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Before the
House Revenue Committee

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HB 2679

Testimony of
Teresa Miller, Administrator
Insurance Division
Department of Consumer and Business Services

For the record, my name is Teresa Miller. I am the Administrator of the Insurance Division of the Department of Consumer and Business Services (DCBS). I am here today to support the -2 amendments to House Bill 2679, which, among other changes, conforms Oregon surplus lines insurance laws to provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act that address the surplus lines market (the Nonadmitted and Reinsurance Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B). These provisions become effective on July 21, 2011, and are intended to simplify the requirements for placing insurance coverage in the surplus lines market, reporting surplus lines transactions, and paying surplus lines fees and premium taxes by providing a consistent federal regulatory scheme.

Generally speaking, surplus lines insurance covers those risk exposures that are not traditionally covered by admitted insurers. States have established regulations to permit the writing of insurance by "non-admitted" insurers under

certain circumstances. This insurance market is commonly known as the surplus lines market. Lloyd's of London is probably one of the most familiar surplus lines insurers. Oregon's current surplus lines insurance laws include, but are not limited to, reporting and tax requirements, and capital and surplus financial requirements.

Dodd-Frank fundamentally changes the way in which a state can regulate a surplus lines transaction with risk exposures in more than one state. Currently, laws that apply to a surplus lines transaction vary significantly from state to state. When a surplus lines producer writes a multi-state policy, the producer must know the surplus lines laws of each of the states where there is an exposure, be licensed in each of those states, file transaction paperwork in each of those states, and allocate the premium and pay the fees and premium taxes due to each of those states. Under Dodd-Frank, only the "home state" of the insured can tax the multi-state policy, but the home state can tax for the liability of all states where there is an exposure. House Bill 2679 and the -2 amendments specify how the "home state" of an insured is determined when there is a multi-state policy.

Dodd-Frank contemplates that each state will adopt nationwide uniform requirements that would facilitate the reporting, payment, collection and allocation of premium taxes among the states. The National Association of Insurance Commissioners (NAIC) has been working with stakeholders for many months to develop a multi-state agreement that states could join. However, there is not consensus among all stakeholders on the form the agreement should take and the NAIC has not completed its work. The -2 amendments authorize the Director of DCBS to enter into a compact or otherwise establish procedures with other states to allocate among the states premium taxes paid to Oregon (as an insured's home state) that also include risk exposures in other states.

Dodd-Frank prohibits any state other than an insured's home state from requiring a surplus lines producer to be licensed in order to write surplus lines

insurance with respect to that insured. In other words, Dodd-Frank makes the home state of the insured the exclusive authority over surplus line transactions. The surplus lines producer must only be licensed in the insured's home state, file transaction paperwork only in the insured's home state, and pay any fees and premium taxes only to the insured's home state. The -2 amendments revise Oregon surplus lines laws to provide that Oregon can only regulate Oregon home state risks and authorize the Director of DCBS to collect taxes on 100 percent of the premiums on Oregon home state risks.

Dodd-Frank also authorizes states to collect premium taxes on independently procured surplus lines insurance policies. These are policies that a consumer purchases directly from a surplus lines insurer rather than through a surplus lines producer. The -2 amendments provide this new authority to Oregon.

Dodd-Frank prohibits states from requiring a surplus lines producer to first determine whether the insurance is available from admitted insurers before writing surplus lines insurance for certain commercial purchasers as long as the commercial purchaser receives proper disclosures and subsequently requests the surplus lines producer to write the insurance. The -2 amendments revise Oregon's current "diligent search" requirements and broaden the federal exemption to include a larger group of commercial purchasers.

The -2 amendments also propose other changes to Oregon's surplus lines laws, including:

- Requiring the surplus lines producer to pay a premium tax of 2.3 percent, with 0.3 percent of the tax used to maintain the office of the State Fire Marshal
- Increasing the capital and surplus requirements of surplus lines insurers

- Allowing the Surplus Line Association of Oregon, at the request of the Director of DCBS, to continue to receive and collect on behalf of the state and remit to the state premium taxes for surplus lines insurance, as well as independently procured insurance

The Insurance Division worked extensively with the Surplus Line Association of Oregon to develop the -2 amendments and believes the amendments allow Oregon to take a significant step towards complying with Dodd-Frank, and also provide Oregon with the flexibility down the road to enter into a compact or otherwise establish premium tax allocation procedures among the states on multi-state surplus lines insurance policies.

I appreciate the opportunity to be here and am happy to answer any questions you might have. Thank you.