

SURPLUS LINE ASSOCIATION OF OREGON

FINAL LEGISLATIVE REPORT

2009 OREGON LEGISLATIVE SESSION

**Markee & Associates, Inc.
July 10, 2009**

2009 Oregon Legislative Session

LEGISLATIVE ACTIVITY SUMMARY

<u>POSITION</u>	<u>PASSED</u>	<u>FAILED</u>	<u>VETOED</u>	<u>TOTAL</u>
S-1	0	0		0
S-2	0	1		1
S-3	0	0		0
Total Support	0	1		1
O-1	1	1		2
O-2	0	4		4
O-3	1	0		1
Total Oppose	2	5		7
Neutral	16	29		45
N/P	6	6		12
Total	24	41		65

KEY

S-1	Support	Highest Priority
S-2	Support	Medium Priority
S-3	Support	Low Priority
O-1	Oppose	Highest Priority
O-2	Oppose	Medium Priority
O-3	Oppose	Low Priority
Neutral	Read bill, just track	
No Position	Have not put a priority on bill	

**SURPLUS LINE ASSOCIATION OF OREGON
FINAL LEGISLATIVE REPORT
2009 REGULAR LEGISLATIVE SESSION
BY: JIM MARKEE, MARKEE & ASSOCIATES, INC
JULY 10, 2009**

The 2009 regular session of the Oregon Legislature adjourned sine die at 9:45 pm on June 30, 2009. The session was dominated by budget and fiscal issues as the nation's recession continued to have a dramatic impact on Oregon's economy. With no sales tax, and a high dependency on income taxes to fund government services in Oregon, the legislature found it very difficult to balance the state's budget as Oregon's unemployment rate rose to over 12%. As a result, the ensuing budget for the next biennium will see cuts to services and tax increases for both individuals and businesses. With Democrats holding a strong three fifths majority in both Houses of the legislature, a democratic Governor, and Democrats holding every other statewide office in Oregon, this legislative session also saw a push for more consumer protection measures, labor legislation, and many bills that the business lobby felt were anti-business. Government jobs were held in higher regard than private sector jobs by this legislature. Cuts in numbers of state employees are being held to a minimum through measures that raised fees and taxes in many areas. The legislature did manage to fund a transportation package that will bring many road improvement projects to communities across the state, paid in part by increases to vehicle related fees. While the business lobby was concerned with the introduction of many bills they felt were anti-business, the democratic leadership failed to enact many of these proposals in spite of their overwhelming majority. However, several were passed.

The corporate minimum tax was raised, as well as the corporate excise tax in HB3405. The current corporate minimum tax is \$10.00 for all corporations, regardless of how they are organized. Under the provisions of HB3405, The corporate minimum goes to \$150.00 for S corps and partnerships, and for C corps the minimum is based on Oregon sales (gross receipts attributable to Oregon business) according to the following schedule:

Under \$500,000.00	\$150.00
\$500,000.00 to \$1 million	\$500.00
\$1 million to \$2 million	\$1,000.00
\$2 million to \$3 million	\$1,500.00
\$3 million to \$5 million	\$2,000.00
\$5 million to \$7 million	\$4,000.00
\$7 million to \$10 million	\$7,500.00
\$10 million to \$25 million	\$15,000.00
\$25 million to \$50 million	\$30,000.00
\$50 million to \$75 million	\$50,000.00
\$75 million to \$100 million	\$75,000.00
\$100 million or more	\$100,000.00

The corporate excise tax was also raised in HB3405. Under present law, the excise tax on corporations is 6.6%. The tax increases to 7.9% on taxable earnings in excess of \$250,000.00 for tax years 2009 and 2010, and is reduced back to 7.6% for tax years 2011 and 2012. The 7.6% rate for years after 2012 will apply to taxable earnings in excess of \$10 million. Under the provisions of this bill, C corporations will pay the greater of the excise tax calculated on their taxable income or the minimum tax calculated on their Oregon sales. The bill also increases the Secretary of State filing from \$50.00 to \$100.00 for domestic corporations and to \$275.00 for foreign corporations. SLAOR took no position on this bill.

Individuals with earnings over \$125,000.00 will see their taxes increase from the current 9% to 10.8% on the excess over \$125,000.00, and 11% on any excess over \$250,000.00 through 2011. For the 2012 tax year, the tax on any excess over \$125,000.00 is reduced to 9.9% permanently. For couples filing jointly, the amounts of income applicable are doubled. All this was accomplished in HB2649, on which we took no position as an association.

The tax increases contained in these bills raise a significant amount of money. Corporate tax increases contained in HB3405 will increase general fund revenue by \$261 million for the 2009-2011 biennium, \$270 million for the 2011-2013 biennium and \$231 million for the 2013-2015 biennium. For the 2009-2011 biennium, \$93 million is attributable to the minimum tax increase on C corporations, \$108 million is from the increased excise tax, \$18 million is from the increased minimum tax on S corporations, and about \$30 million is from increased Secretary of State filing fees.

While SLAOR did not take a position on these two tax bills, we did actively oppose seven bills this session, five of which were defeated and two of which passed. We also supported one bill, which failed to pass. In all we identified sixty five bills that potentially had an impact on SLAOR members. We opposed seven, supported one, took a neutral position on forty five, and took no position on twelve. Overall, twenty four of the bills we tracked for the association were passed into law, while forty-one failed to make it through the process. This session, much like last session saw fewer bills that directly affected the writing of Surplus Line insurance. With the re-write of the surplus line law accomplished in previous sessions, SLAOR had no pressing need to pass any legislation in this session. We did involve ourselves with the general insurance lobby, and with the Department, with which we remain on excellent terms, and directly with legislators on several bills.

The two bill opposed by the association that passed were SB284 and SB377.

SB284 relates to product liability lawsuits and is more of a carrier issue than an agent issue. Under current Oregon law, when a consumer sues a manufacturer or seller for an injury caused by a defective product, he must file the lawsuit within eight years from the date the product was first sold or put into use, plus two years from the date of discovery of the injury, for a total of ten years. This strict statute of ultimate repose has been the law in Oregon since 1978. We have one of the strictest laws in the country, as over half the states have no statute of ultimate repose, and most that do are longer than ours. This became a huge priority for the

Oregon Trial Lawyers Association, as legislation which would have lengthened the statute was defeated in the 2007 legislative session. The Trial Lawyers introduced legislation to lengthen the statute and when that faltered, they successfully amended provisions into SB284 which create a so called "look away provision" on Oregon products cases. Under these provisions, an Oregon Plaintiff would have the right to a ten year statute of ultimate repose for a product manufactured in Oregon, but if the product was manufactured in another state, then they could opt for the statute of repose for that state. For products manufactured outside the United States, they could opt for the statute of repose for the state through which the product was imported into the United States. The proponents of this bill argued that under current Oregon law, an injured consumer could actually sue the manufacturer in the state in which the product was manufactured, and that this new provision simply meant an Oregonian would not have to travel to the other state to take advantage of its statute of repose. This bill was opposed by nearly the entire business and insurance lobbies, as well as SLAOR. However, the Democratic leadership teams in both Houses made this bill a priority and ensured its passage. There were many deals struck among the members of the Democratic majority as some of the members held their nose and voted aye. We originally had enough votes to stop this bill on the Senate floor, but opposition to the bill eroded with pressure from leadership. Many think there are major constitutional issues with this bill, so there may well be a challenge or two in the courts before we know what the true effect of this legislation is. The bill takes effect January 1, 2010.

SB377 involves the use of credit scoring for insurance purposes. Under the current law, an insurance company may use an insurance score, created from credit information, only at the time of initial sale of a policy. Insurers are prohibited from using insurance scores to re-rate insureds at renewal. However, insureds have the right under present law to request a re-rating based on their insurance score, and insurers are allowed to adjust the insured's rate up or down following completion of a requested re-rating. SB377 prohibits the insurer from raising rates based on a requested re-rating, but requires the granting of an improved rate if the insured qualifies for one. The improved rate must be effective as of the date of the consumer's request. While the entire insurance lobby originally opposed this bill, it came to light during hearings that Farmers Insurance Company had already voluntarily implemented the requirements of this bill. As a result, it proved difficult to argue that the bill imposed unreasonable requirements on insurers, and opposition waned. The bill passed and takes effect January 1, 2010.

SLAOR opposed five bills that were defeated this session.

HB2612 contained provisions to lengthen Oregon's statute of ultimate repose in products liability cases. The bill never made it out of the House of Representatives.

HB2791 would have created a right of private action against an insurer for a violation of the unfair claims settlement practices act. Presently, civil penalties are the sole remedy in such cases. This bill had strong opposition from the entire insurance lobby and died in the House Judiciary Committee.

HB3046 would have established an insurance rate review board in the Department of Consumer and Business Services. All insurance rates, rating plans and rating systems used by an insurer or rating organization or advisory organization would have had to be reviewed and approved by this board. The bill died in the House Revenue Committee following one public hearing.

HB3292 would have created a surcharge on property and motor vehicle insurance policies issued in Oregon to be given over to a Public Safety Fund. The fund would have dispersed the money collected to local governments for law enforcement. The insurance lobby strongly opposed the bill. The bill died in committee after one public hearing.

SB307 was another bill containing provisions to lengthen the statute of ultimate repose in products liability cases. The bill had one hearing and died in the Senate Judiciary Committee.

SLAOR additionally supported one bill, HB3092.

SB3092 would have created the crime of insurance fraud. This crime would have been punishable by a maximum of ten years in imprisonment, a \$250,000.00 fine, or both. Additionally, an insurer could have brought an action to recover benefits or payments made to a person convicted of insurance fraud, and the bill would have allowed courts to order restitution in such cases. This was simply not the session for this bill, with such strong democratic control, and the ever present influence of the Trial Lawyers Association. The bill died a sudden death after one public hearing.

Several other bills which we remained neutral on were eventually passed into law this session. On the following pages is a complete summary of all the legislation we were involved with on behalf of the Surplus Lines Association of Oregon during the 2009 legislative session. If you wish to view the complete text of any particular bill and are viewing this report electronically, simply click on the appropriate bill number. Otherwise, you may view the text of any bill at the legislative website at: www.leg.state.or.us. It is our pleasure to serve as your government affairs team in Oregon's political arena, and we look forward to a continued mutually beneficial relationship.