STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 175 BY: ROZELL

AS INTRODUCED

AN ACT RELATING TO INSURANCE; AMENDING 36 O.S. 1981, SECTIONS 1106, AS AMENDED BY SECTION 3, CHAPTER 134, O.S.L. 1986, 1107, AS AMENDED BY SECTION 7, CHAPTER 175, O.S.L. 1987, 1109, AS AMENDED BY SECTION 10, CHAPTER 251, O.S.L. 1986, 1112, 1115, AS AMENDED BY SECTION 5, CHAPTER 248, O.S.L. 1983, 1116 AND SECTION 9, CHAPTER 157, O.S.L. 1987 (36 O.S.SUPP. 1990, SECTIONS 1106, 1107, 1109, 1115 AND 6459), WHICH RELATE TO SURPLUS LINE INSURANCE BROKERS; CLARIFYING CONDITIONS UNDER WHICH INSURANCE MAY BE PURCHASED FROM UNAUTHORIZED INSURER; PROVIDING CERTAIN CRITERIA; LIMITING CERTAIN RATE UNAUTHORIZED INSURER MAY CHARGE; MODIFYING TIME FOR FILING AND INFORMATION TO BE INCLUDED IN CERTAIN REPORT; GRANTING INSURANCE COMMISSIONER AUTHORITY TO APPROVE CERTAIN REPORTING STYLE; MODIFYING CERTAIN NOTIFICATION PROVISIONS; MODIFYING REQUIREMENTS FOR SURPLUS LINE INSURER; MODIFYING TIME FOR FILING SURPLUS LINE PREMIUM TAXES AND PERIOD FOR WHICH TAXES ARE DUE; CONFORMING LANGUAGE; ALLOWING NONRESIDENT TO BE LICENSED AS SURPLUS LINE BROKER ONLY FOR CERTAIN PURPOSE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 36 O.S. 1981, Section 1106, as amended by Section 3, Chapter 134, O.S.L. 1986 (36 O.S. Supp. 1990, Section 1106), is amended to read as follows:

Section 1106. If the ~~full~~ amount of insurance required to protect the interest of the assured cannot be procured from authorized insurers, such ~~surplus~~ amount, hereinafter designated as "surplus line", may be procured from unauthorized insurers subject to the following conditions:

1. The unauthorized insurer must have a certificate of approval from the Commissioner, and meet all relevant statutory requirements~~.~~, including the following:

a. the insurer is financially stable, and

b. the insurer is controlled by persons possessing competence, experience and integrity, and

c. the insurer, if a foreign insurer, is licensed in two or more states or posts a special deposit in an amount to be determined by the Commissioner, or

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

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

2. The insurance must be procured through a licensed surplus line broker, hereinafter in this article referred to as the "broker"~~.~~; and

3. The ~~full~~ amount of insurance required to protect the interest of the assured is not procurable, after diligent effort has been made to do so, from a majority of the insurers accessible to

the broker which are authorized to transact that kind and class of insurance in this state~~, and the amount of insurance placed in an unauthorized insurer is only the excess over the amount procurable from authorized insurers, and the placing of insurance with an unauthorized insurer must not be for the purpose of securing advantages either as to premium rate or terms of the insurance contract~~. The rate for the kind and class of insurance being procured shall not be less than the rate for the same coverage filed by an admitted carrier.

SECTION 2. AMENDATORY 36 O.S. 1981, Section 1107, as amended by Section 7, Chapter 175, O.S.L. 1987 (36 O.S. Supp. 1990, Section 1107), is amended to read as follows:

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

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

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

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

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

5. Premium, and ~~premium rate if applicable.~~ any membership, application, policy or registration fees; and

6. Other information reasonably required by the Insurance Commissioner.

B. The Insurance Commissioner shall prescribe and furnish the required report form. The Insurance Commissioner shall have the authority to grant approval to the surplus line broker for the

master bordereau style reporting of surplus line activity on a quarterly basis.

C. Failure to file the report shall result, after notice and hearing, in censure, suspension, or revocation of license or a fine of up to Five Hundred Dollars ($500.00) for each occurrence or by both such fine and licensure penalty.

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

SECTION 3. AMENDATORY 36 O.S. 1981, Section 1109, as amended by Section 10, Chapter 251, O.S.L. 1986 (36 O.S. Supp. 1990, Section 1109), is amended to read as follows:

Section 1109. A. Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this article shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

B. Insurance contracts procured as surplus ~~lines~~ line coverage shall contain in bold-face type notification stamped on the declaration page of the policy that such contracts are not subject to the protection of any guaranty association in the event of liquidation or receivership of the insurer.

SECTION 4. AMENDATORY 36 O.S. 1981, Section 1112, is amended to read as follows:

Section 1112. A. A surplus line broker shall not knowingly place any such coverage in an insurer which is in an unsound financial condition. A surplus line broker shall not place any such coverage in an insurer ~~which is not then licensed in two or more states of the United States to write the kind of insurance provided by the policy unless such surplus line~~ unless the insurer has been approved in writing by the Commissioner as ~~such~~ a surplus line insurer and such approval has not been withdrawn. A surplus line

broker shall not place any surplus line insurance in an insurer that has been disapproved by the Commissioner as a surplus line insurer.

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

SECTION 5. AMENDATORY 36 O.S. 1981, Section 1115, as amended by Section 5, Chapter 248, O.S.L. 1983 (36 O.S. Supp. 1990, Section 1115), is amended to read as follows:

Section 1115. A. On or before the ~~first day of April of each year~~ end of each month following each calendar quarter, each surplus line broker shall remit to the State Treasurer through the Insurance Commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by the broker ~~during the preceding calendar year, as shown by his annual statement filed with the Insurance Commissioner~~ for the period covered by the report. Such tax shall be at the rate of six percent (6%) of the gross premiums less premiums returned on account of cancellation or reduction of premium, and shall exclude gross premiums and returned premiums upon business exempted from surplus line provisions pursuant to Section 1119 of this ~~article~~ title.

B. Except as provided in subsection C of this section, for the purpose of determining the surplus line tax, the total premium charged for surplus line insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this state in such proportion

as the total premium on the insured properties or operations in this state, computed on the exposure in this state on the basis of any single standard rating method in use in all states or countries where such insurance applies, bears to the total premium so computed in all such states or countries.

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

1. the portion of the premium determined as provided in subsection B of this section charged for operations in other states taxing such premium of an insured maintaining its headquarters office in this state; or

2. the premium for operations outside of this state of an insured maintaining its headquarters office outside of this state and branch office in this state.

D. 1. Every person, corporation, association, or partnership procuring or accepting any policy of insurance from an unauthorized insurer, upon, covering, or relating to a subject of insurance resident or having a situs in the State of Oklahoma, or any such policy of insurance which is to be performed in whole or part in the State of Oklahoma, except such policies as are lawfully obtained through a licensed surplus line broker in this state, shall report, within thirty (30) days next succeeding the issuance of such policy, the purchase of such policy or policies of insurance to the Insurance Commissioner, on forms prescribed by him, and at the same time shall remit to the Insurance Commissioner a tax in the amount of six percent (6%) of the annual premium agreed to be paid, or paid, for such insurance. Such policies of insurance, providing for the payment of retrospective premiums, or policies on which the premiums are not determinable at the time of issuance, shall be reported to the Insurance Commissioner, by the insured, within thirty (30) days next succeeding the date such policies are issued

and the tax payable on such policies shall be remitted, by the insured, to the Insurance Commissioner within thirty (30) days next succeeding the date such premiums can be determined. The tax on renewal premiums shall be paid by the insured in accordance with this section, in like manner as provided for payment of the original premium tax, within thirty (30) days next succeeding the date such premiums can be determined.

2. The taxes imposed by the provisions of this section on surplus lines shall be paid into the State Treasury and deposited to the General Revenue Fund of this state.

SECTION 6. AMENDATORY 36 O.S. 1981, Section 1116, is amended to read as follows:

Section 1116. ~~(a)~~ A. If any surplus line broker fails to remit the surplus line tax provided for by Section 1115 of this ~~article~~ title for more than ~~thirty (30)~~ sixty (60) days after ~~the first day of any April~~ it is due, he shall be liable to a fine of not to exceed Twenty-five Dollars ($25.00) for each additional day of delinquency. The Insurance Commissioner shall collect the tax by distraint and shall recover the fine by an action in the name of the State of Oklahoma. All fines shall be paid into the general fund of the state.

~~(b)~~ B. If any person, corporation, association or partnership procuring or accepting any policy of insurance from an unauthorized insurer, otherwise than through a licensed surplus line broker in this state, fails to remit the surplus line tax provided for by subsection D of Section 1115~~(D)~~ of this ~~article~~ title, such person, corporation, association or partnership shall, in addition to said tax, be liable to a fine in an amount equal to one percent (1%) of the premiums paid or agreed to be paid for such policy or policies of insurance for each calendar month of delinquency or a fine in the amount of Twenty-five Dollars ($25.00) whichever shall be the greater. The Insurance Commissioner shall collect the tax by

distraint and shall recover the fine in an action in the name of the State of Oklahoma. All fines shall be paid into the general fund of the state.

SECTION 7. AMENDATORY Section 9, Chapter 157, O.S.L. 1987 (36 O.S. Supp. 1990, Section 6459), is amended to read as follows:

Section 6459. A purchasing group shall not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not licensed to transact insurance in this state, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of this state. A nonresident person may be licensed as a surplus line broker only for purposes of placing insurance on behalf of a purchasing group.

SECTION 8. This act shall become effective September 1, 1991.

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