregon may charge resident and  
2 nonresident surplus lines licensees and nonresident producing insurance  
3 producers a fee for reviewing surplus lines policies and for collecting, on  
4 behalf of the state, taxes imposed under ORS 735.470.

5       “(b) **The association may charge insureds a fee for collecting, on**  
6 **behalf of the state, reports required and taxes imposed under section**  
7 **5 of this 2011 Act.**

8       “(c) The association shall adopt bylaws implementing **paragraphs (a)**  
9 **and (b) of this subsection.**

10       “**SECTION 13.** ORS 735.435 is amended to read:

11       “735.435. (1) Upon placing surplus lines insurance **on an Oregon home**  
12 **state risk**, the surplus lines licensee shall promptly deliver to the insured  
13 or the producing insurance producer the policy, or if such policy is not then  
14 available, a certificate as described in subsection (4) of this section, cover  
15 note or binder. The certificate, as described in subsection (4) of this section,  
16 cover note or binder shall be executed by the surplus lines licensee and shall  
17 show the description and location of the subject of the insurance, coverages  
18 including any material limitations other than those in standard forms, a  
19 general description of the coverages of the insurance, the premium and rate  
20 charged and taxes to be collected from the insured, and the name and address  
21 of the insured and surplus lines insurer or insurers and proportion of the  
22 entire risk assumed by each, and the name of the surplus lines licensee and  
23 the licensee’s license number.

24       “(2) [No] **A** surplus lines licensee [*shall*] **may not** issue or deliver any  
25 insurance policy or certificate of insurance or represent that insurance will  
26 be or has been written by any eligible surplus lines insurer, unless the  
27 licensee has authority from the insurer to cause the risk to be insured, or  
28 has received information from the insurer in the regular course of business  
29 that such insurance has been granted.

30       “(3) If, after delivery of an insurance policy or certificate of insurance,

1 there is any change in the identity of the insurers, or the proportion of the  
2 risk assumed by any insurer, or any other material change in coverage as  
3 stated in the surplus lines licensee's original insurance policy, or in any  
4 other material as to the insurance coverage, the surplus lines licensee shall  
5 promptly issue and deliver to the insured or the original producing insurance  
6 producer an appropriate substitute for, or indorsement of the original docu-  
7 ment, accurately showing the current status of the coverage and the insurers  
8 responsible thereunder.

9       “(4) As soon as reasonably possible after the placement of any such in-  
10 surance the surplus lines licensee shall deliver a copy of the policy or, if not  
11 available, a certificate of insurance to the insured or producing insurance  
12 producer to replace an insurance policy or certificate of insurance  
13 theretofore issued. Each certificate or policy of insurance shall contain or  
14 have attached thereto a complete record of all policy insuring agreements,  
15 conditions, exclusions, clauses, indorsements or any other material facts that  
16 would regularly be included in the policy.

17       “(5) Any surplus lines licensee who fails to comply with the requirements  
18 of this section shall be subject to the penalties provided **in ORS 731.988**.

19       “(6) Each insurance policy or certificate of insurance negotiated, placed  
20 or procured under the provisions of ORS 735.400 to 735.495 by the surplus  
21 lines licensee shall bear the name of the licensee and the following legend  
22 in bold type: ‘This insurance was procured and developed under the Oregon  
23 surplus lines laws. It is NOT covered by the provisions of ORS 734.510 to  
24 734.710 relating to the Oregon Insurance Guaranty Association. If the insurer  
25 issuing this insurance becomes insolvent, the Oregon Insurance Guaranty  
26 Association has no obligation to pay claims under this insurance.’

27       “(7) The Director of the Department of Consumer and Business Services  
28 by rule may establish requirements relating to insurance policies and certif-  
29 icates of insurance and other applicable requirements governing placement  
30 of insurance by a nonresident surplus lines licensee outside this state that



1 covers [a risk with exposures located both in this state and outside this  
2 state] **an Oregon home state risk.**

3 **“SECTION 14.** ORS 735.450 is amended to read:

4 “735.450. [(1)] A person [shall] **may** not procure any contract of surplus  
5 lines insurance with any nonadmitted insurer **for an Oregon home state**  
6 **risk** unless the person is licensed under ORS chapter 744 to transact surplus  
7 lines insurance. A person may obtain a license to transact surplus lines in-  
8 surance only if the person is licensed as an insurance producer under ORS  
9 chapter 744 to transact property and casualty insurance.

10 “[2) *The prohibition in subsection (1) of this section does not apply to a*  
11 *nonresident surplus lines licensee or to a nonresident surplus lines insurance*  
12 *producer who is not a licensee in this state if:]*

13 “[a) *The insurance contract covers a risk with exposures both in this state*  
14 *and outside this state;]*

15 “[b) *Procurement of the insurance contract described in paragraph (a) of*  
16 *this subsection did not occur in this state; and]*

17 “[c) *The licensee or insurance producer is licensed to transact surplus lines*  
18 *insurance in the state in which the insurance contract described in paragraph*  
19 *(a) of this subsection was procured.]*

20 **“SECTION 15.** ORS 735.455 is amended to read:

21 “735.455. (1) A surplus lines licensee may originate surplus lines insurance  
22 **on an Oregon home state risk** or accept such insurance from any other  
23 insurance producer duly licensed as to the kinds of insurance involved **on**  
24 **an Oregon home state risk**, and the surplus lines licensee may compensate  
25 the insurance producer therefor.

26 “(2) A surplus lines licensee may charge a producing insurance producer  
27 a fee or a combination of a fee and a commission when transacting surplus  
28 lines for the producing insurance producer if the surplus lines licensee has  
29 a written agreement with the producing insurance producer prior to the  
30 binding or issuance of a surplus lines insurance policy. When a surplus lines

1 licensee transacts surplus lines insurance directly for a prospective insured,  
2 the surplus lines licensee may charge the prospective insured a fee or a  
3 combination of a fee and a commission if the surplus lines licensee has a  
4 written agreement with the prospective insured prior to the binding or issu-  
5 ance of a surplus lines insurance policy.

6 “(3) A producing insurance producer may charge a fee to a prospective  
7 insured when the producing insurance producer pays a fee or a combination  
8 of a fee and a commission to a surplus lines licensee under subsection (2)  
9 of this section if the producing insurance producer has a written agreement  
10 with the prospective insured prior to the binding or issuance of the surplus  
11 lines insurance policy. The fee may not exceed the amount of compensation  
12 paid by the producing insurance producer to the surplus lines licensee.

13 “(4) For the purpose of determining the charge under subsection (2) of this  
14 section, the producing insurance producer and the surplus lines licensee may  
15 agree to any allocation of the fee that the producing insurance producer  
16 charges the prospective insured under this section.

17 “(5) The fee or the fee and commission charged by a surplus lines licensee  
18 under subsection (2) of this section must be commensurate with the services  
19 provided by the surplus lines licensee. The Director of the Department of  
20 Consumer and Business Services may establish by rule minimum conditions  
21 for written agreements entered into under this section. An insurer or insur-  
22 ance producer who enters into a written agreement as provided in this sec-  
23 tion is not in violation of ORS 746.035 or 746.045.

24 “**SECTION 16.** ORS 735.460 is amended to read:

25 “735.460. (1) Each surplus lines licensee shall keep a full and true record  
26 of each surplus lines insurance contract placed **on an Oregon home state**  
27 **risk** by or through the licensee [*on each risk resident in this state*] as re-  
28 quired by ORS 744.068, including a copy of the policy, certificate, cover note  
29 or other evidence of insurance showing any of the following items that are  
30 applicable:

- 1       “(a) Amount of the insurance and perils insured;
- 2       “(b) Brief description of the property insured and its location;
- 3       “(c) Gross premium charged;
- 4       “(d) Any return premium paid;
- 5       “(e) Rate of premium charged upon the several items of property;
- 6       “(f) Effective date of the contract and the terms thereof;
- 7       “(g) Name and address of the insured;
- 8       “(h) Name and address of the insurer;
- 9       “(i) Amount of tax and other sums to be collected from the insured; and
- 10       “(j) Identity of the producing insurance producer, any confirming corre-
- 11 spondence from the insurer or its representative and the application.

12       “(2) The record of each contract shall be kept open at all reasonable times  
13 to examination by the Director of the Department of Consumer and Business  
14 Services without notice for a period not less than five years following ter-  
15 mination of the contract.

16       “**SECTION 17.** ORS 735.465 is amended to read:

17       “735.465. (1) On or before the end of each month, each surplus lines  
18 licensee shall file with the Director of the Department of Consumer and  
19 Business Services, as prescribed by the director, a verified report of all sur-  
20 plus lines insurance transacted on [*risks resident in this state*] **Oregon home**  
21 **state risks** during the preceding 90 days. The report need not show trans-  
22 acted surplus lines insurance that was reported in an earlier report. The re-  
23 port shall show:

- 24       “(a) Aggregate gross premiums written;
- 25       “(b) Aggregate return premiums; and
- 26       “(c) Amount of aggregate tax.

27       “(2) The director may direct that reports required under subsection (1) of  
28 this section be made to the Surplus Line Association of Oregon and that the  
29 Surplus Line Association of Oregon file a combined report thereof with the  
30 director. The director may also require that reports required under sub-

1 section (1) of this section be made electronically but may exempt a licensee  
2 from the requirement for good cause shown.

3 “(3) For the purpose of collecting taxes on insurance covering [*the*]  
4 Oregon **home state** [*portion of*] risks when the insurance is placed outside  
5 this state [*and covers a risk with exposures located both in this state and*  
6 *outside this state*], the director may establish by rule requirements for filing  
7 reports on surplus lines insurance transacted outside this state on **Oregon**  
8 **home state** risks [*with exposures located both in this state and outside this*  
9 *state*].

10 **“SECTION 18.** ORS 735.485 is amended to read:

11 “735.485. (1) A surplus lines insurer may be sued upon any cause of action  
12 arising in this state under any surplus lines insurance contract **on an**  
13 **Oregon home state risk** made by it or evidence of insurance issued or de-  
14 livered by the surplus lines licensee pursuant to the procedure provided in  
15 ORS 735.490. Any surplus lines policy issued by the surplus lines licensee  
16 shall contain a provision stating the substance of this section and designat-  
17 ing the person to whom process shall be delivered.

18 “(2) Each surplus lines insurer assuming surplus lines insurance shall be  
19 considered thereby to have subjected itself to ORS 735.400 to 735.495.

20 “(3) The remedies provided in this section are in addition to any other  
21 methods provided by law for service of process upon insurers.

22 “[*(4) A surplus lines insurance contract covering risks with exposures both*  
23 *in this state and outside this state that is placed outside this state by a non-*  
24 *resident surplus lines licensee, and the surplus lines insurer of the contract,*  
25 *are not subject to the provisions of subsection (2) of this section or ORS*  
26 *735.490.*]

27 “[*(a) If the nonresident surplus lines licensee is currently licensed as an*  
28 *insurance producer authorized to transact surplus lines insurance contracts in*  
29 *the state in which the surplus lines insurance contract is placed and is in good*  
30 *standing in that state; and*]

1       “(b) *If the surplus lines insurance contract complies with all of the re-*  
2 *quirements for placement of nonadmitted insurance in the state in which the*  
3 *surplus lines insurance contract is placed.*]

4       “[(5)] (4) When a nonresident surplus lines insurance producer [*who is*  
5 *not a surplus lines licensee in this state*] transacts outside this state a surplus  
6 lines insurance contract covering [*risks with exposures both in this state and*  
7 *outside this state*] **an Oregon home state risk**, the producer and the surplus  
8 lines insurer of the contract are subject to this section and to ORS 735.490  
9 or to rules adopted by the director in lieu thereof. [*unless:*]

10       “[(a) *The producer is currently licensed to transact surplus lines policies*  
11 *in the state in which the surplus lines insurance contract is placed and is in*  
12 *good standing in that state; and*]

13       “[(b) *The surplus lines insurance contract complies with all of the require-*  
14 *ments for placement of nonadmitted insurance in the state in which the surplus*  
15 *lines insurance contract is placed.*]

16       “**SECTION 19.** ORS 735.490 is amended to read:

17       “735.490. (1) An insurer transacting insurance **on an Oregon home state**  
18 **risk** under the provisions of ORS 735.400 to 735.495 may be sued upon any  
19 cause of action, arising under any policy of insurance so issued and delivered  
20 by it, in the courts for the county where the insurance producer who regis-  
21 tered or delivered the policy resides or transacts business, by the service of  
22 summons and complaint made upon the insurance producer for the insurer.

23       “(2) Any insurance producer served with summons and complaint in any  
24 such cause shall forthwith mail the summons and complaint, or a true and  
25 complete copy thereof, by registered or certified mail with proper postage  
26 affixed and properly addressed, to the insurer being sued.

27       “(3) The insurer shall have 40 days from the date of the service of the  
28 summons and complaint upon the insurance producer in which to plead, an-  
29 swer or defend any such cause.

30       “(4) Upon service of summons and complaint upon the insurance producer

1 for the insurer, the court in which the action is begun shall be deemed to  
2 have duly acquired personal jurisdiction of the defendant insurer so served.

3 “(5) An insurer and policyholder may agree to waive the provisions of  
4 subsections (1) to (4) of this section governing service and venue with respect  
5 to a surplus lines insurance contract for commercial property and casualty  
6 risk if the waiver is specifically referred to in the contract or in an  
7 indorsement attached to the contract.

8 **“SECTION 20.** ORS 731.144 is amended to read:

9 “731.144. ‘Surplus lines insurance’ means any insurance **on an Oregon**  
10 **home state risk** [*in this state of risks resident, located or to be performed in*  
11 *this state*], permitted to be placed through a surplus lines licensee with a  
12 nonadmitted insurer eligible to accept such insurance, other than reinsur-  
13 ance, wet marine and transportation insurance, independently procured in-  
14 surance, [*and*] life **insurance** and health insurance and annuities. **For**  
15 **purposes of this section, ‘home state’ has the meaning given that term**  
16 **in ORS 735.405.”**

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