

House Bill 2787

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 **as introduced**.

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 insurance; creating
3 new provisions; and amending ORS 731.824, 731.828 and 735.470.

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.

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

29 (4) "Losses incurred," as used in this section, means gross losses incurred during the calendar

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 year under *[such]* policies written within the United States, less reinsurance claims collected or
 2 collectible and salvages or recoveries collectible from any source applicable to the *[such]* losses.

3 (5) "Expenses incurred" includes:

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

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

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

20 731.828. (1) Each **authorized** insurer transacting wet marine and transportation insurance in
 21 this state shall file annually on or before June 15 with the Director of the Department of Consumer
 22 and Business Services and in the form prescribed by the director, a report of all the items pertaining
 23 to *[its]* **the authorized insurer's** insurance business as enumerated and prescribed in ORS 731.824.

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

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

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

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

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

45 (4) The **authorized** insurer each year shall compute the tax, according to the method described

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

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

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

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

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

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

31 735.470. (1)(a) [*The*] **A** surplus lines licensee shall pay the Director of the Department of Con-
 32 sumer and Business Services a surplus lines premium tax equal to two percent of the gross amount
 33 of premiums received on Oregon home state risks as shown in the report required by ORS 735.465,
 34 **other than for wet marine and transportation insurance premiums. For wet marine and**
 35 **transportation insurance, the licensee shall pay the director a premium tax that is equal to**
 36 **three-fourths of one percent of gross premiums the licensee receives on insurance placed**
 37 **with unauthorized or nonadmitted insurers if the insured's home state is Oregon.**

38 (b) Notwithstanding ORS 731.820, the surplus lines licensee shall also pay to the director a tax
 39 equal to 0.3 percent of the premium or fees charged by the insurer or the insurer's insurance pro-
 40 ducer and other intermediaries for the insurance, for the purpose of maintaining the office of the
 41 State Fire Marshal and paying the expenses incident thereto.

42 (c) The taxes [*shall*] **must** be collected by the surplus lines licensee as specified by the director,
 43 in addition to the gross amount of premiums charged by the insurer or the insurer's insurance pro-
 44 ducer and other intermediaries for the insurance. The taxes on any portion of the premium unearned
 45 at termination of insurance having been credited by the state to the licensee [*shall*] **must** be re-

1 turned to the policyholder directly by the surplus lines licensee or through the producing insurance
2 producer, if any. The surplus lines licensee is prohibited from absorbing the taxes, and from rebating
3 for any reason, any part of the taxes.

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

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

11 (4) For the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010 (P.L.
12 111-203, Title V, Subtitle B), the director may collect taxes on 100 percent of the gross amount of
13 premiums on Oregon home state risks. If the director enters into a compact or otherwise establishes
14 procedures with other states pursuant to ORS 735.418, the director by rule shall establish proce-
15 dures to facilitate the reporting, collection, payment, allocation and disbursement of premium taxes
16 on Oregon home state risks that also include risks allocable to other states.

17 (5) As used in this section, "gross amount of premiums" has the meaning given that term in ORS
18 731.808.

19 **SECTION 4. The amendments to ORS 731.824, 731.828 and 735.470 by sections 1 to 3 of this**
20 **2019 Act apply to contracts for insurance that an insurer issues or renews on or after the**
21 **effective date of this 2019 Act.**

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