

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 As Amended

4 SENATE BILL NO. 1617

5 By: Brown of the Senate

6 and

7 Mulready of the House

8 An Act relating to unauthorized insurers and surplus
9 lines insurance; amending 36 O.S. 2011, Sections
10 1100, 1100.1, 1100.2, 1101, 1101.1, 1103, 1104, 1105,
11 1106, 1106.1, 1107, 1109, 1111, 1112, 1113, 1114,
12 1115, 1116, 1118 and 1120, which relate to the
13 Unauthorized Insurers and Surplus Lines Insurance
14 Act; updating short title; specifying purpose;
15 modifying definitions; authorizing the Insurance
16 Commissioner in his or her discretion to enter into
17 certain agreement if deemed to be in the best
18 interest of the state; clarifying that certain
19 actions must be performed by a broker or licensee as
20 defined in the Unauthorized Insurers and Surplus
21 Lines Insurance Act; allowing insurers to write
22 surplus line insurance in this state and certain
23 other jurisdictions; specifying when all domestic
24 surplus lines insurers shall pay premium tax to the
Insurance Commissioner; modifying service of process;
modifying exemption from service of process; allowing
certain state agencies attorney fees; modifying
requirement for a surplus lines insurer; clarifying
that certain insurance be procured in the insurer's
home state; exempting a surplus lines broker from
making certain due diligence search; modifying
procedures related to the procurement of surplus
lines insurance with a multistate risk; clarifying
information on certain notice; specifying that
insurance agent shall have the right to receive
certain commission; modifying requirements that a
surplus lines licensee or broker must meet;
specifying that information in records of surplus
line brokers shall be determined by law; requiring
certain information relating to surplus lines brokers

1 to be provided to the Insurance Commissioner;
2 modifying procedures relating to the calculation and
3 payment of the premium tax; clarifying language;
4 clarifying that legal process procedures apply to
5 surplus lines or nonadmitted insurer; modifying scope
6 of subjects that shall produce certain records for
7 examination by the Insurance Commissioner; and
8 declaring an emergency.

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

10 SECTION 1. AMENDATORY 36 O.S. 2011, Section 1100, is
11 amended to read as follows:

12 Section 1100. A. ~~Sections 4, 5, 6 and 12 of this act and~~
13 ~~Sections 1101~~ 1100 through 1120 of Title 36 of the Oklahoma Statutes
14 shall be known and may be cited as the "Unauthorized Insurers and
15 Surplus Lines Insurance Act".

16 B. The purpose and effect of the Unauthorized Insurers and
17 Surplus Lines Insurance Act shall relate back to the effective date
18 of implementation of the Nonadmitted and Reinsurance Reform Act of
19 2010.

20 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1100.1, is
21 amended to read as follows:

22 Section 1100.1. As used in the Unauthorized Insurers and
23 Surplus Lines Insurance Act:

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

1 2. "Home state" means:

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

4 (1) the state in which an insured maintains its
5 principal place of business or, in the case of an
6 individual, the individual's principal residence,
7 or

8 (2) if one hundred percent (100%) of the insured risk
9 is located out of the state referred to in
10 division (1) of this subparagraph, the state to
11 which the greatest percentage of the insured's
12 taxable premium for the insurance contract is
13 allocated is deemed the home state,

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

16 (1) the state where the insured maintains its
17 headquarters and where the insured's high-level
18 officers direct, control and coordinate the
19 business activities, or

20 (2) if the insured maintains its headquarters or the
21 insured's high-level officers direct, control and
22 coordinate the business activities outside ~~any~~
23 state Oklahoma, the state to which the greatest
24

- 1 percentage of the insured's taxable premium for
2 that insurance contract is allocated,
- 3 c. with respect to determining the home state of the
4 insured, "principal residence" means:
- 5 (1) the state where the insured resides for the
6 greatest number of days during the calendar year,
7 or
8 (2) if the insured's principal residence is located
9 outside any state, the state to which the
10 greatest percentage of the insured's taxable
11 premium for that insurance is allocated,
- 12 d. if more than one insured from an affiliated group are
13 named insureds on a single nonadmitted insurance
14 contract, the term "home state" means the home state,
15 as determined pursuant to division (1) of subparagraph
16 a of this paragraph, of the member affiliated group
17 that has the largest percentage of premium attributed
18 to it under such insurance contract, or
- 19 e. when the group policyholder pays one hundred percent
20 (100%) of the premium from its own funds, the term
21 "home state" means the home state, as determined
22 pursuant to division (1) of subparagraph a of this
23 paragraph, of the group policyholder. When the group
24 policyholder does not pay one hundred percent (100%)

1 of the premium from its own funds, the term "home
2 state" means the home state, as determined pursuant to
3 division (1) of subparagraph a of this paragraph, or
4 of the group member;

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

7 4. "Licensed" means, with respect to an insurer, authorization
8 to transact the business of insurance in a state by a license,
9 certificate of authority, charter or otherwise;

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

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

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

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

24

1 9. "Surplus lines insurer" means insurance procured by a
2 ~~surplus lines~~ nonadmitted licensee or broker from a surplus lines
3 insurer as permitted under the law of the insured's home state; and

4 10. "Surplus lines licensee" or "surplus lines broker" means an
5 individual, firm or corporation that is licensed in ~~a state~~ the
6 insured's home state to sell, solicit, or negotiate insurance,
7 including the agent of record on a nonadmitted insurance policy, on
8 properties, risks or exposures located or to be performed in a state
9 ~~with~~ allowing nonadmitted insurers to do business.

10 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1100.2, is
11 amended to read as follows:

12 Section 1100.2. A. For the purposes of carrying out the
13 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance
14 Commissioner is authorized in the Insurance Commissioner's sole
15 discretion and judgment to enter into the Nonadmitted Insurance
16 Multi-State Agreement or any other multistate agreement or compact
17 with the same function and purpose, in order to:

18 1. Facilitate the collection, allocation and disbursement of
19 premium taxes attributable to the placement of nonadmitted insurance
20 through a central clearinghouse;

21 2. Provide for uniform methods of allocation and reporting
22 among nonadmitted insurance risk classifications through a central
23 clearinghouse; and
24

1 3. Share information among states relating to nonadmitted
2 insurance premium taxes.

3 B. The Insurance Commissioner is not compelled now or in the
4 future to join the Nonadmitted Insurance Multi-State Agreement or
5 any other multistate agreement or compact with the same function and
6 purpose of distributing surplus line premium tax proceeds based on a
7 formula of multistate risk allocation, unless the Insurance
8 Commissioner, in his or her discretion, deems joining such a
9 multistate compact or agreement is in the best interest of the State
10 of Oklahoma and its citizens.

11 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1101, is
12 amended to read as follows:

13 Section 1101. A. No person in Oklahoma shall in any manner:

14 1. Represent or assist any nonadmitted insurer ~~as defined in~~
15 ~~the Unauthorized Insurers and Surplus Lines Insurance Act,~~ in the
16 soliciting, procuring, placing, or maintenance of any nonadmitted
17 insurance coverage upon or with relation to any subject of insurance
18 resident, located, or to be performed in Oklahoma without being a
19 surplus lines licensee or broker as defined in the Unauthorized
20 Insurers and Surplus Lines Insurance Act; or

21 2. Inspect or examine any risk or collect or receive any
22 premium on behalf of any nonadmitted insurer without being a surplus
23 lines broker or licensee as defined in the Unauthorized Insurers and
24 Surplus Lines Insurance Act.

1 B. Any person transacting insurance or acting as a surplus
2 lines broker or licensee in violation of this section shall be
3 liable to the insured for the performance of any contract between
4 the insured and the insurer resulting from the transaction.

5 C. This section shall not apply as to reinsurance, to surplus
6 line insurance lawfully procured pursuant to the Unauthorized
7 Insurers and Surplus Lines Insurance Act, to transactions exempt
8 under Section 606 of this title (Authorization of Insurers and
9 General Qualifications), or to professional services of an adjuster
10 or attorney-at-law from time to time with respect to claims under
11 policies lawfully solicited, issued, and delivered outside of
12 Oklahoma.

13 D. The investigation and adjustment of any claim in this state
14 arising under an insurance contract issued by ~~an unauthorized~~ a
15 nonadmitted insurer shall not be deemed to constitute the
16 transacting of the business of insurance in this state.

17 E. Nonadmitted insurers shall contract with the trustees of any
18 fund which will insure residents in this state in a manner
19 consistent with the requirements, nature and scope of the
20 Unauthorized Insurers and Surplus Lines Insurance Act.

21 SECTION 5. AMENDATORY 36 O.S. 2011, Section 1101.1, is
22 amended to read as follows:

23 Section 1101.1. A. An Oklahoma domestic insurer possessing
24 policyholder surplus of at least Fifteen Million Dollars

1 (\$15,000,000.00) may, pursuant to a resolution by its board of
2 directors, and with the written approval of the Insurance
3 Commissioner, be designated as a domestic surplus line insurer.
4 Such insurers ~~shall~~ may write surplus line insurance in this state
5 and in any other jurisdiction within which it does business,
6 including this state allowed under the Nonadmitted and Reinsurance
7 Reform Act of 2010.

8 B. A The premiums of a domestic surplus line insurer ~~may only~~
9 ~~insure in this state any risk procured pursuant to Article 11 of the~~
10 ~~Oklahoma Insurance Code governing surplus line insurers and brokers~~
11 ~~and its premium shall be subject to surplus line premium tax~~
12 ~~pursuant to Section 1115 of this title and pursuant to the~~
13 ~~Nonadmitted Insurance Multi-State Agreement or any other multistate~~
14 ~~agreement or compact with the same function and purpose the~~
15 ~~Insurance Commissioner may, in the exercise of his or her sole~~
16 ~~discretion and judgment, enter into or join. All domestic surplus~~
17 lines insurers shall pay all premium taxes to the Insurance
18 Commissioner **when Oklahoma is the home state of the insured** until
19 and unless in the exercise of his or her sole discretion and
20 judgment, the Insurance Commissioner decides to join the Nonadmitted
21 Insurance Multi-State Agreement or any other multistate agreement or
22 compact with the same function and purpose.

23 C. A domestic surplus line insurer may not issue a policy
24 designed to satisfy the motor vehicle financial responsibility

1 requirement of this state, the ~~Oklahoma~~ Workers' Compensation Act
2 Code, or any other law mandating insurance coverage by a licensed
3 insurance company.

4 D. A domestic surplus line insurer is not subject to the
5 provisions of the Oklahoma Property & Casualty Insurance Guaranty
6 Act nor the Oklahoma Life and Health Insurance Guaranty Association
7 Act.

8 SECTION 6. AMENDATORY 36 O.S. 2011, Section 1103, is
9 amended to read as follows:

10 Section 1103. A. Delivery, effectuation, or solicitation of
11 any insurance contract, by mail or otherwise, within this state by a
12 surplus lines insurer, or the performance within this state of any
13 other service or transaction connected with the insurance by or on
14 behalf of the insurer, shall be deemed to constitute an appointment
15 by the insurer of the Insurance Commissioner ~~and the Commissioner's~~
16 ~~successors in office~~ as its attorney, upon whom may be served all
17 lawful process issued within this state in any action or proceeding
18 against the insurer arising out of any such contract or transaction.

19 B. Service of process shall be made by delivering to and
20 leaving with the Insurance Commissioner three copies thereof. At
21 time of service the plaintiff shall pay Twenty Dollars (\$20.00) to
22 the Insurance Commissioner, taxable as costs in the action. The
23 Insurance Commissioner shall mail by registered mail one of the
24 copies of the process to the defendant at any home state address as

1 last known to the Insurance Commissioner, and shall keep a record of
2 all process so served.

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

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

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

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

19 SECTION 7. AMENDATORY 36 O.S. 2011, Section 1104, is
20 amended to read as follows:

21 Section 1104. Sections 1103 and 1105 of this article shall not
22 apply to ~~surplus line insurance lawfully effectuated under this~~
23 ~~article, or to~~ reinsurance, nor to any action or proceeding against
24 a surplus lines insurer arising out of:

- 1 1. Ocean marine and foreign trade insurance,
- 2 2. Insurance on subjects located, resident, or to be performed
3 wholly outside this state, or on vehicles or aircraft owned and
4 principally garaged outside this state,
- 5 3. Insurance on property or operations of railroads engaged in
6 interstate commerce, or
- 7 4. Insurance on aircraft or cargo of the aircraft, or against
8 liability, other than employers' liability, arising out of the
9 ownership, maintenance, or use of the aircraft, where the policy or
10 contract contains a provision designating the Insurance Commissioner
11 as its attorney for the acceptance of service of lawful process in
12 any action or proceeding instituted by or on behalf of an insured or
13 beneficiary arising out of any policy, or where the insurer enters a
14 general appearance in any action.

15 SECTION 8. AMENDATORY 36 O.S. 2011, Section 1105, is
16 amended to read as follows:

17 Section 1105. In any action against a surplus lines insurer
18 pursuant to Section 1103 of this title, if the insurer has failed
19 for thirty (30) days after demand prior to the commencement of the
20 action to make payment in accordance with the terms of the contract
21 of insurance or in accordance with Section 1115 of this title, and
22 it appears to the court that the refusal was vexatious and without
23 reasonable cause, the court may allow to the plaintiff or an
24 aggrieved agency of this state a reasonable attorney fee and include

1 the fee in any judgment that may be rendered in the action. The fee
2 shall not exceed one-third (1/3) of the amount which the court or
3 jury finds the plaintiff is entitled to recover against the insurer,
4 but in no event shall a fee be less than One Hundred Dollars
5 (\$100.00). Failure of an insurer to defend any action shall be
6 deemed prima facie evidence that its failure to make payment was
7 vexatious and without reasonable cause.

8 SECTION 9. AMENDATORY 36 O.S. 2011, Section 1106, is
9 amended to read as follows:

10 Section 1106. If insurance required to protect the interest of
11 the assured cannot be procured from admitted insurers after direct
12 inquiry to authorized insurers, insurance may be procured from
13 surplus lines insurers subject to the following conditions:

14 1. The surplus lines insurer shall meet the requirements of the
15 Unauthorized Insurers and Surplus Lines Insurance Act and the
16 following conditions:

17 a. the insurer has capital and surplus or its equivalent
18 under the laws of its domiciliary jurisdiction which
19 equals the greater of:

20 (1) the minimum capital and surplus requirements
21 under the laws of this state for nonadmitted
22 insurers, or

23 (2) Fifteen Million Dollars (\$15,000,000.00),
24

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

15 c. the insurer, if an alien insurer, is listed on the
16 National Association of Insurance Commissioners
17 Nonadmitted Insurers Quarterly Listing; and

18 2. The insurance shall be procured through a licensed surplus
19 lines licensee or broker licensed in a the insurer's home state. An
20 Oklahoma surplus lines license is required only where Oklahoma is
21 the home state ~~and domicile~~ of the insurer.

22 For the purposes of carrying out the provisions of the
23 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance
24 Commissioner is authorized to utilize the national insurance

1 producer database of the National Association of Insurance
2 Commissioners, or any other equivalent uniform national database,
3 for the licensure of an individual or entity as a surplus lines
4 licensee or broker and for renewal of such license.

5 SECTION 10. AMENDATORY 36 O.S. 2011, Section 1106.1, is
6 amended to read as follows:

7 Section 1106.1. A. A surplus lines licensee or broker is not
8 required to make a due diligence search to determine whether the
9 full amount or type of insurance can be obtained from admitted
10 insurers when the surplus lines licensee or broker is seeking to
11 procure or place nonadmitted insurance for an exempt commercial
12 purchaser, provided:

13 1. The licensee or broker procuring or placing the surplus
14 lines insurance has disclosed to the exempt commercial purchaser
15 that such insurance may or may not be available from the admitted
16 market that may provide greater protection with more regulatory
17 oversight; and

18 2. The exempt commercial purchaser has subsequently requested
19 in writing for the surplus lines broker to procure or place such
20 insurance from a nonadmitted insurer.

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

24

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

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

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

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

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

15 c. the person employs more than five hundred full-time-
16 equivalent employees per individual insured or is a
17 member of an affiliated group employing more than one
18 thousand employees in the aggregate,

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

24

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

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

9 SECTION 11. AMENDATORY 36 O.S. 2011, Section 1107, is
10 amended to read as follows:

11 Section 1107. A. After procuring any surplus line insurance
12 where Oklahoma is the home state and the insurance involves a
13 multistate risk, the surplus lines licensee and broker shall submit
14 such ~~clearinghouse or other entity~~ information relating to the
15 transaction as may be established by the Insurance Commissioner
16 ~~through joining, in.~~ The data shall be provided to the Insurance
17 Commissioner until and unless in the exercise of his or her sole
18 discretion and judgment, the Insurance Commissioner decides to enter
19 or join the Nonadmitted Insurance Multi-State Agreement or any other
20 multistate agreement or compact with the same function and purpose
21 and other reporting requirements are thereby established.

22 B. When Oklahoma is the home state in connection with either a
23 single state or a multistate risk or any combination thereof, the
24 surplus lines licensee and broker shall make ~~the~~ all required

1 applications, informational and notification of doing business
2 submissions and filings, tax filings and all premium tax payments
3 required in the manner established by the Insurance Commissioner
4 ~~through joining, in.~~ The tax filings and premium tax payments shall
5 be provided entirely to the Insurance Commissioner until and unless
6 in the exercise of his or her sole discretion and judgment, the
7 Insurance Commissioner decides to enter or join the Nonadmitted
8 Insurance Multi-State Agreement or any other multistate agreement or
9 compact with the same function and purpose and other reporting and
10 filing requirements are thereby established.

11 C. Failure to file the required information, any required fee
12 payments and make the required premium tax payments in the manner
13 established by the Insurance Commissioner ~~in the exercise of his or~~
14 ~~her sole discretion and judgment~~ pursuant to this section and
15 Section 1115 of this title where Oklahoma is the home state of the
16 insured shall result, after notice and hearing, in censure,
17 suspension, or revocation of license or a fine of up to Five Hundred
18 Dollars (\$500.00) for each occurrence or by both such fine and
19 licensure penalty.

20 SECTION 12. AMENDATORY 36 O.S. 2011, Section 1109, is
21 amended to read as follows:

22 Section 1109. A. Insurance contracts procured as surplus line
23 coverage from surplus lines insurers in accordance with this article
24 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 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 surplus lines insurer.

9 SECTION 13. AMENDATORY 36 O.S. 2011, Section 1111, is
10 amended to read as follows:

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

17 SECTION 14. AMENDATORY 36 O.S. 2011, Section 1112, is
18 amended to read as follows:

19 Section 1112. A. A surplus lines licensee or broker shall not
20 knowingly place any such coverage ~~in an~~ with a nonadmitted insurer
21 which is in an unsound financial condition. To be considered
22 financially sound, a surplus lines insurer shall meet the
23 requirements of Section 1106 of this title. ~~A surplus lines~~
24 ~~licensee or broker shall not place any such coverage in an insurer~~

1 ~~unless the insurer meets the requirements of Section 1106 of this~~
2 ~~title or has been approved in writing by the Insurance Commissioner~~
3 ~~as a surplus lines insurer and such approval has not been withdrawn.~~
4 ~~A surplus lines licensee or broker shall not place any surplus lines~~
5 ~~insurance in an insurer that does not meet the requirements of~~
6 ~~Section 1106 of this title.~~

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

16 SECTION 15. AMENDATORY 36 O.S. 2011, Section 1113, is
17 amended to read as follows:

18 Section 1113. Each surplus lines licensee or broker licensed in
19 Oklahoma shall keep ~~in the broker's office in this state~~ a full and
20 true record of each surplus lines contract procured by the surplus
21 lines broker, and such record may be examined at any time within
22 three (3) years thereafter by the Insurance Commissioner. The
23 record shall include such information required to be submitted as
24 established by the Insurance Commissioner ~~through joining, in the~~

1 ~~manner established by the Insurance Commissioner in his or her sole~~
2 ~~discretion and judgment, the Nonadmitted Insurance Multi State~~
3 ~~Agreement or any other multistate agreement or compact with the same~~
4 ~~function and purpose~~ in this article.

5 SECTION 16. AMENDATORY 36 O.S. 2011, Section 1114, is
6 amended to read as follows:

7 Section 1114. Each surplus lines licensee or broker licensed or
8 transacting business in Oklahoma shall on or before April 1 of each
9 year file with the Insurance Commissioner a verified statement of
10 all surplus lines insurance transacted by the broker during the
11 preceding calendar year where Oklahoma is the home state of the
12 insured ~~or there is a single state risk in Oklahoma.~~ The statement
13 shall be on a form prescribed and furnished by the Insurance
14 Commissioner and shall show such information required to be
15 submitted as established by the Insurance Commissioner ~~through~~
16 ~~joining, in the manner established by the Insurance Commissioner.~~
17 The information shall be provided to the Insurance Commissioner
18 until and unless in the exercise of his or her sole discretion and
19 judgment, the Insurance Commissioner decides to enter or join the
20 Nonadmitted Insurance Multi-State Agreement or any other multistate
21 agreement or compact with the same function and purpose and other
22 transaction reporting requirements are thereby established.

23 SECTION 17. AMENDATORY 36 O.S. 2011, Section 1115, is
24 amended to read as follows:

1 Section 1115. A. ~~In addition to the full amount of gross~~
2 ~~premiums charged by the insurer for the insurance, where~~ Where
3 Oklahoma is the home state of the insured, every person licensed
4 pursuant to Section 1106 of this title shall collect and pay as
5 provided in ~~subsections A through H of this section, a sum for~~
6 premium tax based on the total gross premiums charged in connection
7 with any broker-procured surplus lines insurance, less any return
8 premiums, for surplus lines insurance ~~provided by the licensee~~
9 ~~pursuant to the license~~ sold to the Oklahoma home state insureds by
10 the surplus lines broker and licensee.

11 B. Where Oklahoma is the home state of the insured and the
12 insurance covers properties, risks or exposures located or to be
13 performed both in and out of Oklahoma, the sum payable to the
14 Oklahoma Insurance Commissioner shall be computed based on an amount
15 equal to six percent (6%) ~~on that portion of the~~ total gross
16 premiums ~~allocated to Oklahoma, plus an amount equal to the portion~~
17 ~~of the premiums allocated to other states or territories on the~~
18 ~~basis of tax rates and fees applicable to~~ whether the properties,
19 risks or exposures are located or to be performed inside or outside
20 Oklahoma ~~pursuant to subsection H of this section less the amount of~~
21 ~~gross premium unearned at termination of the surplus lines~~
22 ~~insurance.~~ Any such unearned gross premium credited by the state to
23 the surplus lines broker or licensee shall be returned to the
24 policyholder by the broker or licensee. The surplus lines licensee

1 or broker is prohibited from rebating, for any reason, any part of
2 the tax.

3 C. ~~Gross~~ Where Oklahoma is the home state of the insured, gross
4 premiums charged for independently procured insurance, less any
5 return premiums, are subject to a premium tax at the rate of six
6 percent (6%), and the insured procuring independently procured
7 insurance, where Oklahoma is the home state and there is a
8 multistate risk, shall pay the tax to the surplus lines
9 clearinghouse, as provided in subsections A through H of this
10 section, who shall transmit the same for distribution as provided by
11 the Unauthorized Insurers and Surplus Lines Insurance Act payable to
12 the Oklahoma Insurance Commissioner, whether the properties, risks
13 or exposures are located or to be performed inside or outside
14 Oklahoma.

15 D. ~~Where the insurance covers properties, risks or exposures~~
16 ~~located or to be performed both in and out of Oklahoma, the sum~~
17 ~~payable shall be computed based on an amount equal to six percent~~
18 ~~(6%) on that portion of the gross premiums allocated to Oklahoma~~
19 ~~pursuant to subsection A of this section, plus an amount equal to~~
20 ~~the portion of the premiums allocated to other states or territories~~
21 ~~on the basis of the tax rates and fees applicable to properties,~~
22 ~~risks or exposures located or to be performed outside of this state~~
23 ~~pursuant to this subsection.~~

24

1 ~~E.~~ The Insurance Commissioner is authorized, in the exercise of
2 his or her sole discretion and judgment, to participate in the
3 Nonadmitted Insurance Multi-State Agreement or any other multistate
4 agreement or compact with the same function and purpose for the
5 ~~purpose~~ function of collecting and disbursing to reciprocal states
6 any funds collected pursuant to the Unauthorized Insurers and
7 Surplus Lines Insurance Act applicable to other properties, risks or
8 exposures located or to be performed outside of Oklahoma. ~~To the~~
9 ~~extent that other states where portions of the properties, risks or~~
10 ~~exposures reside have failed to enter into a compact or reciprocal~~
11 ~~allocation procedure with Oklahoma, the net premium tax collected~~
12 ~~shall be retained by Oklahoma~~ Until such time as the Insurance
13 Commissioner may, while not being required to, join such multistate
14 agreement or compact, premium taxes relating to Oklahoma home-state
15 insureds shall continue to be paid and accounted for by nonadmitted
16 insurers through their surplus lines licensees and brokers as
17 provided in subsections A through C of this section.

18 ~~F.~~ E. When the surplus lines coverage of an Oklahoma home-state
19 insured covers properties, risks or exposures located only in
20 Oklahoma, the surplus lines licensee or broker or self-procuring
21 insured shall pay the surplus lines premium tax payable on such
22 Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.

23 ~~G.~~ In order to participate in F. Should the Insurance
24 Commissioner exercise his or her sole discretion and judgment and

1 decide to join the Nonadmitted Insurance Multi-State Agreement or
2 any other multistate agreement or compact with the same function and
3 purpose, the Insurance Commissioner, ~~in the exercise of his or her~~
4 ~~sole discretion and judgment~~, is authorized in such event to
5 establish a uniform, statewide rate of taxation applicable to lines
6 of nonadmitted insurance ~~subject to the Agreement~~. This rate shall
7 encompass all existing rates of taxation, fees and assessments
8 imposed by this state ~~and any political subdivision hereof~~, pursuant
9 to ~~subsection~~ subsections A through C of this section and the
10 Insurance Commissioner shall document the method by which the
11 statewide rate is calculated. The Insurance Commissioner is
12 authorized to receive any monies obtained ~~through the Insurance~~
13 ~~Commissioner in the exercise of his or her sole discretion and~~
14 ~~judgment for the collection~~ as premium tax received through any
15 multistate agreement he or she may in the future in his or her
16 discretion choose to join and then ~~the disbursement of~~ disburse such
17 funds as provided by the Insurance Code and other applicable
18 Oklahoma law.

19 ~~H.~~ The G. Should the Insurance Commissioner exercise his or her
20 sole discretion and decide to join the Nonadmitted Insurance Multi-
21 State Agreement or any other multistate agreement or compact with
22 the same function and purpose, the Insurance Commissioner is
23 authorized in such circumstances to utilize or adopt any allocation
24 schedule included in the Nonadmitted Insurance Multi-State Agreement

1 or any other multistate agreement or compact the Insurance
2 Commissioner may enter in the exercise of his or her sole discretion
3 and judgment which schedule has the function and purpose of
4 allocating risk and computing the tax due on the portion of premium
5 attributable to each risk classification and to each state where
6 properties, risks or exposures are located.

7 ~~F.~~ H. Policies sold to federally recognized Indian tribes shall
8 be reported as provided in Section 1107 of this title; however,
9 these policies shall be exempt from the surplus line premium tax to
10 the extent that the Insurance Commissioner can identify that
11 coverage is for risks which are wholly owned by a tribe and located
12 within Indian Country, as defined in Section 1151 of Title 18 of the
13 United States Code.

14 ~~F.~~ I. The surplus line premium tax on insurance on motor
15 transit operations conducted between this and other states shall be
16 paid on the total premium charged on all surplus line insurance
17 less:

18 1. The portion of the premium ~~determined as provided in~~
19 ~~subsection C of this section~~ charged for operations in other states
20 taxing the premium of an insured where Oklahoma is the home state;
21 or

22 2. The premium for operations outside of this state of an
23 insured maintaining its headquarters office outside of this state
24 and branch office in this state.

1 SECTION 18. AMENDATORY 36 O.S. 2011, Section 1116, is
2 amended to read as follows:

3 Section 1116. A. Any surplus lines licensee or broker who
4 fails to remit the surplus line tax provided for by Section 1115 of
5 this title for more than sixty (60) days after it is due shall be
6 liable ~~to~~ for a civil penalty of not to exceed Twenty-five Dollars
7 (\$25.00) for each additional day of delinquency. The Insurance
8 Commissioner shall collect the tax by distraint and shall recover
9 the penalty by an action in the name of the State of Oklahoma. The
10 Commissioner may request the Attorney General to appear in the name
11 of the state by relation of the Commissioner.

12 B. If any person, association or legal entity procuring or
13 accepting any insurance coverage from a surplus lines insurer where
14 Oklahoma is the home state of the insured, otherwise than through a
15 surplus lines licensee or broker, fails to remit the surplus line
16 tax provided for by Section 1115 of this title, the person,
17 association or legal entity shall, in addition to the tax, be liable
18 to a civil penalty in an amount equal to one percent (1%) of the
19 premiums paid or agreed to be paid for the policy or policies of
20 insurance for each calendar month of delinquency or a civil penalty
21 in the amount of Twenty-five Dollars (\$25.00) whichever shall be the
22 greater. The Insurance Commissioner shall collect the tax by
23 distraint and shall recover the civil penalty in an action in the
24 name of the State of Oklahoma. The Commissioner may request the

1 Attorney General to appear in the name of the state by relation of
2 the Commissioner.

3 SECTION 19. AMENDATORY 36 O.S. 2011, Section 1118, is
4 amended to read as follows:

5 Section 1118. A. Every surplus lines insurer issuing or
6 delivering a surplus line policy through a surplus lines licensee or
7 broker in this state shall conclusively be deemed thereby to have
8 irrevocably appointed the Insurance Commissioner as its attorney for
9 acceptance of service of all legal process, other than a subpoena,
10 issued in this state in any action or proceeding under or arising
11 out of the policy, and service of process upon the Insurance
12 Commissioner shall be lawful personal service upon the surplus lines
13 or nonadmitted insurer.

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

18 C. Triplicate copies of legal process against such an insurer
19 shall be served upon the Insurance Commissioner, and at time of
20 service the plaintiff shall pay to the Insurance Commissioner Twenty
21 Dollars (\$20.00), taxable as costs in the action. The Insurance
22 Commissioner shall immediately mail one copy of the process so
23 served to the person designated by the insurer in the policy for the
24 purpose, by mail with return receipt requested. The surplus lines

1 or nonadmitted insurer shall have forty (40) days after the date of
2 mailing within which to plead, answer, or otherwise defend the
3 action.

4 SECTION 20. AMENDATORY 36 O.S. 2011, Section 1120, is
5 amended to read as follows:

6 Section 1120. Upon request of the Insurance Commissioner any
7 person in Oklahoma who is the insured under any policy issued by a
8 surplus lines insurer upon a subject of insurance resident, located,
9 or to be performed in Oklahoma at the time the policy was issued, or
10 where the insured's home state is Oklahoma, shall produce for
11 examination all policies and other documents evidencing and relating
12 to the insurance, and shall disclose the amount of the gross
13 premiums paid or agreed to be paid for the insurance, through whom
14 the insurance was procured, and such other information relative to
15 the placing of the insurance as may reasonably be required by the
16 Insurance Commissioner.

17 SECTION 21. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

21 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated
22 2-23-12 - DO PASS, As Amended and Coauthored.

23
24