

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2073

 By: Key

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8 COMMITTEE SUBSTITUTE

9 An Act relating to unauthorized insurers and surplus
10 lines insurance; creating the Unauthorized Insurers
11 and Surplus Lines Insurance Act; providing short
12 title; defining terms; authorizing the Insurance
13 Commissioner to enter into certain agreements;
14 amending 36 O.S. 2001, Sections 1101, as amended by
15 Section 10, Chapter 222, O.S.L. 2010, Section 22,
16 Chapter 176, O.S.L. 2009, 1103, as amended by Section
17 12, Chapter 222, O.S.L. 2010, 1105, as amended by
18 Section 14, Chapter 222, O.S.L. 2010, 1106, as last
19 amended by Section 15, Chapter 222, O.S.L. 2010,
20 1107, as amended by Section 16, Chapter 222, O.S.L.
21 2010, 1108, as amended by Section 17, Chapter 222,
22 O.S.L. 2010, 1109, as last amended by Section 18,
23 Chapter 222, O.S.L. 2010, 1111, 1112, as amended by
24 Section 10, Chapter 307, O.S.L. 2002, 1113, 1114,
 1115, as last amended by Section 19, Chapter 222,
 O.S.L. 2010, 1116, as last amended by Section 20,
 Chapter 222, O.S.L. 2010 and 1118, as amended by
 Section 21, Chapter 222, O.S.L. 2010 (36 O.S. Supp.
 2010, Sections 1101, 1101.1, 1103, 1105, 1106, 1107,
 1108, 1109, 1112, 1115, 1116 and 1118), which relate
 to the Unauthorized Insurers and Surplus Lines
 Insurance Act; requiring certain transactions to be
 only performed by a surplus lines licensee or broker;
 specifying that certain surplus lines premiums shall
 be subject to surplus premium tax pursuant to certain
 agreements entered into by the Insurance
 Commissioner; modifying service of process; modifying
 circumstances for award of certain attorney fees;

1 modifying conditions in which insurance may be
2 procured from surplus lines insurers; providing
3 procedures for the procurement of certain insurance
4 for an exempt commercial purchaser; defining term;
5 specifying information to be submitted to the surplus
6 lines clearinghouse; providing schedule for filing
7 and payment of certain taxes; providing penalty for
8 failure to file certain information; allowing certain
9 coverage to be placed with certain insurers;
10 clarifying type of licensee; requiring surplus lines
11 insurer to meet certain financial requirements;
12 requiring certain information submitted to the
13 surplus lines clearinghouse to be retained by certain
14 licensees or brokers; modifying procedures relating
15 to the levying, collection, payment and distribution
16 of the surplus lines premium tax; providing for
17 codification; and declaring an emergency.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1100 of Title 36, unless there
21 is created a duplication in numbering, reads as follows:

22 Sections 1, 2, 3 and 9 of this act and Sections 1101 through
23 1121 of Title 36 of the Oklahoma Statutes shall be known and may be
24 cited as the "Unauthorized Insurers and Surplus Lines Insurance
Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1100.1 of Title 36, unless there
is created a duplication in numbering, reads as follows:

1 As used in the Unauthorized Insurers and Surplus Lines Insurance
2 Act:

3 1. "Admitted insurer" means, with respect to a state, an
4 insurer that is licensed to transact the business of insurance in
5 such state;

6 2. "Home state" means:

7 a. except as provided in subparagraphs b through e of
8 this paragraph, with respect to an insured:

9 (1) the state in which an insured maintains its
10 principal place of business or, in the case of an
11 individual, the individual's principal residence,
12 or

13 (2) if one hundred percent (100%) of the insured risk
14 is located out of the state referred to in
15 division (1) of this subparagraph, the state to
16 which the greatest percentage of the insured's
17 taxable premium for the insurance contract is
18 allocated,

19 b. with respect to determining the home state of the
20 insured, "principal place of business" means:

21 (1) the state where the insured maintains its
22 headquarters and where the insured's high-level
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1 officers direct, control and coordinate the
2 business activities, or

3 (2) if the insured's high-level officers direct,
4 control and coordinate business activities in
5 more than one state, the state in which the
6 greatest percentage of the insured's taxable
7 premium for the insurance contract is allocated,
8 or

9 (3) if the insured maintains its headquarters or the
10 insured's high-level officers direct, control and
11 coordinate the business activities outside any
12 state, the state to which the greatest percentage
13 of the insured's taxable premium for that
14 insurance contract is allocated,

15 c. with respect to determining the home state of the
16 insured "principal residence" means:

17 (1) the state where the insured resides for the
18 greatest number of days during the calendar year,
19 or

20 (2) if the insured's principal residence is located
21 outside any state, the state to which the
22 greatest percentage of the insured's taxable
23 premium for that insurance is allocated,

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- 1 d. if more than one insured from an affiliated group are
2 named insureds on a single nonadmitted insurance
3 contract, the term "home state" means the home state,
4 as determined pursuant to division (1) of subparagraph
5 a of this paragraph, of the member affiliated group
6 that has the largest percentage of premium attributed
7 to it under such insurance contract, or
- 8 e. when the group policyholder pays one hundred percent
9 (100%) of the premium from its own funds, the term
10 "home state" means the home state, as determined
11 pursuant to division (1) of subparagraph a of this
12 paragraph, of the group policyholder. When the group
13 policyholder does not pay one hundred percent (100%)
14 of the premium from its own funds, the term home state
15 means the home state, as determined pursuant to
16 division (1) of subparagraph a of this paragraph, or
17 of the group member;

18 3. "Independently procured insurance" means insurance procured
19 by an insured directly from a nonadmitted insurer;

20 4. "Licensed" means, with respect to an insurer, authorization
21 to transact the business of insurance by a license, certificate of
22 authority, charter or otherwise;

1 5. "Multistate risk" means a risk covered by a nonadmitted
2 insurer with insured exposures in more than one state;

3 6. "Nonadmitted insurance" means any property and casualty
4 insurance permitted in a state to be placed directly through a
5 surplus lines licensee or broker with a nonadmitted insurer eligible
6 to accept such insurance. For purposes of the Unauthorized Insurers
7 and Surplus Lines Insurance Act, nonadmitted insurance includes
8 independently procured insurance and surplus lines insurance;

9 7. "Nonadmitted insurer" means, with respect to a state, an
10 insurer not licensed to engage in the business of insurance in such
11 state, but shall not include a risk retention group as that term is
12 defined under applicable federal law;

13 8. "Single-state risk" means a risk insured with insured
14 exposures in only one state;

15 9. "Surplus lines insurer" means insurance procured by a
16 surplus lines licensee or broker from a surplus lines insurer as
17 permitted under the law of the home state; and

18 10. "Surplus lines licensee or broker" means an individual,
19 firm or corporation that is licensed in a state to sell, solicit, or
20 negotiate insurance, including the agent of record on a nonadmitted
21 insurance policy, on properties, risks or exposures located or to be
22 performed in a state with nonadmitted insurers.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1100.2 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 For the purposes of carrying out the Nonadmitted and Reinsurance
5 Reform Act of 2010, the Insurance Commissioner is authorized to
6 enter into the Nonadmitted Insurance Multi-State Agreement or any
7 other multistate agreement or compact with the same function and
8 purpose, in order to:

9 1. Facilitate the collection, allocation and disbursement of
10 premium taxes attributable to the placement of nonadmitted insurance
11 through a central clearinghouse;

12 2. Provide for uniform methods of allocation and reporting
13 among nonadmitted insurance risk classifications through a central
14 clearinghouse; and

15 3. Share information among states relating to nonadmitted
16 insurance premium taxes.

17 SECTION 4. AMENDATORY 36 O.S. 2001, Section 1101, as
18 amended by Section 10, Chapter 222, O.S.L. 2010 (36 O.S. Supp. 2010,
19 Section 1101), is amended to read as follows:

20 Section 1101. A. ~~Sections 1101 through 1121 of this title~~
21 ~~shall be known and may be cited as the "Unauthorized Insurers and~~
22 ~~Surplus Lines Insurance Act".~~

23 ~~B.~~ No person in Oklahoma shall in any manner:

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1 1. Represent or assist any nonadmitted insurer ~~not then duly~~
2 ~~authorized to transact insurance in Oklahoma~~ as defined in the
3 Unauthorized Insurers and Surplus Lines Insurance Act, in the
4 soliciting, procuring, placing, or maintenance of any nonadmitted
5 insurance coverage upon or with relation to any subject of insurance
6 resident, located, or to be performed in Oklahoma- without being a
7 surplus lines licensee or broker; or

8 2. Inspect or examine any risk or collect or receive any
9 premium on behalf of ~~the~~ any nonadmitted insurer without being a
10 surplus lines broker or licensee.

11 ~~C.~~ B. Any person transacting insurance or acting as a surplus
12 lines broker or licensee in violation of this section shall be
13 liable to the insured for the performance of any contract between
14 the insured and the insurer resulting from the transaction.

15 ~~D.~~ C. This section shall not apply as to reinsurance, to
16 surplus line insurance lawfully procured pursuant to ~~this article~~
17 the Unauthorized Insurers and Surplus Lines Insurance Act, to
18 transactions exempt under Section 606 of this title (Authorization
19 of Insurers and General Qualifications), or to professional services
20 of an adjuster or attorney-at-law from time to time with respect to
21 claims under policies lawfully solicited, issued, and delivered
22 outside of Oklahoma.

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 ~~E.~~ D. The investigation and adjustment of any claim in this
2 state arising under an insurance contract issued by an unauthorized
3 insurer shall not be deemed to constitute the transacting of
4 insurance in this state.

5 ~~F. Insurance companies not licensed in the State of Oklahoma E.~~
6 Nonadmitted insurers shall ~~not~~ contract with the trustees of any
7 fund which will insure residents in this state ~~without the previous~~
8 ~~written approval of the Insurance Commissioner~~ in a manner
9 consistent with the requirements, nature and scope of the
10 Unauthorized Insurers and Surplus Lines Insurance Act.

11 SECTION 5. AMENDATORY Section 22, Chapter 176, O.S.L.
12 2009 (36 O.S. Supp. 2010, Section 1101.1), is amended to read as
13 follows:

14 Section 1101.1 A. An Oklahoma domestic insurer possessing
15 policyholder surplus of at least Fifteen Million Dollars
16 (\$15,000,000.00) may, pursuant to a resolution by its board of
17 directors, and with the written approval of the Insurance
18 Commissioner, be designated as a domestic surplus line insurer.
19 Such insurers shall write surplus line insurance in any jurisdiction
20 within which it does business, including this state.

21 B. A domestic surplus line insurer may only insure in this
22 state any risk procured pursuant to Article 11 of the Oklahoma
23 Insurance Code governing surplus line insurers and brokers and its

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1 premium shall be subject to surplus line premium tax pursuant to
2 Section 1115 of this title and pursuant to the Nonadmitted Insurance
3 Multi-State Agreement or any other multistate agreement or compact
4 with the same function and purpose the Insurance Commissioner may
5 enter into or join.

6 C. A domestic surplus line insurer may not issue a policy
7 designed to satisfy the motor vehicle financial responsibility
8 requirement of this state, the Oklahoma Workers' Compensation Act,
9 or any other law mandating insurance coverage by a licensed
10 insurance company.

11 D. A domestic surplus line insurer is not subject to the
12 provisions of the Oklahoma Property & Casualty Insurance Guaranty
13 Act nor the Oklahoma Life and Health Insurance Guaranty Association
14 Act.

15 SECTION 6. AMENDATORY 36 O.S. 2001, Section 1103, as
16 amended by Section 12, Chapter 222, O.S.L. 2010 (36 O.S. Supp. 2010,
17 Section 1103), is amended to read as follows:

18 Section 1103. A. Delivery, effectuation, or solicitation of
19 any insurance contract, by mail or otherwise, within this state by a
20 surplus lines insurer, or the performance within this state of any
21 other service or transaction connected with the insurance by or on
22 behalf of the insurer, shall be deemed to constitute an appointment
23 by the insurer of the Insurance Commissioner and the Commissioner's

1 successors in office as its attorney, upon whom may be served all
2 lawful process issued within this state in any action or proceeding
3 against the insurer arising out of any such contract or transaction.

4 B. Service of process shall be made by delivering to and
5 leaving with the Insurance Commissioner three copies thereof. At
6 time of service the plaintiff shall pay Twenty Dollars (\$20.00) to
7 the Insurance Commissioner, taxable as costs in the action. The
8 Insurance Commissioner shall mail by registered mail one of the
9 copies of the process to the defendant at ~~its principal place of~~
10 ~~business~~ any home state address as last known to the Insurance
11 Commissioner, and shall keep a record of all process so served.

12 C. Service of process in any action or proceeding, in addition
13 to the manner provided herein, shall also be valid if served upon
14 any person within this state who, in this state on behalf of the
15 insurer, is soliciting insurance, or making, issuing, or delivering
16 any insurance policy, or collecting or receiving any premium,
17 membership fee, assessment, or other consideration for insurance.

18 D. Service of process upon an insurer in accordance with this
19 section shall be as valid and effective as if served upon a
20 defendant personally present in this state.

21 E. Means provided in this section for service of process upon
22 the insurer shall not be deemed to prevent service of process upon
23 the insurer by any other lawful means.

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1 F. An insurer which has been so served with process shall have
2 the right to appear in and defend the action and employ attorneys
3 and other persons in this state to assist in its defense or
4 settlement.

5 SECTION 7. AMENDATORY 36 O.S. 2001, Section 1105, as
6 amended by Section 14, Chapter 222, O.S.L. 2010 (36 O.S. Supp. 2010,
7 Section 1105), is amended to read as follows:

8 Section 1105. In any action against a surplus lines insurer
9 pursuant to Section 1103 of this ~~article~~ title, if the insurer has
10 failed for thirty (30) days after demand prior to the commencement
11 of the action to make payment in accordance with the terms of the
12 contract of insurance or in accordance with Section 1115 of this
13 title, and it appears to the court that the refusal was vexatious
14 and without reasonable cause, the court may allow to the plaintiff a
15 reasonable attorney fee and include the fee in any judgment that may
16 be rendered in the action. The fee shall not exceed one-third (1/3)
17 of the amount which the court or jury finds the plaintiff is
18 entitled to recover against the insurer, but in no event shall a fee
19 be less than One Hundred Dollars (\$100.00). Failure of an insurer to
20 defend any action shall be deemed prima facie evidence that its
21 failure to make payment was vexatious and without reasonable cause.

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1 SECTION 8. AMENDATORY 36 O.S. 2001, Section 1106, as
2 last amended by Section 15, Chapter 222, O.S.L. 2010 (36 O.S. Supp.
3 2010, Section 1106), is amended to read as follows:

4 Section 1106. If insurance required to protect the interest of
5 the assured cannot be procured from authorized insurers after direct
6 inquiry to authorized insurers, ~~the insurance, hereinafter~~
7 ~~designated as "surplus line",~~ may be procured from surplus lines
8 insurers subject to the following conditions:

9 1. The surplus lines insurer shall have a certificate of
10 approval from the Commissioner, ~~and meet all relevant statutory~~
11 ~~requirements, including the following~~ if it meets the requirements
12 of the Unauthorized Insurers and Surplus Lines Insurance Act and the
13 following conditions:

- 14 a. ~~the insurer is financially stable, and~~
- 15 b. ~~the insurer is controlled by persons possessing~~
16 ~~competence, experience and integrity, and~~
- 17 c. ~~the insurer, if a foreign insurer, posts a special~~
18 ~~deposit in an amount to be determined by the~~
19 ~~Commissioner, or~~ has capital and surplus or its
20 equivalent under the laws of its domiciliary
21 jurisdiction which equals the greater of:
22 (1) the minimum capital and surplus requirements
23 under the laws of this state, or

1 (2) Fifteen Million Dollars (\$15,000,000.00),

2 b. the requirements of subparagraph a of this paragraph
3 may be satisfied by an insurer's possessing less than
4 the minimum capital and surplus upon an affirmative
5 finding of acceptability by the Insurance
6 Commissioner. The finding shall be based upon such
7 factors as quality of management, capital and surplus
8 of any parent company, company underwriting profit and
9 investment income trends, market availability and
10 company record and reputation within the industry. In
11 no event shall the Insurance Commissioner make an
12 affirmative finding of acceptability when the
13 nonadmitted insurer's capital and surplus is less than
14 Four Million Five Hundred Thousand Dollars
15 (\$4,500,000.00), and

16 d.

17 c. the insurer, if an alien insurer, is listed on the
18 National Association of Insurance Commissioners Non-
19 Admitted Insurers Quarterly Listing-

20 ~~The Commissioner may withdraw a certificate of approval or~~
21 ~~refuse to renew a certificate upon finding that the insurer no~~
22 ~~longer meets the criteria for approval set out herein;~~

1 2. The insurance shall be procured through a licensed surplus
2 ~~line~~ lines licensee or broker, hereinafter in this article referred
3 ~~to as the "broker"~~; and

4 3. ~~The broker shall file the appropriate affidavit as required~~
5 ~~by Section 1107 of this title~~ For the purposes of carrying out the
6 provisions of the Nonadmitted and Reinsurance Reform Act of 2010,
7 the Insurance Commissioner is authorized to utilize the national
8 insurance producer database of the National Association of Insurance
9 Commissioners, or any other equivalent uniform national database,
10 for the licensure of an individual or entity as a surplus lines
11 licensee or broker and for renewal of such license.

12 SECTION 9. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1106.1 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 A. A surplus lines broker is not required to make a due
16 diligence search to determine whether the full amount or type of
17 insurance can be obtained from admitted insurers when the broker is
18 seeking to procure or place nonadmitted insurance for an exempt
19 commercial purchaser, provided:

20 1. The broker procuring or placing the surplus lines insurance
21 has disclosed to the exempt commercial purchaser that such insurance
22 may or may not be available from the admitted market that may
23 provide greater protection with more regulatory oversight; and

1 2. The exempt commercial purchaser has subsequently requested
2 in writing for the broker to procure or place such insurance from a
3 nonadmitted insurer.

4 B. For purposes of this section, the term "exempt commercial
5 purchaser" means any person purchasing commercial insurance that, at
6 the time of placement, meets the following requirements:

7 1. The person employs or retains a qualified risk manager to
8 negotiate insurance coverage;

9 2. The person has paid aggregate nationwide commercial property
10 and casualty insurance premiums in excess of One Hundred Thousand
11 Dollars (\$100,000.00) in the immediately preceding twelve (12)
12 months;

13 3. The person meets at least one of the following criteria:

14 a. the person possesses a net worth in excess of Twenty
15 Million Dollars (\$20,000,000.00), as such amount is
16 adjusted pursuant to paragraph 4 of this subsection,

17 b. the person generates annual revenues in excess of
18 Fifty Million Dollars (\$50,000,000.00), as such amount
19 is adjusted pursuant to paragraph 4 of this
20 subsection,

21 c. the person employs more than five hundred full-time-
22 equivalent employees per individual insured or is a
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1 member of an affiliated group employing more than one
2 thousand employees in the aggregate,

3 d. the person is a not-for-profit organization or public
4 entity generating annual budgeted expenditures of at
5 least Thirty Million Dollars (\$30,000,000.00), as such
6 amount is adjusted pursuant to paragraph 4 of this
7 subsection, or

8 e. the person is a municipality with a population in
9 excess of fifty thousand (50,000) persons; and

10 4. Effective on January 1, 2015, and every five (5) years
11 thereafter, the amounts in subparagraphs a, b and d of paragraph 3
12 of this subsection shall be adjusted to reflect the percentage
13 change for such five-year period in the Consumer Price Index of All
14 Urban Consumers published by the Bureau of Labor Statistics of the
15 U.S. Department of Labor.

16 SECTION 10. AMENDATORY 36 O.S. 2001, Section 1107, as
17 amended by Section 16, Chapter 222, O.S.L. 2010 (36 O.S. Supp. 2010,
18 Section 1107), is amended to read as follows:

19 Section 1107. A. After procuring any surplus line insurance,
20 the broker shall execute and ~~file with the Insurance Commissioner a~~
21 ~~report under oath, setting forth facts from which it may be~~
22 ~~determined whether the requirements of Section 1106 of this title~~
23 ~~have been met, and in addition thereto the following:~~

1 ~~1. Name and address of the insurer, and name and address of the~~
2 ~~person named in the policy pursuant to Section 1118 of this title to~~
3 ~~whom the Insurance Commissioner shall send copies of legal process;~~

4 ~~2. Number of the policy issued;~~

5 ~~3. Name and address of the insured;~~

6 ~~4. Nature and amount of liability assumed by the insurer;~~

7 ~~5. Premium, and any membership, application, policy or~~
8 ~~registration fees; and~~

9 ~~6. Other information reasonably required by the Insurance~~
10 ~~Commissioner.~~

11 ~~B. The Insurance Commissioner shall prescribe and furnish the~~
12 ~~required report form. The Insurance Commissioner shall have the~~
13 ~~authority to grant approval to the surplus line broker for the~~
14 ~~master bordereau style reporting of surplus line activity on a~~
15 ~~quarterly basis submit such information required to be submitted to~~
16 ~~the surplus lines clearinghouse as established by the Insurance~~
17 ~~Commissioner through joining the Nonadmitted Insurance Multi-State~~
18 ~~Agreement or any other multistate agreement or compact with the same~~
19 ~~function and purpose.~~

20 ~~B. Pursuant to Section 1115 of this title, when Oklahoma is the~~
21 ~~home state, the surplus lines licensee and broker shall make the tax~~
22 ~~filings and payments required by subsection A of this section to the~~

1 clearinghouse in a quarterly manner, utilizing the following dates
2 only:

3 1. February 15 for the quarter ending the preceding December
4 31;

5 2. May 15 for the quarter ending the preceding March 31;

6 3. August 15 for the quarter ending the preceding June 30; and

7 4. November 15 for the quarter ending the preceding September
8 30.

9 C. Failure to file the ~~report~~ required information with the
10 clearinghouse pursuant to this section and Section 1115 of this
11 title shall result, after notice and hearing, in censure,
12 suspension, or revocation of license or a fine of up to Five Hundred
13 Dollars (\$500.00) for each occurrence or by both such fine and
14 licensure penalty.

15 ~~D. The brokers' affidavits and report shall be submitted on or~~
16 ~~before the end of each month following each calendar quarter.~~

17 SECTION 11. AMENDATORY 36 O.S. 2001, Section 1108, as
18 amended by Section 17, Chapter 222, O.S.L. 2010 (36 O.S. Supp. 2010,
19 Section 1108), is amended to read as follows:

20 Section 1108. ~~A. If after a hearing thereon the Insurance~~
21 ~~Commissioner finds that~~ a particular insurance coverage or type,
22 class, or kind of coverage is not readily procurable from authorized
23 insurers, ~~he may by order declare the coverage or coverages to be~~

1 ~~recognized surplus lines until the Insurance Commissioner's further~~
2 ~~order. The broker's affidavit provided for in Section 1107 of this~~
3 ~~article shall not be required as to coverages while so recognized.~~
4 ~~Before holding any hearing the Commissioner shall give notice to~~
5 ~~admitted insurers authorized to write such lines of insurance, to~~
6 ~~rating organizations licensed to make rates for such lines of~~
7 ~~insurance and to other interested persons in the manner provided by~~
8 ~~Article 3 of this Code.~~

9 ~~B. Any order shall be subject to modification, and the~~
10 ~~Insurance Commissioner shall so modify as to any coverage found by~~
11 ~~the Commissioner to be no longer entitled to recognition after a~~
12 ~~hearing held upon the initiative of the Commissioner or upon request~~
13 ~~of any insurance agent, surplus line broker, broker, insurer, rating~~
14 ~~or advisory organization, or other person in Oklahoma, a surplus~~
15 ~~lines licensee or broker may place the coverage with a nonadmitted~~
16 ~~insurer or surplus lines insurer as defined in the Unauthorized~~
17 ~~Insurers and Surplus Lines Insurance Act.~~

18 SECTION 12. AMENDATORY 36 O.S. 2001, Section 1109, as
19 last amended by Section 18, Chapter 222, O.S.L. 2010 (36 O.S. Supp.
20 2010, Section 1109), is amended to read as follows:

21 Section 1109. A. Insurance contracts procured as surplus line
22 coverage from surplus lines insurers in accordance with this article
23 shall be fully valid and enforceable as to all parties, and shall be

1 given recognition in all matters and respects to the same effect as
2 like contracts issued by ~~authorized~~ admitted insurers.

3 B. Insurance contracts procured as surplus line coverage shall
4 contain in bold-face type notification stamped by the surplus lines
5 licensee or broker or surplus lines insurer on the declaration page
6 of the policy that the contracts are not subject to the protection
7 of any guaranty association in the event of liquidation or
8 receivership of the insurer.

9 SECTION 13. AMENDATORY 36 O.S. 2001, Section 1111, is
10 amended to read as follows:

11 Section 1111. A ~~licensed~~ surplus ~~line~~ lines licensee or broker
12 may accept and place surplus ~~line-business~~ lines insurance from any
13 insurance agent or broker licensed in this state for the kind of
14 insurance involved, and may compensate such agent or broker
15 therefor. The surplus lines licensee or broker shall have the right
16 to receive from the surplus lines insurer the customary commission.

17 SECTION 14. AMENDATORY 36 O.S. 2001, Section 1112, as
18 amended by Section 10, Chapter 307, O.S.L. 2002 (36 O.S. Supp. 2010,
19 Section 1112), is amended to read as follows:

20 Section 1112. A. A surplus ~~line~~ lines licensee or broker shall
21 not knowingly place any such coverage in an insurer which is in an
22 unsound financial condition. To be considered financially sound, a
23 surplus ~~line-company~~ lines insurer shall ~~have a minimum capital and~~

1 ~~surplus of not less than Fifteen Million Dollars (\$15,000,000.00)~~
2 meet the requirements of Section 1106 of this title. A surplus ~~line~~
3 lines licensee or broker shall not place any such coverage in an
4 insurer unless the insurer meets the requirements of Section 1106 of
5 this title or has been approved in writing by the Insurance
6 Commissioner as a surplus ~~line~~ lines insurer and such approval has
7 not been withdrawn. A surplus ~~line~~ lines licensee or broker shall
8 not place any surplus ~~line~~ lines insurance in an insurer that has
9 been disapproved by the Commissioner as a surplus ~~line~~ lines
10 insurer.

11 B. For violation of this section, in addition to any other
12 penalty provided by law, the broker's license shall be revoked, and
13 the broker shall not again be so licensed within a period of two (2)
14 years thereafter. In addition, any surplus ~~line~~ lines broker who
15 violates this section shall be guilty of a misdemeanor and upon
16 conviction thereof shall be punished for each offense, by a fine of
17 not more than One Thousand Dollars (\$1,000.00) or by confinement in
18 jail for not more than ninety (90) days, or by both such fine and
19 imprisonment.

20 SECTION 15. AMENDATORY 36 O.S. 2001, Section 1113, is
21 amended to read as follows:

22 Section 1113. Each surplus ~~line~~ lines licensee or broker shall
23 keep in the broker's office in this state a full and true record of
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1 each surplus ~~line~~ lines contract procured by the broker, and such
2 record may be examined at any time within three (3) years thereafter
3 by the Insurance Commissioner. The record shall include ~~the~~
4 ~~following items as are applicable:~~

5 ~~1. Name and address of the insurer;~~

6 ~~2. Name and address of the insured;~~

7 ~~3. Amount of insurance;~~

8 ~~4. Gross premium charged;~~

9 ~~5. Return premium paid, if any;~~

10 ~~6. Rate of premium charged on the several items of coverage;~~

11 ~~7. Effective date of the contract and the terms thereof; and~~

12 ~~8. Brief general description of the risks insured against and~~

13 ~~the property insured~~ such information required to be submitted to

14 the surplus lines clearinghouse as established by the Insurance

15 Commissioner through joining the Nonadmitted Insurance Multi-State

16 Agreement or any other multistate agreement or compact with the same

17 function and purpose.

18 SECTION 16. AMENDATORY 36 O.S. 2001, Section 1114, is

19 amended to read as follows:

20 Section 1114. Each surplus ~~line~~ lines licensee or broker shall

21 on or before ~~the first day of~~ April 1 of each year file with the

22 Insurance Commissioner a verified statement of all surplus ~~line~~

23 lines insurance transacted by ~~him~~ the broker during the preceding

24

1 calendar year. The statement shall be on a form prescribed and
2 furnished by the Insurance Commissioner and shall show+

3 ~~1. Gross amount of each kind of insurance transacted,~~

4 ~~2. Aggregate gross premiums charged,~~

5 ~~3. Aggregate of return premiums paid to insureds,~~

6 ~~4. Aggregate of net premiums, and~~

7 ~~5. Such additional information as may reasonably be required by~~

8 ~~the Insurance Commissioner such information required to be submitted~~

9 ~~to the surplus lines clearinghouse as established by the Insurance~~

10 ~~Commissioner through joining the Nonadmitted Insurance Multi-State~~

11 ~~Agreement or any other multistate agreement or compact with the same~~

12 ~~function and purpose.~~

13 SECTION 17. AMENDATORY 36 O.S. 2001, Section 1115, as
14 last amended by Section 19, Chapter 222, O.S.L. 2010 (36 O.S. Supp.
15 2010, Section 1115), is amended to read as follows:

16 Section 1115. A. ~~On or before the end of each month following~~
17 ~~each calendar quarter, each surplus line broker shall remit to the~~
18 ~~State Treasurer through the Insurance Commissioner a tax on the~~
19 ~~premiums, exclusive of sums collected to cover federal and state~~
20 ~~taxes and examination fees, on surplus line insurance subject to tax~~
21 ~~transacted by the broker for the period covered by the report. The~~
22 ~~tax shall be at the rate of six percent (6%) of the gross premiums~~
23 ~~less premiums returned on account of cancellation or reduction of~~

1 ~~premium, and shall exclude gross premiums and returned premiums upon~~
2 ~~business exempted from surplus line provisions pursuant to Section~~
3 ~~1119 of this title.~~

4 ~~B. Except as provided in subsection C of this section, for the~~
5 ~~purpose of determining the surplus line tax, the total premium~~
6 ~~charged for surplus line insurance placed in a single transaction~~
7 ~~with one underwriter or group of underwriters, whether in one or~~
8 ~~more policies, shall be allocated to this state in such proportion~~
9 ~~as the total premium on the insured properties or operations in this~~
10 ~~state, computed on the exposure in this state on the basis of any~~
11 ~~single standard rating method in use in all states or countries~~
12 ~~where the insurance applies, bears to the total premium so computed~~
13 ~~in all the states or countries~~ In addition to the full amount of
14 gross premiums charged by the insurer for the insurance, where
15 Oklahoma is the home state of the insured, every person licensed
16 pursuant to Section 1106 of this title shall collect and pay to the
17 surplus lines clearinghouse, as provided in Section 3 of this act, a
18 sum based on the total gross premiums charged in connection with any
19 broker-procured insurance, less any return premiums, for surplus
20 lines insurance provided by the licensee pursuant to the license.
21 Where the insurance covers properties, risks or exposures located or
22 to be performed both in and out of Oklahoma, the sum payable shall
23 be computed based on an amount equal to six percent (6%) on that

1 portion of the gross premiums allocated to Oklahoma, plus an amount
2 equal to the portion of the premiums allocated to other states or
3 territories on the basis of tax rates and fees applicable to
4 properties, risks or exposures located or to be performed outside
5 Oklahoma pursuant to subsection E of this section less the amount of
6 gross premium unearned at termination of the surplus lines
7 insurance. Any such unearned gross premium credited by the state to
8 the surplus broker or licensee shall be returned to the policyholder
9 by the broker or licensee. The surplus lines licensee is prohibited
10 from rebating, for any reason, any part of the tax.

11 B. Gross premium charged for independently procured insurance,
12 less any return premiums, are subject to a tax at the rate of six
13 percent (6%). At the time of filing the report required in this
14 section, the insured procuring independently procured insurance,
15 where Oklahoma is the home state, shall pay the tax to the surplus
16 lines clearinghouse, as provided in Section 3 of this act, who shall
17 transmit the same for distribution as provided by the Unauthorized
18 Insurers and Surplus Lines Insurance Act. Where the insurance
19 covers properties, risks or exposures located or to be performed
20 both in and out of Oklahoma, the sum payable shall be computed based
21 on an amount equal to six percent (6%) on that portion of the gross
22 premiums allocated to Oklahoma pursuant to subsection A of this
23 section, plus an amount equal to the portion of the premiums

1 allocated to other states or territories on the basis of the tax
2 rates and fees applicable to properties, risks or exposures located
3 or to be performed outside of this state pursuant to this
4 subsection.

5 C. The Insurance Commissioner is authorized to participate in
6 the Nonadmitted Insurance Multi-State Agreement or any other
7 multistate agreement or compact with the same function and purpose
8 for the purpose of collecting and disbursing to reciprocal states
9 any funds collected pursuant to the Unauthorized Insurers and
10 Surplus Lines Insurance Act applicable to other properties, risks or
11 exposures located or to be performed outside of Oklahoma. To the
12 extent that other states where portions of the properties, risks or
13 exposures reside have failed to enter into compact or reciprocal
14 allocation procedure with Oklahoma, the net premium tax collected
15 shall be retained by Oklahoma. When the surplus lines coverage of
16 an Oklahoma home state insured covers properties, risks or exposures
17 located only in Oklahoma, the surplus lines licensee or broker shall
18 nevertheless make the required surplus premium tax filings and
19 remittances as described in subsection A of this section pursuant to
20 the Nonadmitted Insurance Multi-State Agreement or any other
21 multistate agreement or compact with the same function and purpose
22 the Insurance Commissioner may agree to or enter.

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1 D. In order to participate in the Nonadmitted Insurance Multi-
2 State Agreement, the Insurance Commissioner is authorized to
3 establish a uniform, statewide rate of taxation applicable to lines
4 of nonadmitted insurance subject to the Agreement. This rate shall
5 encompass all existing rates of taxation, fees and assessments
6 imposed by this state and any political subdivision hereof, pursuant
7 to subsection A of this section and the Insurance Commissioner shall
8 document the method by which the statewide rate is calculated. The
9 Insurance Commissioner is authorized to receive any monies obtained
10 through the clearinghouse established through the Agreement for the
11 collection and then the disbursement of such funds as provided by
12 the Insurance Code.

13 E. The Insurance Commissioner is authorized to utilize or adopt
14 the allocation schedule included in the Nonadmitted Insurance Multi-
15 State Agreement or any other multistate agreement or compact with
16 the same function and purpose of allocating risk and computing the
17 tax due on the portion of premium attributable to each risk
18 classification and to each state where properties, risks or
19 exposures are located.

20 F. Subsections A through E of this section shall apply equally
21 to single-state risks and multistate risks.

22 G. Policies sold to federally recognized Indian tribes shall be
23 reported as provided in Section 1107 of this title; however, these
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1 policies shall be exempt from the surplus line tax to the extent
2 that the Insurance Commissioner can identify that coverage is for
3 risks which are wholly owned by a tribe and located within Indian
4 Country, as defined in Section 1151 of Title 18 of the United States
5 Code

6 ~~C.~~ H. The surplus line tax on insurance on motor transit
7 operations conducted between this and other states shall be paid on
8 the total premium charged on all surplus line insurance less:

9 1. The portion of the premium determined as provided in
10 subsection B of this section charged for operations in other states
11 taxing the premium of an insured ~~maintaining its headquarters office~~
12 ~~in this~~ where Oklahoma is the home state; or

13 2. The premium for operations outside of this state of an
14 insured maintaining its headquarters office outside of this state
15 and branch office in this state.

16 ~~D. Every person, association, or legal entity procuring or~~
17 ~~accepting any insurance coverage from a surplus lines insurer, upon,~~
18 ~~covering, or relating to a subject of insurance resident or having a~~
19 ~~situs in the this state, or any insurance coverage which is to be~~
20 ~~performed in whole or part in this state, except coverages as are~~
21 ~~lawfully obtained through a licensed surplus line broker in this~~
22 ~~state, shall report, within thirty (30) days next succeeding the~~
23 ~~issuance of evidence of coverage, the purchase of the coverages of~~

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1 ~~insurance to the Insurance Commissioner, on forms prescribed by the~~
2 ~~Commissioner, and at the same time shall remit to the Insurance~~
3 ~~Commissioner a tax in the amount of six percent (6%) of the annual~~
4 ~~premium agreed to be paid, or paid, for the insurance. The~~
5 ~~insurance coverages, providing for the payment of retrospective~~
6 ~~premiums, or coverages on which the premiums are not determinable at~~
7 ~~the time of issuance, shall be reported to the Insurance~~
8 ~~Commissioner, by the insured, within thirty (30) days next~~
9 ~~succeeding the date the coverages are issued and the tax payable on~~
10 ~~the coverages shall be remitted, by the insured, to the Insurance~~
11 ~~Commissioner within thirty (30) days next succeeding the date the~~
12 ~~premiums can be determined. The tax on renewal premiums shall be~~
13 ~~paid by the insured in accordance with this section, in like manner~~
14 ~~as provided for payment of the original premium tax, within thirty~~
15 ~~(30) days next succeeding the date the premiums can be determined.~~

16 SECTION 18. AMENDATORY 36 O.S. 2001, Section 1116, as
17 last amended by Section 20, Chapter 222, O.S.L. 2010 (36 O.S. Supp.
18 2010, Section 1116), is amended to read as follows:

19 Section 1116. A. Any surplus line lines licensee or broker who
20 fails to remit the surplus line tax provided for by Section 1115 of
21 this title for more than sixty (60) days after it is due shall be
22 liable to a civil penalty of not to exceed Twenty-five Dollars
23 (\$25.00) for each additional day of delinquency. The Insurance
24

1 Commissioner shall collect the tax by distraint and shall recover
2 the penalty by an action in the name of the State of Oklahoma. The
3 Commissioner may request the Attorney General to appear in the name
4 of the state by relation of the Commissioner.

5 B. If any person, association or legal entity procuring or
6 accepting any insurance coverage from a surplus lines insurer,
7 otherwise than through a ~~licensed~~ surplus ~~line~~ lines licensee or
8 broker in this state, fails to remit the surplus line tax provided
9 for by ~~subsection D of~~ Section 1115 of this title, the person,
10 association or legal entity shall, in addition to the tax, be liable
11 to a civil penalty in an amount equal to one percent (1%) of the
12 premiums paid or agreed to be paid for the policy or policies of
13 insurance for each calendar month of delinquency or a civil penalty
14 in the amount of Twenty-five Dollars (\$25.00) whichever shall be the
15 greater. The Insurance Commissioner shall collect the tax by
16 distraint and shall recover the civil penalty in an action in the
17 name of the State of Oklahoma. The Commissioner may request the
18 Attorney General to appear in the name of the state by relation of
19 the Commissioner.

20 SECTION 19. AMENDATORY 36 O.S. 2001, Section 1118, as
21 amended by Section 21, Chapter 222, O.S.L. 2010 (36 O.S. Supp. 2010,
22 Section 1118), is amended to read as follows:
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1 Section 1118. A. Every surplus lines insurer issuing or
2 delivering a surplus line policy through a surplus ~~line~~ lines
3 licensee or broker in this state shall conclusively be deemed
4 thereby to have irrevocably appointed the Insurance Commissioner as
5 its attorney for acceptance of service of all legal process, other
6 than a subpoena, issued in this state in any action or proceeding
7 under or arising out of the policy, and service of process upon the
8 Insurance Commissioner shall be lawful personal service upon the
9 insurer.

10 B. Each surplus line policy shall contain a provision stating
11 the substance of subsection A of this section, and designating the
12 person to whom the Insurance Commissioner shall mail process as
13 provided in subsection C of this section.

14 C. Triplicate copies of legal process against such an insurer
15 shall be served upon the Insurance Commissioner, and at time of
16 service the plaintiff shall pay to the Insurance Commissioner Twenty
17 Dollars (\$20.00), taxable as costs in the action. The Insurance
18 Commissioner shall immediately mail one copy of the process so
19 served to the person designated by the insurer in the policy for the
20 purpose, by mail with return receipt requested. The insurer shall
21 have forty (40) days after the date of mailing within which to
22 plead, answer, or otherwise defend the action.

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1 SECTION 20. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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6 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03-07-2011 - DO
7 PASS, As Amended.
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