

Surplus Line Association of Oregon
Final Legislative Report
2003 Regular Legislative Session
By: Jim Markee
September 24, 2003

The 2003 regular session of the Oregon Legislature adjourned sine die on August 27th at 9:00 PM. This was by far the longest regular session on record for the Oregon Legislature, breaking the old record by over 20 days. It was also one of the most contentious sessions as tempers flared over ideological differences as to how to deal with what has been perhaps Oregon's worst ever fiscal crisis. Adding to the complexity of the session was a Senate that was split evenly between 15 republicans and 15 democrats. This made it difficult to gain consensus on resolution of significant issues. However, given this even split, the Senate did quite well in eventually dealing with the major issues facing them. Republicans once again dominated the House with 35 republicans and only 25 democrats. Complications still arose in the House due in part to major philosophical differences within the republican caucus. In the end, the legislature did what they felt they had to do to balance the budget for the next two years. The plan calls for an income tax surcharge to partially make up the revenue shortfall caused by the present recession, a plan that is likely to be referred to the voters by citizen tax activists. If the surcharge gets on the ballot and fails, the legislature will likely be back in special session shortly after. Hopefully, that session will be limited to budgetary matters.

With the legislature mired down in budget matters, it was hard to get their attention on other issues, but the business committees in both houses of the legislature did good work on several pieces of legislation that will benefit you in the future. These committees also were instrumental in stopping several bills that were detrimental to business generally and the insurance industry specifically.

This session we identified and tracked a total of 81 bills that had some potential impact on your association members. 29 of these bills were eventually passed into law, while 52 failed to make it through the process. We were actively involved in many of these bills, either in supporting or opposing them, or seeking amendments on your behalf to alleviate industry concerns.

Of all the bills we worked on this session, SB 253 is by far the most important for our member agents. Our legislative efforts began well ahead of the session on this particular bill. Your board of directors made it a priority to pass legislation creating statutory authority for surplus agents to charge fees for their services in wholesale transactions nearly a year before the legislative session started. Your executive director Larry Boyd worked with our office and the Insurance Division of the Department of Consumer and Business Services to accomplish this task through the legislative process. We all owe a great deal of thanks to the staff at the Division for their diligence and

patience throughout this process. SB 253 was introduced in the legislature at the request of the Insurance Division. The bill, known as the “producer bill”, changes the term “insurance agent” to “insurance producer” throughout the statutes. The bill authorizes insurance producers to charge fees in certain instances. Under the bills provisions, an insurance producer may be paid by commission, fee, or a combination of the two when the transaction involves commercial lines in excess of \$100,000.00 premium. It further allows wholesale insurance producers to charge fees in wholesale transactions if there is a written agreement with the retail producer. There is a separate section, which authorizes a surplus lines licensee to charge a producing insurance producer a fee or a combination of a fee and commission when transacting surplus lines for the producing insurance producer, and for the producing insurance producer to pass on the charge to the prospective insured. This section further authorizes a surplus lines licensee to charge a fee when transacting surplus lines insurance directly with a prospective insured. There must be a written agreement in place authorizing the fee in all instances. The surplus line licensee and the producing insurance producer may agree to any allocation of the fee that the producing insurance producer charges the prospective insured. The bill contains many other significant provisions, which you might want to take a look at.

There were many other bills of significance to the association, some of which passed and some of which failed. On the following pages is a complete summary of those bills that passed and became law, with their effective dates. Click on the bill number to link to the entire text of any bill.

It has been a pleasure to once again represent the Surplus Line Association of Oregon. We look forward to a rewarding interim period preceding the next legislative session. If you have any questions regarding any legislative matter, please feel free to call our office.

***Surplus Line Association of Oregon
Bill Status Summary
Legislation Passed***

Bill Number

[HB 2043](#)

Position

No Position

Passed

**Effective Date: Portions effective on November 26, 2003 with exceptions.
Chapter 545, 2003 Laws**

Summary: Allows credit against corporate excise or income tax for corporation that provides motor vehicle insurance issued under mile-based or time-based rating plan. Applies to tax years beginning on or after January 1, 2005, and before January 1, 2010. Limits total amount of credits that may be allowed for all taxpayers for all tax years to \$1 million.

Bill Number

[HB 2049](#)

Position

No Position

Passed

**Effective Date: January 1, 2004
Chapter 552, 2003 Laws**

Summary: Requires court to deny motion to amend pleading to assert claim for punitive damages if party opposing motion establishes that timing of motion prejudices party's ability to defend against claim. Allows court to grant continuance to allow discovery.

Bill Number

[HB 2080](#)

Position

No Position

Passed

Effective Date: Portions effective January 1, 2004 with exceptions.

Summary: Provides that statute of limitations for product liability civil actions commences to run when plaintiff first discovered, or in exercise of reasonable care should have discovered, injury or damage and causal relationship between injury or damage and product. Specifies civil action must be commenced by earlier of two years after discovery or 10 years after purchase of product. Modifies limitations on product liability civil actions for death. Revives certain causes of action for death, personal injury or property damage filed before effective date of Act. Requires civil action be refiled within one year of effective date of Act.

Bill Number

[HB 2200](#)

Position

No Position

Passed

**Effective Date: April 4, 2003 without Governor's signature.
Chapter 054, 2003 Laws**

Summary: Exempts forest protective associations, rangeland protection systems and public bodies from liability for certain fire protection actions. Allows liability for willful misconduct or gross negligence. Establishes limitations on liability. Modifies definition of every reasonable effort.

Bill Number

[HB 2278](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Summary: Provides consistent terminology for public bodies in laws relating to districts. Establishes rules governing unfunded Public Employees Retirement System (PERS) liabilities of public bodies that transfer employees, merge, consolidate or split. Allocates unfunded PERS liabilities of certain employees of Multnomah Rural Fire Protection District #10. Makes miscellaneous changes to laws governing Department of Consumer and Business Services.

Bill Number

[HB 2301](#)

Position

No Position

Passed

**Effective Date: Portions effective on August 21, 2003 with exceptions.
Chapter 685, 2003 Laws**

Summary: Increases reserve base of Oregon Forest Land Protection Fund to \$22.5 million. Sunsets reserve base increase on January 2, 2006. Prohibits purchase of insurance by Emergency Fire Cost Committee with moneys from Oregon Forest Land Protection Fund during specified period unless Legislative Assembly determines otherwise.

Bill Number

[HB 2338](#)

Position

No Position

Passed

**Effective Date: November 26, 2003
Chapter 107, 2003 Laws**

Summary: Prohibits carrying minor in open bed of motor vehicle or on other external part of motor vehicle. Provides exceptions. Takes effect on 91st day following adjournment sine die.

Bill Number

[HB 2410](#)

Position

No Position

Passed

Effective Date: June 11, 2003

Chapter 298, 2003 Laws

Summary: Authorizes Department of Human Services to establish registry of emergency health care providers for purpose of services during emergencies. Provides that upon Governor declaring state of emergency and while participating in authorized training, registered health care providers and health care facilities providing services are agents of state for purposes of Oregon Tort Claims Act.

Bill Number

[HB 2498](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Summary: Sets rate of interest on judgments in civil actions relating to professional negligence of person licensed by Board of Medical Examiners or Oregon State Board of Nursing at lesser of five percent per annum or three percent in excess of discount rate in effect at Federal Reserve Bank in Federal Reserve district where injuries occurred.

Bill Number

[HB 2623](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Chapter 123, 2003 Laws

Summary: Modifies amount of deposits required or permitted under Insurance Code for certain corporations. Allows Director of Department of Consumer and Business Services to adopt rules to require periodic review of secured obligations of corporation.

Bill Number

[HB 2933](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Chapter 531, 2003 Laws

Summary: Increases threshold amount of property damage that requires vehicle accident report. Provides that driver need not report accident unless damage to driver's vehicle exceeds threshold amount, unless damage is to property other than vehicle or unless any vehicle must be towed from scene of accident.

Bill Number

[HB 3051](#)

Position

No Position

Passed

Effective Date: Portions effective on November 26, 2003 with exceptions.

Chapter 568, 2003 Laws

Summary: Directs member insurers to collect recoupment assessment on net direct written premiums to recover Oregon Insurance Guaranty Association assessments. Requires member insurers to annually certify total amount of recoupment assessments to Director of Department of Consumer and Business Services. Allows director to set minimum threshold for recoupment. Allows department to audit assessments. Eliminates certain corporate excise tax and fire insurance gross premiums tax assessment offsets. Applies to corporate excise tax years and gross premiums tax reporting periods beginning on or after January 1, 2003. Takes effect on 91st day following adjournment sine die.

Bill Number

[HB 3630](#)

Position

No Position

Passed

Effective Date: Portions effective on January 1, 2004 with exceptions.

Summary: Requires State Accident Insurance Fund Corporation to establish reinsurance program for medical professional liability policies of certain rural doctors. Establishes Rural Medical Liability Reinsurance Fund for payment of reinsurance of medical professional liability insurance claims incurred prior to January 1, 2008. Creates Professional Panel for Analysis of Medical Professional Liability Insurance. Requires Office for Oregon Health Policy and Research to make recommendations concerning methods to attract and retain doctors in rural areas. Requires Director of Department of Consumer and Business Services to report to Legislative Assembly on performance of reinsurance program. Sunsets January 2, 2014. Declares emergency, effective on passage.

Bill Number

[HB 3668](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Summary: Increases motor vehicle liability coverage required for personal injury protection benefits. Prohibits provider from charging person receiving personal injury protection benefits more than provider charges public or more than charges allowed under workers' compensation fee schedules.

Bill Number

[HB 5011](#)

Position

No Position

Passed

Effective Date: July 1, 2003

Chapter 510, 2003 Laws

Summary: Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, and including federal funds, collected or received by Department of Consumer and Business Services. Excludes from expenditure limitation certain fees collected, payments and accounts. Declares emergency, effective July 1, 2003.

Bill Number

[HB 5045](#)

Position

No Position

Passed

Effective Date: July 1, 2003

Chapter 666, 2003 Laws

Summary: Appropriates moneys from General Fund to Department of State Police for certain biennial expenses. Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds, collected or received by department. Limits biennial expenditures of department from federal funds. Excludes from expenditure limitation on federal funds payments to cities and counties for federal emergency management assistance. Limits biennial expenditures of lottery moneys for fish and wildlife activities. Declares emergency, effective July 1, 2003.

Bill Number

[HB 5046](#)

Position

No Position

Passed

Effective Date: July 1, 2003

Chapter 650, 2003 Laws

Summary: Authorizes certain new or increased fees adopted by Department of State Police, Office of State Fire Marshal. Declares emergency, effective July 1, 2003.

Bill Number

[HB 5057](#)

Position

No Position

Passed

Effective Date: July 1, 2003

Chapter 636, 2003 Laws

Summary: Authorizes certain new or increased fees adopted by Department of Transportation. Declares emergency, effective July 1, 2003.

Bill Number

[HB 5059](#)

Position

No Position

Passed

Effective Date: July 1, 2003

Chapter 513, 2003 Laws

Summary: Authorizes certain new or increased fees adopted by Department of Consumer and Business Services. Declares emergency, effective July 1, 2003.

Bill Number

[SB 235](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Chapter 363, 2003 Laws

Summary: Establishes standards governing transaction of insurance by depository institutions and affiliates. Requires depository institution and affiliate transacting insurance to make specified disclosures to customers. Prohibits advertising or promotion that indicates governmental responsibility or guarantee of insurance products. Requires separation of credit and insurance documents and records. Allows financial institution employee who provides financial services to consumers to also provide insurance services offered by financial institution to same consumers.

Bill Number

[SB 247](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Chapter 175, 2003 Laws

Summary: Repeals authority to use bonds or cash deposits, rather than insurance, to meet requirements of financial responsibility for ownership, operation, maintenance and use of motor vehicle. Makes related changes to statutes dealing with weather modification and ambulances.

Bill Number

[SB 253](#)

Position

Support 1

Passed

Effective Date: January 1, 2003

Chapter 364, 2003 Laws

Summary: Replaces term of insurance agent and its definition for purposes of Insurance Code with new term insurance producer and its definition, and authorizes producer to transact insurance on behalf of person other than insurer. Makes corresponding changes throughout statutes. Allows insurance producer to charge certain fees.

Bill Number

[SB 260](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Summary: Requires insurer or agent to provide consumer with specific reasons for adverse underwriting decision when decision was based in whole or in part on credit history or insurance score. Applies to insurer or agent making initial adverse underwriting decision. Prohibits insurer from canceling or nonrenewing personal insurance in effect for more than 60 days based on consumer's credit history or insurance score. Allows insurer to decline coverage of personal insurance in initial underwriting decision based on consumer's credit history in combination with other substantive factors. Requires insurer using credit history or insurance score to file scoring model with Director of Department of Consumer and Business Services. Prohibits insurer from using credit history or insurance score to rerate policy at renewal.

Bill Number

[SB 297](#)

Position

No Position

Passed

Effective Date: Portions effective on January 1, 2004 with exceptions.

Summary: Requires insurer to pay all sums covered by general liability insurance policy unaffected by other insurance that may provide coverage for same environmental claim. Requires insured to notify all insurers liable for claim. Allows insurer to seek contribution from other insurer that is liable for claim. Specifies allocation of costs between insurers. Provides procedures relating to lost policy.

Bill Number

[SB 602](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Chapter 331, 2003 Laws

Summary: Eliminates statutory rules governing which insurance is primary when person lends, rents, donates use of, makes available for test drive or otherwise provides motor vehicle to another person in course of business.

Bill Number

[SB 646](#)

Position

No Position

Passed

Effective Date: October 4, 2003

Chapter 646, 2003 Laws

Summary: Reinstates provisions prohibiting insurer from refusing claim solely because claim was submitted by physician assistant. Sunsets October 4, 2009.

Bill Number

[SB 909](#)

Position

No Position

Passed

Effective Date: January 1, 2004

Chapter 660, 2003 Laws

Summary: Establishes notice of defect procedure as prerequisite to compelling arbitration or commencing court action to recover damages for residential construction defect. Requires contractor to provide owner with notice of procedures. Specifies wording of notice.

Bill Number

[SB 910](#)

Position

No Position

Passed

Effective Date: Portions effective on January 1, 2004 with exceptions.

Summary: Prohibits person in course of offering real estate, goods or services for sale, rent or other disposition from transmitting electronic mail message that uses Internet domain name without permission or misrepresents subject or origin of message. Defines terms. Prohibits certain unsolicited commercial electronic mail messages. Provides remedies. Sunsets January 2, 2006.

Bill Number

[SB 943](#)

Position

No Position

Passed

Effective Date: Portions effective upon signature of Governor with exceptions.

Not signed as of this writing.

Summary: Allows general or specialty contractor that is residential-only contractor to procure alternative form of security approved by Construction Contractors Board as substitute for public liability, personal injury and property damage insurance covering work of contractor. Sunsets January 2, 2008. Declares emergency, effective on passage.