

D R A F T

SUMMARY

Specifies that certain taxes related to transacting wet marine and transportation insurance in this state apply to authorized insurers.

Specifies that rate of taxation that applies to surplus lines insurers that transact wet marine and transportation insurance is premium tax that is equal to three-fourths of one percent of gross premiums surplus lines insurer receives on insurance placed with unauthorized or nonadmitted insurers, if the insured's home state is Oregon.

A BILL FOR AN ACT

1
2 Relating to taxation for insurers that transact wet marine and transportation
3 insurance; creating new provisions; and amending ORS 731.824, 731.828
4 and 735.470.

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

6 **SECTION 1.** ORS 731.824 is amended to read:

7 731.824. (1) Wet marine and transportation insurance written by **author-**
8 **ized** foreign or alien insurers within this state shall be taxed only on that
9 proportion of the total underwriting profit of [*such*] **the authorized** insurer
10 from [*such*] **wet marine and transportation** insurance written within the
11 United States that the gross premiums of the **authorized** insurer from
12 [*such*] **wet marine and transportation** insurance written within this state
13 bear to the gross premiums of [*such*] **the authorized** insurer from [*such*]
14 **wet marine and transportation** insurance written within the United
15 States.

16 (2) The “underwriting profit,” for purposes of this section, is arrived at
17 by deducting from the net earned premiums on [*such*] **wet marine and**
18 **transportation** insurance policies written within the United States during

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 the calendar year:

2 (a) The losses incurred[,]; and

3 (b) Expenses incurred, including all taxes, state and federal, in connection
4 with [*such*] net earned premiums.

5 (3) The amount of “net earned premiums” on [*such*] **wet marine and**
6 **transportation** insurance policies written during the calendar year is the
7 sum of paragraphs (a) and (b) **of this subsection** less paragraph (c) of this
8 subsection[.]:

9 (a) Gross premiums on [*such*] **wet marine and transportation** insurance
10 policies written during the calendar year, less any and all return premiums,
11 any and all premiums on policies not taken and any and all premiums paid
12 for [*such*] reinsurance.

13 (b) Unearned premiums on [*such*] outstanding marine business at the end
14 of the preceding calendar year.

15 (c) Unearned premiums on [*such*] outstanding marine business at the end
16 of the current calendar year.

17 (4) “Losses incurred,” as used in this section, means gross losses incurred
18 during the calendar year under [*such*] policies written within the United
19 States, less reinsurance claims collected or collectible and salvages or re-
20 coveries collectible from any source applicable to the [*such*] losses.

21 (5) “Expenses incurred” includes:

22 (a) Specific expenses incurred on [*such*] earned wet marine and transpor-
23 tation insurance premiums, consisting of all commissions, agency expenses,
24 taxes, licenses, fees, loss-adjustment expenses, and all other expenses in-
25 curred directly and specifically in connection with [*such*] **the** premiums, less
26 recoveries or reimbursements on account of or in connection with [*such*]
27 commissions or other expenses collected or collectible because of reinsurance
28 or from any other source.

29 (b) General expenses incurred on [*such*] earned premiums, consisting of
30 that proportion of general or overhead expenses, such as salaries of officers
31 and employees, printing and stationery, all taxes of this state and of the

1 United States, except as otherwise provided [*herein*] **in this section**, and all
2 other expenses not chargeable specifically to a particular class of insurance,
3 [*which*] **that** the net premiums of [*such*] insurance written bear to the total
4 net premiums written by [*such*] **an authorized** insurer from all classes of
5 insurance written by [*it*] **the authorized insurer** during the current calen-
6 dar year. However, in arriving at the “underwriting profit” for purposes of
7 taxation under this section there [*shall*] **may** not be deducted in respect to
8 expenses incurred, as defined and specified in [*paragraphs (a) and (b) of*] this
9 subsection, amounts [*which*] **that**, in the aggregate, exceed 40 percent of the
10 gross premiums on [*such*] **the** insurance policies.

11 **SECTION 2.** ORS 731.828 is amended to read:

12 731.828. (1) Each **authorized** insurer transacting wet marine and trans-
13 portation insurance in this state shall file annually on or before June 15
14 with the Director of the Department of Consumer and Business Services and
15 in the form prescribed by the director, a report of all the items pertaining
16 to [*its*] **the authorized insurer’s** insurance business as enumerated and
17 prescribed in ORS 731.824.

18 (2) Each **authorized** insurer that has [*been writing such*] **written wet**
19 **marine and transportation** insurance in this state for three years shall
20 furnish **to** the director a statement of all of the items referred to in sub-
21 section (1) of this section, in the form prescribed by the director, for each
22 of the preceding three calendar years. An **authorized** insurer that has not
23 [*been writing such*] **written wet marine and transportation** insurance for
24 three years shall furnish to the director a statement of all [*such*] items for
25 each of the calendar years during which [*it*] **the authorized insurer** has
26 written [*such*] **wet marine and transportation** insurance.

27 (3) On or before June 15 of each year, if the **authorized** insurer has
28 transacted [*such*] **wet marine and transportation** insurance for three years,
29 the **authorized** insurer shall:

30 (a) Ascertain the average annual underwriting profit, as provided in ORS
31 731.824, derived by the **authorized** insurer from [*such*] **wet marine and**

1 **transportation** insurance business written within the United States during
2 the last preceding three calendar years.

3 (b) Ascertain the proportion [*which*] **that** the average annual premiums
4 of the **authorized** insurer from [*such*] **wet marine and transportation** in-
5 surance written by [*it*] **the authorized insurer** in this state during the last
6 preceding three calendar years bears to the average total of [*such*] wet ma-
7 rine and transportation insurance premiums of the **authorized** insurer dur-
8 ing the same three years.

9 (c) Pay five percent on this proportion of the average annual underwriting
10 profit of the **authorized** insurer from [*such*] **wet marine and transporta-**
11 **tion** insurance to the director as a tax upon [*such insurance written by it*]
12 **the insurance written by the authorized insurer** in this state during the
13 current calendar year.

14 (4) The **authorized** insurer each year shall compute the tax, according
15 to the method described in this section, upon the **authorized insurer's** av-
16 erage annual underwriting profit [*of such insurer from such*] **from wet ma-**
17 **rine and transportation** insurance during the preceding three years,
18 including the current calendar year. At the expiration of each current cal-
19 endar year, the profit or loss on [*such*] **wet marine and transportation**
20 insurance business of that year is to be added or deducted, and the profit or
21 loss upon [*such*] **the** insurance business of the first calendar year of the
22 preceding three-year period is to be dropped so that the computation of
23 underwriting profit for purposes of taxation under this section will always
24 be on a three-year average.

25 (5) An **authorized** insurer that has not [*been writing*] **written** wet marine
26 and transportation insurance in this state for three years shall, until [*it*] **the**
27 **authorized insurer** has transacted [*such business*] **wet marine and trans-**
28 **portation insurance** in this state for [*that number of*] **three** years, be taxed
29 on the basis of [*its*] **the authorized insurer's** annual underwriting profit
30 on [*such*] **wet marine and transportation** insurance written within the
31 United States for the current calendar year, subject, however, to an adjust-

1 ment in the tax as soon as the **authorized** insurer, in accordance with the
2 provisions of this section, is enabled to compute the tax on the three-year
3 basis.

4 (6) In the case of **authorized** mutual insurers, the **authorized** insurer
5 *[shall]* **may** not include in the underwriting profit, when computing the tax
6 prescribed by this section, the amounts refunded by *[such]* **the mutual**
7 insurers on account of premiums previously paid by *[their]* **the** policyholders
8 **of the mutual insurers.**

9 (7) If the director, during the period in which the director under ORS
10 731.836 may collect taxes owing under this section, finds the amount of
11 *[such]* taxes paid by an **authorized** insurer to have been incorrect, the di-
12 rector shall charge or credit the **authorized** insurer with the difference be-
13 tween the correct amount of tax and the amount actually paid.

14 (8) If an **authorized** insurer ceases to transact wet marine and transpor-
15 tation insurance in *[the]* **this** state, *[it]* **the authorized insurer** shall
16 *[thereupon make]* report to the director *[of]* the items **the authorized**
17 **insurer has not previously reported** pertaining to *[such]* **the** insurance
18 business, as enumerated and described in this section, to the date *[of its*
19 *ceasing to]* **on which the authorized insurer ceased to** transact *[such]* **wet**
20 **marine and transportation** insurance *[and not theretofore reported]*, and
21 **shall** forthwith pay to the director the taxes computed according to this
22 section and the annual authorization fees thereon.

23 **SECTION 3.** ORS 735.470 is amended to read:

24 735.470. (1)(a) *[The]* **A** surplus lines licensee shall pay the Director of the
25 Department of Consumer and Business Services a surplus lines premium tax
26 equal to two percent of the gross amount of premiums received on Oregon
27 home state risks as shown in the report required by ORS 735.465, **other than**
28 **for wet marine and transportation insurance premiums. For wet ma-**
29 **rine and transportation insurance, the licensee shall pay the director**
30 **a premium tax that is equal to three-fourths of one percent of gross**
31 **premiums the licensee receives on insurance placed with unauthorized**

1 **or nonadmitted insurers if the insured's home state is Oregon.**

2 (b) Notwithstanding ORS 731.820, the surplus lines licensee shall also pay
3 to the director a tax equal to 0.3 percent of the premium or fees charged by
4 the insurer or the insurer's insurance producer and other intermediaries for
5 the insurance, for the purpose of maintaining the office of the State Fire
6 Marshal and paying the expenses incident thereto.

7 (c) The taxes [*shall*] **must** be collected by the surplus lines licensee as
8 specified by the director, in addition to the gross amount of premiums
9 charged by the insurer or the insurer's insurance producer and other inter-
10 mediaries for the insurance. The taxes on any portion of the premium un-
11 earned at termination of insurance having been credited by the state to the
12 licensee [*shall*] **must** be returned to the policyholder directly by the surplus
13 lines licensee or through the producing insurance producer, if any. The sur-
14 plus lines licensee is prohibited from absorbing the taxes, and from rebating
15 for any reason, any part of the taxes.

16 (2) The surplus lines taxes are due quarterly on the 45th day following
17 the calendar quarter in which the premium is collected. The taxes [*shall*]
18 **must** be paid to and reported on forms prescribed by the director or upon
19 the director's order paid to and reported on forms prescribed by the Surplus
20 Line Association of Oregon.

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

24 (4) For the purposes of carrying out the Nonadmitted and Reinsurance
25 Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B), the director may col-
26 lect taxes on 100 percent of the gross amount of premiums on Oregon home
27 state risks. If the director enters into a compact or otherwise establishes
28 procedures with other states pursuant to ORS 735.418, the director by rule
29 shall establish procedures to facilitate the reporting, collection, payment,
30 allocation and disbursement of premium taxes on Oregon home state risks
31 that also include risks allocable to other states.

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

3 **SECTION 4. The amendments to ORS 731.824, 731.828 and 735.470 by**
4 **sections 1 to 3 of this 2019 Act apply to contracts for insurance that**
5 **an insurer issues or renews on or after the effective date of this 2019**
6 **Act.**

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