

# Senate Bill 1036

Sponsored by COMMITTEE ON RULES

## 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**.

Imposes motor vehicle liability insurance surcharge. Limits surcharge to that portion of insurer's gross amount of premiums not allocable to insurance mandated to lawfully own, operate or use motor vehicle. Requires Director of Department of Consumer and Business Services to collect surcharge.

Establishes Motor Vehicle Insurance Surcharge Fund.

Continuously appropriates surcharge moneys from Motor Vehicle Insurance Surcharge Fund to Department of State Police for state police patrol services.

Applies surcharge to premiums from policies issued or renewed on or after January 1, 2006.

## A BILL FOR AN ACT

1  
2 Relating to insurance surcharges; creating new provisions; amending ORS 731.292, 731.836, 731.840  
3 and 735.470; appropriating money; and providing for revenue raising that requires approval by  
4 a three-fifths majority.

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

6 **SECTION 1. Sections 2 to 8 of this 2005 Act are added to and made a part of ORS chapter**  
7 **731.**

8 **SECTION 2. As used in sections 2 to 8 of this 2005 Act:**

9 (1) "Gross amount of premiums" has the meaning given that term in ORS 731.808.

10 (2) "Insurer of motor vehicles" means an insurer that issues motor vehicle liability poli-  
11 cies designed to insure motor vehicles or drivers of motor vehicles against damages for li-  
12 ability on account of accidents arising out of the ownership, operation, maintenance or use  
13 of motor vehicles.

14 **SECTION 3. (1) For the privilege of insuring motor vehicles in this state, each insurer**  
15 **of motor vehicles in this state shall pay a surcharge of \_\_\_\_\_ percent of that portion of the**  
16 **annual gross amount of premiums written by the insurer or the insurance producers of the**  
17 **insurer from motor vehicle insurance in this state that is derived from insurance coverage**  
18 **in excess of the coverage required to comply with the minimum financial and future re-**  
19 **sponsibility requirements of ORS chapter 806 or other mandatory coverage required to law-**  
20 **fully own, operate or use a motor vehicle in this state.**

21 (2) The Director of the Department of Consumer and Business Services shall adopt rules  
22 that annually require insurers to report:

23 (a) The gross amount of premiums written by the insurer for the year; and

24 (b) That portion of the gross amount of premiums that is allocable to motor vehicle in-  
25 surance coverage that exceeds the coverage required to comply with the minimum financial  
26 and future responsibility requirements of ORS chapter 806 or other mandatory coverage re-  
27 quired to lawfully own, operate, maintain or use a motor vehicle in this state.

28 (3) The surcharge imposed under this section is in addition to and not in lieu of any tax,

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 assessment or other surcharge imposed on an insurer. An offset against corporate excise  
2 taxes imposed under ORS chapter 317 may not be made for the surcharge imposed under this  
3 section.

4 (4) Notwithstanding subsection (1) of this section, each insurer subject to a surcharge  
5 under this section may retain \_\_\_\_\_ percent of the insurer's surcharge obligation each  
6 year as compensation for administrative costs incurred by the insurer under sections 2 to 8  
7 of this 2005 Act.

8 **SECTION 4.** Notwithstanding section 3 of this 2005 Act, the surcharge imposed under  
9 section 3 of this 2005 Act may not exceed 3.6 percent of the annual gross amount of premi-  
10 ums written by an insurer of motor vehicles or the insurance producers of the insurer from  
11 all motor vehicle liability insurance.

12 **SECTION 5.** (1) The surcharge imposed under section 3 of this 2005 Act shall be paid on  
13 or before April 1 of each year.

14 (2) The surcharge shall be paid by an insurer of motor vehicles to the Director of the  
15 Department of Consumer and Business Services.

16 (3) At the time of payment of the surcharge, the insurer shall file a return on a form  
17 prescribed by the director, containing any information required by the director.

18 **SECTION 6.** If an insurer of motor vehicles ceases to do business in this state, ceases  
19 to issue motor vehicle insurance policies or otherwise ceases to collect premiums on motor  
20 vehicle liability insurance policies, the insurer shall determine the amount of surcharge due  
21 under section 3 of this 2005 Act, immediately file a return reporting the amount of surcharge  
22 due and pay the surcharge due.

23 **SECTION 7.** (1) Every insurer of motor vehicles with a surcharge obligation under sec-  
24 tion 3 of this 2005 Act shall prepay the surcharge imposed for the current calendar year if  
25 the total surcharge obligation under section 3 of this 2005 Act for the preceding calendar  
26 year was \$400 or more.

27 (2) The Director of the Department of Consumer and Business Services shall credit pre-  
28 payments toward the surcharge obligations of the insurer under section 3 of this 2005 Act  
29 for the current calendar year.

30 (3) The amounts of the prepayments shall be percentages of the insurer's surcharge ob-  
31 ligation based on the preceding calendar year's business and shall be paid to the director by  
32 the following due dates and in the following amounts:

- 33 (a) On or before June 15, 45 percent;  
34 (b) On or before September 15, 25 percent; and  
35 (c) On or before December 15, 25 percent.

36 (4) The effect of transferring policies of insurance from one insurer to another insurer  
37 is to transfer the surcharge prepayment obligation with respect to such policies.

38 (5) On or before June 1 of each year, the director shall notify each insurer required to  
39 make prepayments in that year of the amount of each prepayment and shall provide pre-  
40 payment remittance forms to be used by the insurer. However, an insurer's responsibility  
41 to make prepayments is not affected by failure of the director to send, or the insurer to re-  
42 ceive, the notice or the remittance forms.

43 **SECTION 8.** If the Director of the Department of Consumer and Business Services de-  
44 termines that the surcharge paid by an insurer of motor vehicles under section 3 of this 2005  
45 Act is incorrect, the director shall charge or credit the insurer with the difference between

1 **the correct amount of surcharge and the amount actually paid.**

2 **SECTION 9.** Notwithstanding section 7 of this 2005 Act, for the year beginning January  
3 **1, 2006, in lieu of the prepayment of surcharges under section 7 of this 2005 Act, each insurer**  
4 **of motor vehicles with a surcharge obligation under section 3 of this 2005 Act for the year**  
5 **shall estimate the amount of the surcharge and shall pay the following amounts to the Di-**  
6 **rector of the Department of Consumer and Business Services:**

7 (1) **On or before June 15, 2006, 45 percent of the estimate;**

8 (2) **On or before September 15, 2006, 25 percent of the estimate; and**

9 (3) **On or before December 15, 2006, 25 percent of the estimate.**

10 **SECTION 10.** ORS 731.292 is amended to read:

11 731.292. (1) Except as provided in subsections [(2) and (3)] **(2), (3) and (4)** of this section, all fees,  
12 charges and other moneys received by the Department of Consumer and Business Services or the  
13 Director of the Department of Consumer and Business Services under the Insurance Code shall be  
14 deposited in the fund created by ORS 705.145 and are continuously appropriated to the department  
15 for the payment of the expenses of the department in carrying out the Insurance Code.

16 (2) All taxes, fines and penalties paid pursuant to the Insurance Code shall be paid to the di-  
17 rector and after deductions of refunds shall be paid by the director to the State Treasurer, at the  
18 end of every calendar month or more often in the director's discretion, for deposit in the General  
19 Fund to become available for general governmental expenses.

20 (3) All premium taxes received by the director pursuant to ORS 731.820 shall be paid by the  
21 director to the State Treasurer for deposit in the State Fire Marshal Fund.

22 (4) **All surcharges received by the director pursuant to sections 2 to 8 of this 2005 Act**  
23 **shall be paid by the director to the State Treasurer for deposit in the Motor Vehicle Insur-**  
24 **ance Surcharge Fund established under section 15 of this 2005 Act.**

25 **SECTION 11.** ORS 731.836 is amended to read:

26 731.836. The Director of the Department of Consumer and Business Services shall commence an  
27 action for the recovery of taxes **or surcharges** payable under ORS 731.820, 731.824, 731.828 and  
28 731.859 **and section 3 of this 2005 Act** not later than the later of the following:

29 (1) Five years after the date such taxes **or surcharges** were payable to the director under such  
30 sections; or

31 (2) Three years after the date on which the report of examination by the domiciliary state of the  
32 insurer, disclosing that such taxes **or surcharges** were owing by the insurer under such sections,  
33 was filed with the director.

34 **SECTION 12.** ORS 731.840 is amended to read:

35 731.840. (1) The retaliatory tax imposed upon a foreign or alien insurer under ORS 731.854 and  
36 731.859, or the corporate excise tax imposed upon a foreign or alien insurer under ORS chapter 317,  
37 is in lieu of all other state taxes upon premiums, taxes upon income, franchise or other taxes  
38 measured by income that might otherwise be imposed upon the foreign or alien insurer except the  
39 fire insurance premiums tax imposed under ORS 731.820, **the motor vehicle insurance surcharge**  
40 **imposed under section 3 of this 2005 Act** and the tax imposed upon wet marine and transportation  
41 insurers under ORS 731.824 and 731.828. However, all real and personal property, if any, of the  
42 insurer shall be listed, assessed and taxed the same as real and personal property of like character  
43 of noninsurers. Nothing in this subsection shall be construed to preclude the imposition of the as-  
44 sessments imposed under ORS 656.612 upon a foreign or alien insurer.

45 (2) Subsection (1) of this section applies to a reciprocal insurer and its attorney in its capacity

1 as such.

2 (3) Subsection (1) of this section applies to foreign or alien title insurers and to foreign or alien  
3 wet marine and transportation insurers issuing policies and subject to taxes referred to in ORS  
4 731.824 and 731.828.

5 (4) The State of Oregon hereby preempts the field of regulating or of imposing excise, privilege,  
6 franchise, income, license, permit, registration, and similar taxes, licenses and fees upon insurers  
7 and their insurance producers and other representatives as such, and:

8 (a) No county, city, district, or other political subdivision or agency in this state shall so regu-  
9 late, or shall levy upon insurers, or upon their insurance producers and representatives as such, any  
10 such tax, license or fee; except that whenever a county, city, district or other political subdivision  
11 levies or imposes generally on a nondiscriminatory basis throughout the jurisdiction of the taxing  
12 authority a payroll, excise or income tax, as otherwise provided by law, such tax may be levied or  
13 imposed upon domestic insurers; and

14 (b) No county, city, district, political subdivision or agency in this state shall require of any  
15 insurer, insurance producer or representative, duly authorized or licensed as such under the Insur-  
16 ance Code, any additional authorization, license, or permit of any kind for conducting therein  
17 transactions otherwise lawful under the authority or license granted under this code.

18 **SECTION 13.** ORS 735.470 is amended to read:

19 735.470. (1) The surplus lines licensee shall pay the Director of the Department of Consumer and  
20 Business Services an amount equal to the tax [*which*] **that** would have been imposed under ORS  
21 731.816 (1993 Edition) if that section were in effect and operative, and the [*tax which is*] **amount**  
22 **of taxes and surcharges that are** imposed by ORS 731.820 **and section 3 of this 2005 Act**, on  
23 authorized insurers for the premiums shown in the report required by ORS 735.465. The tax shall  
24 be collected by the surplus lines licensee as specified by the director, in addition to the full amount  
25 of the gross premium charged by the insurer for the insurance. The tax on any portion of the pre-  
26 mium unearned at termination of insurance having been credited by the state to the licensee shall  
27 be returned to the policyholder directly by the surplus lines licensee or through the producing in-  
28 surance producer, if any. The surplus lines licensee is prohibited from absorbing such tax and from  
29 rebating for any reason, any part of such tax.

30 (2) The surplus lines tax is due quarterly on the 45th day following the calendar quarter in  
31 which the premium is collected. The tax shall be paid to and reported on forms prescribed by the  
32 director or upon the director's order paid to and reported on forms prescribed by the surplus lines  
33 association.

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

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

39 (5) The director by rule shall establish procedures for:

40 (a) Payment of taxes on the Oregon portion of risks covered by surplus lines insurance policies  
41 transacted outside this state that cover risks with exposures both in this state and outside this  
42 state; **and**

43 (b) **With respect to the surcharge imposed by section 3 of this 2005 Act, determining the**  
44 **amount of surcharge payable by surplus lines licensees so that the amount is consistent with**  
45 **the surcharge imposed by section 3 of this 2005 Act on insurers of motor vehicles who are**

1 not surplus lines licensees.

2 **SECTION 14.** Sections 2 to 8 of this 2005 Act and the amendments to ORS 731.292, 731.836,  
3 731.840 and 735.470 by sections 10 to 13 of this 2005 Act apply to motor vehicles liability poli-  
4 cies that are issued or renewed on or after the effective date of this 2005 Act.

5 **SECTION 15.** (1) The Motor Vehicle Insurance Surcharge Fund is established, separate  
6 and distinct from the General Fund. Interest earned by the Motor Vehicle Insurance Sur-  
7 charge Fund shall be credited to the Motor Vehicle Insurance Surcharge Fund.

8 (2) Moneys in the Motor Vehicle Insurance Surcharge Fund shall be distributed quarterly  
9 as follows:

10 (a) Amounts needed to reimburse the Department of Consumer and Business Services for  
11 expenses in administering section 3 of this 2005 Act are continuously appropriated to the  
12 department;

13 (b) Amounts needed to reimburse the General Fund for reductions in revenue caused by  
14 the effect of sections 1 to 8 of this 2005 Act on the retaliatory tax imposed under ORS 731.854  
15 and 731.859 shall be transferred to the General Fund; and

16 (c) The remaining balance is continuously appropriated to the Department of State Police  
17 for the purpose of funding Patrol Services Division activities and operations.

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