

CHAPTER 493

AN ACT

HB 2787

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:

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, less recoveries or reimbursements on account of or in con-

nection with *[such]* commissions or other expenses collected or collectible because of reinsurance or from any other source.

(b) General expenses incurred on *[such]* earned premiums, consisting of that proportion of general or overhead expenses, such as salaries of officers and employees, printing and stationery, all taxes of this state and of the United States, except as otherwise provided *[herein]* **in this section**, 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, exceed 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 transportation** 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, including 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 deducted, 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 coverages; 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 report 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.

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