

**Enrolled**  
**House Bill 2679**

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Surplus Line Association of Oregon)

CHAPTER .....

AN ACT

Relating to insurance; creating new provisions; amending ORS 731.144, 735.405, 735.410, 735.415, 735.425, 735.430, 735.435, 735.450, 735.455, 735.460, 735.465, 735.470, 735.485, 735.490, 743.912, 743.917, 750.055 and 750.333; and providing for revenue raising that requires approval by a three-fifths majority.

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

**SECTION 1.** Section 2 of this 2011 Act is added to and made a part of ORS chapter 731.

**SECTION 2.** “Independently procured insurance” means insurance procured directly by an insured from a nonadmitted insurer as defined in ORS 735.405.

**SECTION 3.** Sections 4, 5 and 7 of this 2011 Act are added to and made a part of ORS 735.400 to 735.495.

**SECTION 4.** For purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B), after receiving express legislative approval, the Director of the Department of Consumer and Business Services is authorized to enter into a compact or to otherwise establish procedures with other states to allocate among the states the premium taxes paid to an insured’s home state.

**SECTION 5.** (1) Each insured in this state who obtains independently procured insurance, or continues or renews independently procured insurance on Oregon home state risks, other than insurance procured through a surplus lines licensee, shall file, within 30 days after the date the insurance was procured, continued or renewed, a written report with the Director of the Department of Consumer and Business Services showing:

- (a) The name and address of the insurer;
- (b) The subject of the insurance;
- (c) The amount of premium currently charged; and
- (d) Additional pertinent information reasonably requested by the director.

(2) The insured filing a report under subsection (1) of this section shall pay, at the time of filing the report, the director an amount equal to the taxes imposed under ORS 735.470 for the premium reported under subsection (1)(c) of this section. The filing of the report and payment of the taxes may be made by a person authorized by the insured to act on the insured’s behalf.

(3)(a) The director may require that reports filed under subsection (1) of this section be filed with the Surplus Line Association of Oregon. The director may require that such filings be made electronically, but may allow an exemption to this requirement for good cause shown.

(b) The director may require that amounts to be paid to the director under subsection (2) of this section be paid to the Surplus Line Association of Oregon.

**SECTION 6.** ORS 735.405 is amended to read:

735.405. As used in ORS 735.400 to 735.495:

(1) "Admitted insurer" means an insurer authorized to do an insurance business in this state.

(2) "Affiliated group" means any group of entities that, with respect to an insured, exercise control over the insured, are under the control of the insured, or are under common control with the insured.

[(2)] (3) "Capital" means funds paid in for stock or other evidence of ownership.

(4) "Control" means a situation where a controlling entity:

(a) Directly, or acting through one or more other persons, owns or has the power to vote 25 percent or more of any class of voting securities of the controlled entity; or

(b) Directs in any manner the election of a majority of directors or trustees of the controlled entity.

[(3)] (5) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance.

(6) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement:

(a) Employs or retains a qualified risk manager to negotiate insurance coverage;

(b) Has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and

(c) Meets at least one of the following criteria:

(A) The person possesses a net worth in excess of \$10 million, as such amount is adjusted pursuant to section 7 of this 2011 Act.

(B) The person generates annual revenues in excess of \$20 million, as such amount is adjusted pursuant to section 7 of this 2011 Act.

(C) The person employs more than 50 full-time or full-time equivalent employees for each insured or is a member of an affiliated group employing more than 100 employees in the aggregate.

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenses of at least \$30 million, as such amount is adjusted pursuant to section 7 of this 2011 Act.

(E) The person is a municipality with a population in excess of 50,000 individuals.

[(4)] (7) "Export" means to place surplus lines insurance with a nonadmitted insurer.

(8) "Home state" means, with respect to an insured:

(a) The state in which an insured maintains the insured's principal place of business or, in the case of an individual, the individual's principal residence;

(b) If 100 percent of the insured risk is located out of the state described in paragraph (a) of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or

(c) If two or more insureds from an affiliated group are named as insureds on a single nonadmitted insurance contract, the state, as determined pursuant to paragraph (a) or (b) of this subsection, of the member of the affiliated group that has the greatest percentage of premium attributed to it under the insurance contract.

[(5)] (9) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement [which] that must be filed with the Director of the Department of Consumer and Business Services by authorized insurers.

[(6)] (10) "Nonadmitted insurer" means an insurer not authorized to do an insurance business in this state. [This definition shall include] "Nonadmitted insurer" includes insurance exchanges as authorized under the laws of various states. "Nonadmitted insurer" does not include a risk retention group as defined in ORS 735.305.

(11) **“Premium tax” means any tax, assessment or other charge imposed by this state directly or indirectly based upon any payment made as consideration for insurance in an insurance contract.**

[7] (12) **“Producing insurance producer” means the individual insurance producer dealing directly with the party seeking insurance.**

(13) **“Qualified risk manager” means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:**

(a) **The person is an employee of, or third party consultant retained by, the commercial policyholder.**

(b) **The person provides skilled services in:**

(A) **Loss prevention;**

(B) **Loss reduction; or**

(C) **Risk and insurance coverage analysis and purchase of insurance.**

(c) **The person has:**

(A) **A bachelor’s degree, from an accredited college or university, in risk management, business administration, finance, economics or any other field determined by an insurance commissioner or other regulatory official of this or any other state to demonstrate minimum competence in risk management, and has:**

(i) **Three years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or**

(ii) **Any designation, certification or license issued by a national insurance certification organization that is determined by the Director of the Department of Consumer and Business Services to demonstrate minimum competency in risk management;**

(B) **At least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance, and has a designation, certification or license specified in subparagraph (A)(ii) of this paragraph;**

(C) **At least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchasing commercial lines of insurance; or**

(D) **A graduate degree, from an accredited college or university, in risk management, business administration, finance, economics or any other field determined by the director to demonstrate minimum competence in risk management.**

[8] (14) **“Surplus” means funds over and above liabilities and capital of the insurer for the protection of policyholders.**

[9] (15) **“Surplus lines licensee” means an insurance producer licensed under ORS chapter 744 to place insurance on [risks resident, located or to be performed in this state with nonadmitted insurers eligible to accept such insurance] Oregon home state risks with nonadmitted insurers.**

**SECTION 7. Beginning on January 1, 2015, and each fifth January 1 occurring thereafter, the amounts in ORS 735.405 (6)(c)(A), (B) and (D) shall be adjusted to reflect the percentage change for such five-year period in the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.**

**SECTION 8.** ORS 735.470 is amended to read:

735.470. (1)(a) The surplus lines licensee shall pay the Director of the Department of Consumer and Business Services *[an amount equal to the tax that would have been imposed under ORS 731.816 (1993 Edition) if that section were in effect and operative, and the tax that is imposed by ORS 731.820, on authorized insurers for the premiums shown in the report required by ORS 735.465.] a surplus lines premium tax equal to two percent of the gross amount of premiums received on Oregon home state risks as shown in the report required by ORS 735.465.*

(b) **Notwithstanding ORS 731.820, the surplus lines licensee shall also pay to the director a tax equal to 0.3 percent of the premium or fees charged by the insurer or the insurer’s**

**insurance producer and other intermediaries for the insurance, for the purpose of maintaining the office of the State Fire Marshal and paying the expenses incident thereto.**

(c) The *[tax]* **taxes** shall be collected by the surplus lines licensee as specified by the director, in addition to the *[full amount of the gross premium]* **gross amount of premiums** charged by the insurer **or the insurer's insurance producer and other intermediaries** for the insurance. The *[tax]* **taxes** on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing insurance producer, if any. The surplus lines licensee is prohibited from absorbing *[such tax]* **the taxes**, and from rebating for any reason, any part of *[such tax]* **the taxes**.

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

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

*[(4) In applying ORS 731.816 (1993 Edition) for purposes of this section, the rate shall be two percent rather than two and one-quarter percent.]*

*[(5) The director by rule shall establish procedures for payment of taxes on the Oregon portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state.]*

**(4) For the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B), the director may collect taxes on 100 percent of the gross amount of premiums on Oregon home state risks. If the director enters into a compact or otherwise establishes procedures with other states pursuant to section 4 of this 2011 Act, the director by rule shall establish procedures to facilitate the reporting, collection, payment, allocation and disbursement of premium taxes on Oregon home state risks that also include risks allocable to other states.**

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

**SECTION 9.** ORS 735.410 is amended to read:

735.410. (1) Insurance may be procured through a surplus lines licensee from a nonadmitted insurer if:

(a) The insurer is an eligible surplus lines insurer;

(b) A diligent search has first been made among the insurers who are authorized to transact and are actually writing the particular kind and class of insurance in this state, and it is determined that the full amount or kind of insurance cannot be obtained from those insurers; and

(c) All other requirements of ORS 735.400 to 735.495 are met.

*[(2) Subsection (1) of this section does not apply to a placement of surplus lines insurance outside this state by a nonresident surplus lines licensee or by a nonresident surplus lines insurance producer who is not licensed to transact surplus lines insurance in this state when the insurance covers a risk with exposures both in this state and outside this state, if both of the following conditions are met:]*

*[(a) If the nonresident surplus lines licensee or insurance producer is licensed in the state as an insurance producer to transact surplus lines policies in the state in which the insurance is placed and is in good standing in that state; and]*

*[(b) If the surplus lines policy complies with all of the requirements for placement of nonadmitted insurance in the state in which the insurance is placed.]*

**(2) Subsection (1)(b) of this section does not apply to a surplus lines licensee seeking to procure or place nonadmitted insurance in this state for an exempt commercial purchaser if:**

(a) **The surplus lines licensee procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and**

(b) **The exempt commercial purchaser has subsequently requested in writing that the surplus lines licensee procure or place such insurance from a nonadmitted insurer.**

(3) The Director of the Department of Consumer and Business Services by rule may establish requirements applicable to the placement of surplus lines insurance [*outside this state*] **on Oregon home state risks** by a nonresident surplus lines licensee. [*or by a nonresident surplus lines insurance producer who is not licensed in this state, when the insurance covers a risk with exposures both in this state and outside this state. The rules may include such matters as the procurement of surplus lines insurance, eligibility of the insurer, the conditions under which surplus lines insurance may be obtained, the necessary evidence of insurance, filing requirements and other matters necessary for regulation of surplus lines insurance transactions that affect risk exposures in this state.*] The rules may not interfere with or hinder implementation of the federal Gramm-Leach-Bliley Act (P.L. 106-102) with respect to licensing reciprocity among the states, **or the Nonadmitted and Reinsurance Reform Act of 2010 (P.L. 111-203, Title V, Subtitle B).**

**SECTION 10.** ORS 735.415 is amended to read:]

735.415. (1) A surplus lines licensee may not place any coverage with a nonadmitted insurer unless at the time of placement the nonadmitted insurer has done all of the following:

[*(a) Established satisfactory evidence of good repute and financial integrity.*]

(a) **Obtained authorization to write the kind of insurance to be placed by the surplus lines licensee by the insurance supervisory official in the insurer's domiciliary jurisdiction.**

(b) Qualified under one of the following subparagraphs:

(A) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals **the greater of** either the minimum capital and surplus requirements [*under the laws of this state*] **of its domiciliary jurisdiction** or [*\$5*] **\$15** million, except that the requirements of this [*paragraph*] **subparagraph** may be satisfied by an insurer possessing less than [*\$5 million*] **the minimum** capital and surplus upon an affirmative finding of acceptability by the Director of the Department of Consumer and Business Services. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, **market availability** and company record and reputation within the industry. In no event shall the director make an affirmative finding of acceptability when the [*surplus lines*] **nonadmitted** insurer's capital and surplus is less than [*\$3*] **\$4.5** million.

(B) [*Except as otherwise provided in subparagraph (C) of this paragraph,*] In the case of an alien insurer, **in addition to the requirements in subparagraph (A) of this paragraph**, maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than [*\$1.5*] **\$5.4** million for the protection of all its policyholders in the United States and such trust fund consists of cash, securities, irrevocable letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state. Such trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years.

(C) In the case of a group of insurers that includes incorporated and individual unincorporated underwriters **that are not listed in accordance with subparagraph (E) of this paragraph**, maintains a trust fund of not less than [*\$50*] **\$100** million as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in subparagraph (B) of this paragraph for alien insurers, except that the incorporated members of the group [*shall*] **may** not be engaged in any business other than underwriting as a member of the group and shall be subject to the

same level of solvency regulation and control by the group's domiciliary regulators as are the unincorporated members.

(D) In the case of an insurance exchange created by the laws of individual states, maintains capital and surplus, or the substantial equivalent thereof, of not less than [~~\$15~~] **\$75** million in the aggregate. For insurance exchanges that maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than [~~\$1.5~~] **\$5** million. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subparagraph (A) of this paragraph.

(E) Is [*on the most current list of alien insurers approved by*] **listed on the NAIC Quarterly Listing of Alien Insurers maintained by** the National Association of Insurance Commissioners and meets additional requirements regarding the use of the list established by rule of the director.

(c) Unless qualified under paragraph (b)(E) of this subsection, provided to the director no more than six months after the close of the period reported upon a certified copy of its current annual statement that is:

(A) Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer;

(B) Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or

(C) In the case of an insurance exchange, an aggregate combined statement of all underwriting syndicates operating during the period reported.

(2) When a nonresident surplus lines licensee [*or nonresident surplus lines insurance producer who is not licensed to transact surplus lines insurance in this state*] places surplus lines insurance outside this state that covers [*a risk with exposures both in this state and outside this state*] **an Oregon home state risk**, the licensee or insurance producer is [*not*] subject to the requirements of subsection (1) of this section. [*if the nonadmitted insurer with which the coverage is placed:*]

[*(a) Meets the requirements for nonadmitted placement of insurance in the state in which the insurance is placed; or*]

[*(b) Is an authorized or admitted insurer in the state in which the insurance is placed.*]

**SECTION 11.** ORS 735.425 is amended to read:

735.425. (1) Within 90 days after the placing of any surplus lines insurance in this state **on an Oregon home state risk**, each surplus lines licensee shall file with the Director of the Department of Consumer and Business Services:

(a) A statement signed by the licensee regarding the insurance, which shall be kept confidential as provided in ORS 705.137, including the following:

(A) The name and address of the insured;

(B) The identity of the insurer or insurers;

(C) A description of the subject and location of the risk;

(D) The amount of premium charged for the insurance; and

(E) Such other pertinent information as the director may reasonably require.

(b) A statement on a standardized form furnished by the director, as to the diligent efforts by the producing insurance producer to place the coverage with admitted insurers and the results thereof. The statement shall be signed by the producing insurance producer and shall affirm that the insured was expressly advised prior to placement of the insurance that:

(A) The surplus lines insurer with whom the insurance was to be placed is not licensed in this state and is not subject to its supervision; and

(B) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

**(2) A surplus lines licensee placing nonadmitted insurance in this state for an exempt commercial purchaser satisfies the requirements of subsection (1)(b) of this section if the surplus lines licensee provides proof of compliance with ORS 735.410 (2).**

[2] (3) The director may direct that filings required under subsection (1) of this section be made to the Surplus Line Association of Oregon. The director may also require that such filings be made electronically but may exempt a licensee from the requirement for good cause shown.

[3] (4) A nonresident surplus lines licensee **who places a surplus lines policy on an Oregon home state risk shall satisfy the requirements in ORS 735.410 and the filing requirements in subsections (1) and (2) of this section.** *[or nonresident producing insurance producer not licensed to transact surplus lines insurance in this state who places a surplus lines policy on a risk with exposures located both in this state and outside this state shall satisfy filing requirements established by the director by rule. The director shall ensure that the rules facilitate interstate regulation of surplus lines insurance transactions.]*

[4] (5) Facsimile signatures and electronic signatures subject to ORS 84.001 to 84.061 are acceptable and have the same force as original signatures.

**SECTION 12.** ORS 735.430 is amended to read:

735.430. (1) The Surplus Line Association of Oregon shall be 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 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 *[tax]* **taxes** for surplus lines insurance **pursuant to ORS 735.470 or section 5 of this 2011 Act.**

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

(a) A copy of its constitution, articles of agreement or association or certificate of incorporation;

(b) A copy of its bylaws and rules governing its 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 be paid by the association upon presentation to it by the director of a detailed account 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 method of operation. The director shall furnish two copies of the examination report to the association and shall notify the association that it may, within 20 days thereof, request a hearing on the report or on any facts or recommendations therein. If the director finds the association or any member thereof to be in violation of ORS 735.400 to 735.495, the director may issue an order requiring the discontinuance of such 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 policies and for collecting, on behalf of the state, taxes imposed under ORS 735.470.

(b) **The association may charge insureds a fee for collecting, on behalf of the state, reports required and taxes imposed under section 5 of this 2011 Act.**

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

**SECTION 13.** ORS 735.435 is amended to read:

735.435. (1) Upon placing surplus lines insurance **on an Oregon home state risk**, the surplus lines licensee shall promptly deliver to the insured or the producing insurance producer the policy, or if such policy is not then available, a certificate as described in subsection (4) of this section, cover note or binder. The certificate, as described in subsection (4) of this section, cover note or binder shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including any material limitations other than those in standard forms, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee's license number.

(2) [No] A surplus lines licensee [shall] **may not** issue or deliver any insurance policy or certificate of insurance or represent that insurance will be or has been written by any eligible surplus lines insurer, unless the licensee has authority from the insurer to cause the risk to be insured, or has received information from the insurer in the regular course of business that such insurance has been granted.

(3) If, after delivery of an insurance policy or certificate of insurance, there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the surplus lines licensee's original insurance policy, or in any other material as to the insurance coverage, the surplus lines licensee shall promptly issue and deliver to the insured or the original producing insurance producer an appropriate substitute for, or indorsement of the original document, accurately showing the current status of the coverage and the insurers responsible thereunder.

(4) As soon as reasonably possible after the placement of any such insurance the surplus lines licensee shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured or producing insurance producer to replace an insurance policy or certificate of insurance theretofore issued. Each certificate or policy of insurance shall contain or have attached thereto a complete record of all policy insuring agreements, conditions, exclusions, clauses, indorsements or any other material facts that would regularly be included in the policy.

(5) Any surplus lines licensee who fails to comply with the requirements of this section shall be subject to the penalties provided **in ORS 731.988**.

(6) Each insurance policy or certificate of insurance negotiated, placed or procured under the provisions of ORS 735.400 to 735.495 by the surplus lines licensee shall bear the name of the licensee and the following legend in bold type: "This insurance was procured and developed under the Oregon surplus lines laws. It is NOT covered by the provisions of ORS 734.510 to 734.710 relating to the Oregon Insurance Guaranty Association. If the insurer issuing this insurance becomes insolvent, the Oregon Insurance Guaranty Association has no obligation to pay claims under this insurance."

(7) The Director of the Department of Consumer and Business Services by rule may establish requirements relating to insurance policies and certificates of insurance and other applicable requirements governing placement of insurance by a nonresident surplus lines licensee outside this state that covers *[a risk with exposures located both in this state and outside this state]* **an Oregon home state risk**.

**SECTION 14.** ORS 735.450 is amended to read:

735.450. [(1)] A person [shall] **may not** procure any contract of surplus lines insurance with any nonadmitted insurer **for an Oregon home state risk** unless the person is licensed under ORS chapter 744 to transact surplus lines insurance. A person may obtain a license to transact surplus lines insurance only if the person is licensed as an insurance producer under ORS chapter 744 to transact property and casualty insurance.

[(2)] *The prohibition in subsection (1) of this section does not apply to a nonresident surplus lines licensee or to a nonresident surplus lines insurance producer who is not a licensee in this state if:*

*[(a)] The insurance contract covers a risk with exposures both in this state and outside this state;*

*[(b) Procurement of the insurance contract described in paragraph (a) of this subsection did not occur in this state; and]*

*[(c) The licensee or insurance producer is licensed to transact surplus lines insurance in the state in which the insurance contract described in paragraph (a) of this subsection was procured.]*

**SECTION 15.** ORS 735.455 is amended to read:

735.455. (1) A surplus lines licensee may originate surplus lines insurance **on an Oregon home state risk** or accept such insurance from any other insurance producer duly licensed as to the kinds of insurance involved **on an Oregon home state risk**, and the surplus lines licensee may compensate the insurance producer therefor.

(2) A surplus lines licensee may charge a producing insurance producer a fee or a combination of a fee and a commission when transacting surplus lines for the producing insurance producer if the surplus lines licensee has a written agreement with the producing insurance producer prior to the binding or issuance of a surplus lines insurance policy. When a surplus lines licensee transacts surplus lines insurance directly for a prospective insured, the surplus lines licensee may charge the prospective insured a fee or a combination of a fee and a commission if the surplus lines licensee has a written agreement with the prospective insured prior to the binding or issuance of a surplus lines insurance policy.

(3) A producing insurance producer may charge a fee to a prospective insured when the producing insurance producer pays a fee or a combination of a fee and a commission to a surplus lines licensee under subsection (2) of this section if the producing insurance producer has a written agreement with the prospective insured prior to the binding or issuance of the surplus lines insurance policy. The fee may not exceed the amount of compensation paid by the producing insurance producer to the surplus lines licensee.

(4) For the purpose of determining the charge under subsection (2) of this section, the producing insurance producer and the surplus lines licensee may agree to any allocation of the fee that the producing insurance producer charges the prospective insured under this section.

(5) The fee or the fee and commission charged by a surplus lines licensee under subsection (2) of this section must be commensurate with the services provided by the surplus lines licensee. The Director of the Department of Consumer and Business Services may establish by rule minimum conditions for written agreements entered into under this section. An insurer or insurance producer who enters into a written agreement as provided in this section is not in violation of ORS 746.035 or 746.045.

**SECTION 16.** ORS 735.460 is amended to read:

735.460. (1) Each surplus lines licensee shall keep a full and true record of each surplus lines insurance contract placed **on an Oregon home state risk** by or through the licensee [*on each risk resident in this state*] as required by ORS 744.068, including a copy of the policy, certificate, cover note or other evidence of insurance showing any of the following items that are applicable:

- (a) Amount of the insurance and perils insured;
- (b) Brief description of the property insured and its location;
- (c) Gross premium charged;
- (d) Any return premium paid;
- (e) Rate of premium charged upon the several items of property;
- (f) Effective date of the contract and the terms thereof;
- (g) Name and address of the insured;
- (h) Name and address of the insurer;
- (i) Amount of tax and other sums to be collected from the insured; and
- (j) Identity of the producing insurance producer, any confirming correspondence from the insurer or its representative and the application.

(2) The record of each contract shall be kept open at all reasonable times to examination by the Director of the Department of Consumer and Business Services without notice for a period not less than five years following termination of the contract.

**SECTION 17.** ORS 735.465 is amended to read:

735.465. (1) On or before the end of each month, each surplus lines licensee shall file with the Director of the Department of Consumer and Business Services, as prescribed by the director, a verified report of all surplus lines insurance transacted on *[risks resident in this state]* **Oregon home state risks** during the preceding 90 days. The report need not show transacted surplus lines insurance that was reported in an earlier report. The report shall show:

- (a) Aggregate gross premiums written;
- (b) Aggregate return premiums; and
- (c) Amount of aggregate tax.

(2) The director may direct that reports required under subsection (1) of this section be made to the Surplus Line Association of Oregon and that the Surplus Line Association of Oregon file a combined report thereof with the director. The director may also require that reports required under subsection (1) of this section be made electronically but may exempt a licensee from the requirement for good cause shown.

(3) For the purpose of collecting taxes on insurance covering *[the]* Oregon **home state** *[portion of]* risks when the insurance is placed outside this state *[and covers a risk with exposures located both in this state and outside this state]*, the director may establish by rule requirements for filing reports on surplus lines insurance transacted outside this state on **Oregon home state risks** *[with exposures located both in this state and outside this state]*.

**SECTION 18.** ORS 735.485 is amended to read:

735.485. (1) A surplus lines insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract **on an Oregon home state risk** made by it or evidence of insurance issued or delivered by the surplus lines licensee pursuant to the procedure provided in ORS 735.490. Any surplus lines policy issued by the surplus lines licensee shall contain a provision stating the substance of this section and designating the person to whom process shall be delivered.

(2) Each surplus lines insurer assuming surplus lines insurance shall be considered thereby to have subjected itself to ORS 735.400 to 735.495.

(3) The remedies provided in this section are in addition to any other methods provided by law for service of process upon insurers.

*[(4) A surplus lines insurance contract covering risks with exposures both in this state and outside this state that is placed outside this state by a nonresident surplus lines licensee, and the surplus lines insurer of the contract, are not subject to the provisions of subsection (2) of this section or ORS 735.490:]*

*[(a) If the nonresident surplus lines licensee is currently licensed as an insurance producer authorized to transact surplus lines insurance contracts in the state in which the surplus lines insurance contract is placed and is in good standing in that state; and]*

*[(b) If the surplus lines insurance contract complies with all of the requirements for placement of nonadmitted insurance in the state in which the surplus lines insurance contract is placed.]*

*[(5)]* (4) When a nonresident surplus lines insurance producer *[who is not a surplus lines licensee in this state]* transacts outside this state a surplus lines insurance contract covering *[risks with exposures both in this state and outside this state]* **an Oregon home state risk**, the producer and the surplus lines insurer of the contract are subject to this section and to ORS 735.490 or to rules adopted by the director in lieu thereof. *[unless:]*

*[(a) The producer is currently licensed to transact surplus lines policies in the state in which the surplus lines insurance contract is placed and is in good standing in that state; and]*

*[(b) The surplus lines insurance contract complies with all of the requirements for placement of nonadmitted insurance in the state in which the surplus lines insurance contract is placed.]*

**SECTION 19.** ORS 735.490 is amended to read:

735.490. (1) An insurer transacting insurance **on an Oregon home state risk** under the provisions of ORS 735.400 to 735.495 may be sued upon any cause of action, arising under any policy of insurance so issued and delivered by it, in the courts for the county where the insurance producer who registered or delivered the policy resides or transacts business, by the service of summons and complaint made upon the insurance producer for the insurer.

(2) Any insurance producer served with summons and complaint in any such cause shall forthwith mail the summons and complaint, or a true and complete copy thereof, by registered or certified mail with proper postage affixed and properly addressed, to the insurer being sued.

(3) The insurer shall have 40 days from the date of the service of the summons and complaint upon the insurance producer in which to plead, answer or defend any such cause.

(4) Upon service of summons and complaint upon the insurance producer for the insurer, the court in which the action is begun shall be deemed to have duly acquired personal jurisdiction of the defendant insurer so served.

(5) An insurer and policyholder may agree to waive the provisions of subsections (1) to (4) of this section governing service and venue with respect to a surplus lines insurance contract for commercial property and casualty risk if the waiver is specifically referred to in the contract or in an indorsement attached to the contract.

**SECTION 20.** ORS 731.144 is amended to read:

731.144. "Surplus lines insurance" means any insurance **on an Oregon home state risk** [*in this state of risks resident, located or to be performed in this state*], permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, wet marine and transportation insurance, independently procured insurance, [*and*] life insurance and health insurance and annuities. **For purposes of this section, "home state" has the meaning given that term in ORS 735.405.**

**SECTION 21.** ORS 743.912 is amended to read:

743.912. (1) As used in this section, "refund" means the return, either directly or through an offset to a future claim, of some or all of a payment already received by a health care provider.

(2) Except in the case of fraud or abuse of billing, and except as provided in subsections (3) and (5) of this section, a health insurer may not:

(a) Request from a health care provider a refund of a payment previously made to satisfy a claim unless the health insurer:

(A) Requests the refund in writing [*within 24 months*] **on or before the last day of the period specified by the contract with the health care provider or 18 months** after the date the payment was made, **whichever is earlier**; and

(B) Specifies in the written request why the health insurer believes the provider owes the refund.

(b) Request that a contested refund be paid earlier than six months after the health care provider receives the request.

(3) A health insurer may not do the following for reasons related to coordination of benefits with another health insurer or entity responsible for payment of a claim:

(a) Request from a health care provider a refund of a payment previously made to satisfy a claim unless the health insurer:

(A) Requests the refund in writing within 30 months after the date the payment was made;

(B) Specifies in the written request why the health insurer believes the provider owes the refund; and

(C) Includes in the written request the name and mailing address of the other health insurer or entity that has primary responsibility for payment of the claim.

(b) Request that a contested refund be paid earlier than six months after the provider receives the request.

(4) If a health care provider fails to contest a refund request in writing to the health insurer within 30 days after receiving the request, the request is deemed accepted and the provider must pay the refund within 30 days after the request is deemed accepted. If the provider has not paid the refund within 30 days after the request is deemed accepted, the health insurer may recover the amount through an offset to a future claim.

(5) A health insurer may at any time request from a health care provider a refund of a payment previously made to satisfy a claim if:

(a) A third party, including a government entity, is found responsible for satisfaction of the claim as a consequence of liability imposed by law; and

(b) The health insurer is unable to recover directly from the third party because the third party has already paid or will pay the provider for the health care services covered by the claim.

(6) If a contract between a health insurer and a health care provider conflicts with this section, the provisions of this section prevail. However, nothing in this section prohibits a health care provider from choosing at any time to refund to a health insurer any payment previously made to satisfy a claim.

(7) This section neither permits nor precludes a health insurer from recovering from a subscriber, enrollee or beneficiary any amounts paid to a health care provider for benefits to which the subscriber, enrollee or beneficiary was not entitled under the terms and conditions of the health plan, insurance policy or other benefit agreement.

(8) This section *[does not apply to claims for health care services provided through dental-only health insurers, through Medicare or through Medicare supplemental plans]* **applies to health benefit plans.**

**SECTION 22.** ORS 743.917 is amended to read:

743.917. (1) Except in the case of fraud and except as provided in subsection [(2)] (3) of this section, a health care provider may not:

(a) Request additional payment from a health insurer to satisfy a claim unless the provider:

(A) Requests the additional payment in writing *[within 24 months]* **on or before the last day of the period specified by the contract or 18 months** after the date the claim was denied or payment intended to satisfy the claim was made, **whichever is earlier**; and

(B) Specifies in the written request why the provider believes the health insurer owes the additional payment.

(b) Request that an additional payment be paid earlier than six months after the health insurer receives the request.

**(2) A health insurer may not consider a health care provider's claim untimely if the claim is made no later than 12 months after a different insurer:**

**(a) Denied the claim in whole or in part; or**

**(b) Requested a refund of an erroneous payment made on the claim.**

[(2)] (3) A health care provider may not do the following for reasons related to coordination of benefits with another health insurer or entity responsible for payment of a claim:

(a) Request additional payment from a health insurer to satisfy a claim unless the provider:

(A) Requests the additional payment in writing within 30 months after the date the claim was denied or payment intended to satisfy the claim was made;

(B) Specifies in the written request why the provider believes the health insurer owes the additional payment; and

(C) Includes in the written request the name and mailing address of the other health insurer or entity that has disclaimed responsibility for payment of the claim.

(b) Request that the additional payment be paid earlier than six months after the health insurer receives the request.

[(3)] (4) If a contract between a health insurer and a health care provider conflicts with this section, the provisions of this section prevail. However, nothing in this section prohibits a health insurer from choosing at any time to make additional payments to a health care provider to satisfy a claim.

[(4)] (5) This section *[does not apply to claims for health care services provided through dental-only health insurers, through Medicare or through Medicare supplemental plans]* **applies to health benefit plans.**

**SECTION 23.** The amendments to ORS 743.912 and 743.917 by sections 21 and 22 of this 2011 Act apply to contracts between health insurers and health care providers that are in effect on or after the effective date of this 2011 Act.

**SECTION 24.** Section 25 of this 2011 Act is added to and made a part of the Insurance Code.

**SECTION 25.** An insurer offering a health benefit plan, as defined in ORS 743.730, that provides coverage of prescription eye drops shall provide coverage for one early refill of a prescription for eye drops to treat glaucoma if all of the following criteria are met:

- (1) The refill is requested by an insured less than 30 days after the later of:
  - (a) The date the original prescription was dispensed to the insured; or
  - (b) The date that the last refill of the prescription was dispensed to the insured.
- (2) The prescriber indicates on the original prescription that a specific number of refills will be needed.
- (3) The refill does not exceed the number of refills that the prescriber indicated under subsection (2) of this section.
- (4) The prescription has not been refilled more than once during the 30-day period prior to the request for an early refill.

**SECTION 26.** ORS 750.055 is amended to read:

750.055. (1) The following provisions of the Insurance Code apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992 and 731.870.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.036, 743A.048, 743A.058, 743A.062, 743A.064, 743A.066, 743A.068, 743A.070, 743A.080, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.188, 743A.190 and 743A.192 **and section 25 of this 2011 Act.**

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743A.024, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician associated with a group practice health maintenance organization.

(i) ORS 735.600 to 735.650.

(j) ORS 743.680 to 743.689.

(k) ORS 744.700 to 744.740.

(l) ORS 743.730 to 743.773.

(m) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

**SECTION 27.** ORS 750.333 is amended to read:

750.333. (1) The following provisions of the Insurance Code apply to trusts carrying out a multiple employer welfare arrangement:

(a) ORS 731.004 to 731.150, 731.162, 731.216 to 731.268, 731.296 to 731.316, 731.324, 731.328, 731.378, 731.386, 731.390, 731.398, 731.406, 731.410, 731.414, 731.418 to 731.434, 731.454, 731.484, 731.486, 731.488, 731.512, 731.574 to 731.620, 731.640 to 731.652 and 731.804 to 731.992.

(b) ORS 733.010 to 733.050, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(c) ORS chapter 734.

(d) ORS 742.001 to 742.009, 742.013, 742.061 and 742.400.

(e) ORS 743.028, 743.053, 743.524, 743.526, 743.527, 743.528, 743.529, 743.530, 743.560, 743.562, 743.600, 743.601, 743.602, 743.610, 743.730 to 743.773 (except 743.760 to 743.773), 743.801, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.912, 743.917, 743A.012, 743A.020, 743A.052, 743A.064, 743A.080, 743A.100, 743A.104, 743A.110, 743A.144, 743A.170, 743A.175, 743A.184 and 743A.192 **and section 25 of this 2011 Act.**

(f) ORS 743A.010, 743A.014, 743A.024, 743A.028, 743A.032, 743A.036, 743A.040, 743A.048, 743A.058, 743A.066, 743A.068, 743A.070, 743A.084, 743A.088, 743A.090, 743A.105, 743A.140, 743A.141, 743A.148, 743A.168, 743A.180, 743A.188 and 743A.190. Multiple employer welfare arrangements to which ORS 743.730 to 743.773 apply are subject to the sections referred to in this paragraph only as provided in ORS 743.730 to 743.773.

(g) Provisions of ORS chapter 744 relating to the regulation of insurance producers and insurance consultants, and ORS 744.700 to 744.740.

(h) ORS 746.005 to 746.140, 746.160 and 746.220 to 746.370.

(i) ORS 731.592 and 731.594.

(j) ORS 731.870.

(2) For the purposes of this section:

(a) A trust carrying out a multiple employer welfare arrangement shall be considered an insurer.

(b) References to certificates of authority shall be considered references to certificates of multiple employer welfare arrangement.

(c) Contributions shall be considered premiums.

(3) The provision of health benefits under ORS 750.301 to 750.341 shall be considered to be the transaction of health insurance.

**SECTION 28.** Section 25 of this 2011 Act and the amendments to ORS 750.055 and 750.333 by sections 26 and 27 of this 2011 Act apply to contracts entered into or renewed, and policies or certificates issued or renewed, on or after the effective date of this 2011 Act.

**Passed by House May 23, 2011**

**Repassed by House June 22, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate June 21, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

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Kate Brown, Secretary of State