

A-Engrossed
House Bill 2787

Ordered by the House April 2
Including House Amendments dated April 2

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Lloyd's America, Inc.)

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.

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]* **insurance producers** 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]* **insurance producer** 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 insurance; creating
3 new provisions; and amending ORS 731.808, 731.824, 731.828 and 735.430.

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

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

6 731.824. (1) Wet marine and transportation insurance written by **authorized** foreign or alien
7 insurers within this state shall be taxed only on that proportion of the total underwriting profit of
8 *[such]* **the authorized** insurer from *[such]* **wet marine and transportation** insurance written within
9 the United States that the gross premiums of the **authorized** insurer from *[such]* **wet marine and**
10 **transportation** insurance written within this state bear to the gross premiums of *[such]* **the au-**
11 **thorized** insurer from *[such]* **wet marine and transportation** insurance written within the United
12 States.

13 (2) The "underwriting profit," for purposes of this section, is arrived at by deducting from the
14 net earned premiums on *[such]* **wet marine and transportation** insurance policies written within
15 the United States during the calendar year:

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

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

19 (3) The amount of "net earned premiums" on *[such]* **wet marine and transportation** insurance
20 policies written during the calendar year is the sum of paragraphs (a) and (b) **of this subsection**
21 less paragraph (c) of this subsection[.]:

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

25 (b) Unearned premiums on *[such]* outstanding marine business at the end of the preceding cal-
26 endar year.

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

3 (4) "Losses incurred," as used in this section, means gross losses incurred during the calendar
4 year under *[such]* policies written within the United States, less reinsurance claims collected or
5 collectible and salvages or recoveries collectible from any source applicable to the *[such]* losses.

6 (5) "Expenses incurred" includes:

7 (a) Specific expenses incurred on *[such]* earned wet marine and transportation insurance premi-
8 ums, consisting of all commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses,
9 and all other expenses incurred directly and specifically in connection with *[such]* **the** premiums,
10 less recoveries or reimbursements on account of or in connection with *[such]* commissions or other
11 expenses collected or collectible because of reinsurance or from any other source.

12 (b) General expenses incurred on *[such]* earned premiums, consisting of that proportion of gen-
13 eral or overhead expenses, such as salaries of officers and employees, printing and stationery, all
14 taxes of this state and of the United States, except as otherwise provided *[herein]* **in this section**,
15 and all other expenses not chargeable specifically to a particular class of insurance, *[which]* **that**
16 the net premiums of *[such]* insurance written bear to the total net premiums written by *[such]* **an**
17 **authorized** insurer from all classes of insurance written by *[it]* **the authorized insurer** during the
18 current calendar year. However, in arriving at the "underwriting profit" for purposes of taxation
19 under this section there *[shall]* **may** not be deducted in respect to expenses incurred, as defined and
20 specified in *[paragraphs (a) and (b) of]* this subsection, amounts *[which]* **that**, in the aggregate, ex-
21 ceed 40 percent of the gross premiums on *[such]* **the** insurance policies.

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

23 731.828. (1) Each **authorized** insurer transacting wet marine and transportation insurance in
24 this state shall file annually on or before June 15 with the Director of the Department of Consumer
25 and Business Services and in the form prescribed by the director, a report of all the items pertaining
26 to *[its]* **the authorized insurer's** insurance business as enumerated and prescribed in ORS 731.824.

27 (2) Each **authorized** insurer that has *[been writing such]* **written wet marine and transpor-**
28 **tation** insurance in this state for three years shall furnish **to** the director a statement of all of the
29 items referred to in subsection (1) of this section, in the form prescribed by the director, for each
30 of the preceding three calendar years. An **authorized** insurer that has not *[been writing such]*
31 **written wet marine and transportation** insurance for three years shall furnish to the director a
32 statement of all *[such]* items for each of the calendar years during which *[it]* **the authorized insurer**
33 has written *[such]* **wet marine and transportation** insurance.

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

36 (a) Ascertain the average annual underwriting profit, as provided in ORS 731.824, derived by the
37 **authorized** insurer from *[such]* **wet marine and transportation** insurance business written within
38 the United States during the last preceding three calendar years.

39 (b) Ascertain the proportion *[which]* **that** the average annual premiums of the **authorized**
40 insurer from *[such]* **wet marine and transportation** insurance written by *[it]* **the authorized**
41 **insurer** in this state during the last preceding three calendar years bears to the average total of
42 *[such]* wet marine and transportation insurance premiums of the **authorized** insurer during the same
43 three years.

44 (c) Pay five percent on this proportion of the average annual underwriting profit of the **au-**
45 **thorized** insurer from *[such]* **wet marine and transportation** insurance to the director as a tax

1 upon *[such insurance written by it]* **the insurance written by the authorized insurer** in this state
 2 during the current calendar year.

3 (4) The **authorized** insurer each year shall compute the tax, according to the method described
 4 in this section, upon the **authorized insurer's** average annual underwriting profit *[of such insurer*
 5 *from such]* **from wet marine and transportation** insurance during the preceding three years, in-
 6 cluding the current calendar year. At the expiration of each current calendar year, the profit or loss
 7 on *[such]* **wet marine and transportation** insurance business of that year is to be added or de-
 8 ducted, and the profit or loss upon *[such]* **the** insurance business of the first calendar year of the
 9 preceding three-year period is to be dropped so that the computation of underwriting profit for
 10 purposes of taxation under this section will always be on a three-year average.

11 (5) An **authorized** insurer that has not *[been writing]* **written** wet marine and transportation
 12 insurance in this state for three years shall, until *[it]* **the authorized insurer** has transacted *[such*
 13 *business]* **wet marine and transportation insurance** in this state for *[that number of]* **three** years,
 14 be taxed on the basis of *[its]* **the authorized insurer's** annual underwriting profit on *[such]* **wet**
 15 **marine and transportation** insurance written within the United States for the current calendar
 16 year, subject, however, to an adjustment in the tax as soon as the **authorized** insurer, in accordance
 17 with the provisions of this section, is enabled to compute the tax on the three-year basis.

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

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

26 (8) If an **authorized** insurer ceases to transact wet marine and transportation insurance in
 27 *[the]* **this** state, *[it]* **the authorized insurer** shall *[thereupon make]* report to the director *[of]* the
 28 items **the authorized insurer has not previously reported** pertaining to *[such]* **the** insurance
 29 business, as enumerated and described in this section, to the date *[of its ceasing to]* **on which the**
 30 **authorized insurer ceased to** transact *[such]* **wet marine and transportation** insurance *[and not*
 31 *theretofore reported]*, and **shall** forthwith pay to the director the taxes computed according to this
 32 section and the annual authorization fees thereon.

33 **SECTION 3.** ORS 735.430 is amended to read:

34 735.430. (1) The Surplus Line Association of Oregon *[shall be]* **is** the advisory organization of
 35 surplus lines licensees to:

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

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

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

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

1 (e) At the request of the director, receive and collect on behalf of the state and remit to the
2 state premium receipts taxes for surplus lines **and wet marine and transportation** insurance
3 *[pursuant to]* **under** ORS 735.417 or 735.470 **or section 6 of this 2019 Act.**

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

5 (a) A copy of *[its]* **the association's** constitution, articles of agreement or association or cer-
6 tificate of incorporation;

7 (b) A copy of *[its]* **the association's** bylaws and rules governing *[its]* **the association's** activ-
8 ities;

9 (c) A current list of members;

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

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

14 (f) A schedule of fees and charges.

15 (3) The director may make or cause to be made an examination of the Surplus Line Association
16 of Oregon. The reasonable cost of any *[such]* examination *[shall]* **must** be paid by the association
17 *[upon presentation to it by the director of]* **at the time the director presents** a detailed account **to**
18 **the association** of each cost. The officers, managers, agents and employees of the association may
19 be examined at any time, under oath, and shall exhibit all books, records, accounts, documents or
20 agreements governing *[its]* **the association's** method of operation. The director shall furnish two
21 copies of the examination report to the association and shall notify the association that *[it]* **the**
22 **association** may, within 20 days *[thereof]* **after receiving the report**, request a hearing on the re-
23 port or on any facts or recommendations *[therein]* **in the report**. If the director finds **that** the as-
24 sociation or any member *[thereof]* **of the association** *[to be in violation of]* **has violated** ORS 735.400
25 to 735.495, the director may issue an order requiring the discontinuance of *[such]* **the** violation.

26 (4)(a) The Surplus Line Association of Oregon may charge resident and nonresident surplus lines
27 licensees and *[nonresident producing]* insurance producers a fee for reviewing surplus lines **and wet**
28 **marine and transportation insurance** policies and for collecting, on behalf of the state, taxes im-
29 posed under ORS 735.470 **and section 6 of this 2019 Act.**

30 (b) The association may charge insureds a fee for collecting, on behalf of the state, reports re-
31 quired and taxes imposed under ORS 735.417.

32 (c) The association shall adopt bylaws implementing paragraphs (a) and (b) of this subsection.

33 **SECTION 4.** ORS 731.808 is amended to read:

34 731.808. As used in ORS 731.804, 731.812 and 731.820 **and section 6 of this 2019 Act**, "gross
35 amount of premiums" means the consideration paid by insureds to an insurer for policies of insur-
36 ance, and includes all premiums, assessments, dues and fees received or derived, or obligations taken
37 therefor, by whatever term known.

38 **SECTION 5.** **Section 6 of this 2019 Act is added to and made a part of ORS 731.808 to**
39 **731.828.**

40 **SECTION 6.** **An insurance producer shall pay to the Director of the Department of Con-**
41 **sumer and Business Services a premium tax that is equal to three-fourths of one percent**
42 **of the gross amount of premiums the insurance producer receives for wet marine and**
43 **transportation insurance that the insurance producer places with unauthorized or nonad-**
44 **mitted insurers if the insured's home state is Oregon.**

45 **SECTION 7.** **Section 6 of this 2019 Act and the amendments to ORS 731.808, 731.824,**

1 **731.828 and 735.430 by sections 1 to 4 of this 2019 Act apply to contracts for insurance that**
2 **an insurer issues or renews on or after the effective date of this 2019 Act.**
3 _____