Enrolled

House Bill 2787

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

CHAPTER ..................................................

AN ACT

Relating to taxation for insurers that transact wet marine and transportation insurance; creating new provisions; and amending ORS 731.808, 731.824, 731.828 and 735.430.

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

SECTION 1, ORS 731.824 is amended to read:

ORS 731.824. (1) Wet marine and transportation insurance written by authorized foreign or alien insurers within this state shall be taxed only on that proportion of the total underwriting profit of [such] the authorized insurer from [such] wet marine and transportation insurance written within the United States that the gross premiums of the authorized insurer from such wet marine and transportation insurance written within this state bear to the gross premiums of such the authorized insurer from such wet marine and transportation insurance written within the United States.

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

(a) The losses incurred, and

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

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

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

(b) Unearned premiums on such outstanding marine business at the end of the preceding calendar year.

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

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

(5) “Expenses incurred” includes:

(a) Specific expenses incurred on such earned wet marine and transportation insurance premiums, consisting of all commissions, agency expenses, taxes, licenses, fees, loss-adjustment expenses, and all other expenses incurred directly and specifically in connection with such the premiums,
ORS 731.828 is amended to read:

and all other expenses not chargeable specifically to a particular class of insurance, [which] that
the net premiums of [such] insurance written bear to the total net premiums written by [such] an
authorized insurer from all classes of insurance written by [it] the authorized insurer during the
current calendar year. However, in arriving at the “underwriting profit” for purposes of taxation
under this section there [shall] may not be deducted in respect to expenses incurred, as defined and
specified in [paragraphs (a) and (b) of] this subsection, amounts [which] that, in the aggregate, ex-
ceed 40 percent of the gross premiums on [such] the insurance policies.

SECTION 2. ORS 731.828 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 735.430 is amended to read:

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

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

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

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

(d) Receive and disseminate to resident and nonresident surplus lines licensees information relative to surplus lines coversages; and

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

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

(a) A copy of [its] the association's constitution, articles of agreement or association or certificate of incorporation;

(b) A copy of [its] the association's bylaws and rules governing [its] the association's activities;

(c) A current list of members;

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

(e) An agreement that the director may examine the Surplus Line Association of Oregon in accordance with the provisions of this section; and

(f) A schedule of fees and charges.

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

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

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

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

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

731.808. As used in ORS 731.804, 731.812 and 731.820 and sections 6 and 8 of this 2019 Act, “gross amount of premiums” means the consideration paid by insureds to an insurer for policies of insurance, and includes all premiums, assessments, dues and fees received or derived, or obligations taken therefor, by whatever term known.

**SECTION 5.** Sections 6 to 8 of this 2019 Act are added to and made a part of ORS 731.808 to 731.828.

**SECTION 6.** An insurance producer shall pay to the Director of the Department of Consumer and Business Services a premium tax that is equal to three-fourths of one percent of the gross amount of premiums the insurance producer receives for wet marine and transportation insurance that the insurance producer places with unauthorized or nonadmitted insurers if the insured’s home state is Oregon.

**SECTION 7.** (1) Each producer of nonadmitted wet marine and transportation insurance shall keep a full and true record of each nonadmitted wet marine and transportation insurance contract placed on an Oregon home state risk. The record must include a copy of the policy, certificate, cover note or other evidence of insurance that the Director of the Department of Consumer and Business Services specifies by rule.

(2) A producer shall keep the record described in subsection (1) of this section open at all reasonable times to the director’s examination, without notice, for a period of not less than five years after termination of the nonadmitted wet marine and transportation insurance contract.

**SECTION 8.** (1) An insurance producer that places wet marine and transportation insurance with a nonadmitted insurer shall collect taxes on the insurance in addition to the gross amount of premiums the insurance producer and other intermediaries charge. If an insurance producer collects taxes under this subsection, the insurance producer shall return directly to the policyholder the taxes that the state credited to the licensee on any portion of the premium that is unearned at the termination of the insurance. The insurance producer may not absorb the taxes or rebate any part of the taxes for any reason.

(2) Each producer of nonadmitted wet marine and transportation insurance shall file with the Director of the Department of Consumer and Business Services, in accordance with the director’s prescription, a verified report of any Oregon home state risk nonadmitted wet marine and transportation insurance the producer transacted during the previous 90 days and shall accompany the report with payment of the tax due on each transaction. The report need not show transacted insurance that the producer filed in an earlier report. The report must show:

(a) Gross amount of premiums or return premium; and

(b) The amount of the tax.

(3) The director may require insurance producers to file the report described in subsection (2) of this section on a form the director specifies or on a form that the Surplus Line Association of Oregon prescribes. If the director specifies that a producer must file the report on a Surplus Line Association of Oregon form, the association shall file the report with
the director. The director may also permit electronic filing and may exempt a licensee from
the requirement to file for good cause shown.

(4) Notwithstanding subsection (2) of this section, if an insurance producer's license is
terminated or not renewed for any reason, the taxes described in this section are due on the
30th day after the termination or nonrenewal.

(5) The director by rule may establish requirements for filing reports on nonadmitted
wet marine and transportation insurance transacted outside this state on Oregon home state
risks for the purpose of collecting taxes on insurance that covers Oregon home state risks
that is placed outside this state.

(6) The director may collect taxes on 100 percent of the gross amount of premiums on
Oregon home state risks for the purposes of carrying out the Nonadmitted and Reinsurance
Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B). If the director enters into a compact
or otherwise establishes procedures with other states under ORS 735.418, the director by rule
shall establish procedures to facilitate reporting, collecting, paying, allocating and disbursing
premium taxes on Oregon home state risks that also include risks that are allocable to other
states.

(7) If an insurance producer does not pay within the prescribed time a tax the producer
must collect under this section, the director may bring an action against the insurance
producer to recover the amount of the unpaid tax.

SECTION 9. Sections 6 to 8 of this 2019 Act and the amendments to ORS 731.808, 731.824,
731.828 and 735.430 by sections 1 to 4 of this 2019 Act apply to contracts for insurance that
an insurer issues or renews on or after the effective date of this 2019 Act.

Passed by House June 3, 2019

Timothy G. Sekerak, Chief Clerk of House

Tina Kotek, Speaker of House

Passed by Senate June 18, 2019

Peter Courtney, President of Senate

Received by Governor:

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Approved:

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Kate Brown, Governor

Filed in Office of Secretary of State:

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Bev Clarno, Secretary of State