

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 959

By: Brown of the Senate

3 and

4 Mulready of the House  
5  
6

7 An Act relating to collection of surplus lines taxes;  
8 authorizing the Insurance Commissioner to enter into  
9 certain agreement for the purpose of complying with  
federal law; providing for codification; and  
declaring an emergency.

10

11

12 AMENDMENT NO. 1. Strike the title, enacting clause and entire bill  
and insert

13

14 "An Act relating to unauthorized insurers and surplus  
15 lines insurance; creating the Unauthorized Insurers  
and Surplus Lines Insurance Act; providing short  
16 title; defining terms; authorizing the Insurance  
Commissioner to enter into certain agreements;  
17 amending 36 O.S. 2001, Sections 1101, as amended by  
Section 10, Chapter 222, O.S.L. 2010, Section 22,  
Chapter 176, O.S.L. 2009, 1103, as amended by  
18 Section 12, Chapter 222, O.S.L. 2010, 1105, as  
amended by Section 14, Chapter 222, O.S.L. 2010,  
19 1106, as last amended by Section 15, Chapter 222,  
O.S.L. 2010, 1107, as amended by Section 16, Chapter  
20 222, O.S.L. 2010, 1108, as amended by Section 17,  
Chapter 222, O.S.L. 2010, 1109, as last amended by  
21 Section 18, Chapter 222, O.S.L. 2010, 1111, 1112, as  
amended by Section 10, Chapter 307, O.S.L. 2002,  
22 1113, 1114, 1115, as last amended by Section 19,  
Chapter 222, O.S.L. 2010, 1116, as last amended by  
23 Section 20, Chapter 222, O.S.L. 2010 and 1118, as  
amended by Section 21, Chapter 222, O.S.L. 2010 (36  
24 O.S. Supp. 2010, Sections 1101, 1101.1, 1103, 1105,

1 1106, 1107, 1108, 1109, 1112, 1115, 1116 and 1118),  
2 which relate to the Unauthorized Insurers and  
3 Surplus Lines Insurance Act; requiring certain  
4 transactions to be only performed by a surplus lines  
5 licensee or broker; specifying that certain surplus  
6 lines premiums shall be subject to surplus premium  
7 tax pursuant to certain agreements entered into by  
8 the Insurance Commissioner; modifying service of  
9 process; modifying circumstances for award of  
10 certain attorney fees; modifying conditions in which  
11 insurance may be procured from surplus lines  
12 insurers; providing procedures for the procurement  
13 of certain insurance for an exempt commercial  
14 purchaser; defining term; specifying information to  
15 be submitted to the surplus lines clearinghouse;  
16 providing schedule for filing and payment of certain  
17 taxes; providing penalty for failure to file certain  
18 information; allowing certain coverage to be placed  
19 with certain insurers; clarifying type of licensee;  
20 requiring surplus lines insurer to meet certain  
21 financial requirements; requiring certain  
22 information submitted to the surplus lines  
23 clearinghouse to be retained by certain licensees or  
24 brokers; modifying procedures relating to the  
levying, collection, payment and distribution of the  
surplus lines premium tax; and providing for  
codification.

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

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

Sections 1, 2, 3 and 9 of this act and Sections 1101 through  
1120 of Title 36 of the Oklahoma Statutes shall be known and may be  
cited as the "Unauthorized Insurers and Surplus Lines Insurance  
Act".

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

4 As used in the Unauthorized Insurers and Surplus Lines Insurance  
5 Act:

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

9 2. "Home state" means:

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

12 (1) the state in which an insured maintains its  
13 principal place of business or, in the case of an  
14 individual, the individual's principal residence,  
15 or

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

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

24

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

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

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

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

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

22 (2) if the insured's principal residence is located  
23 outside any state, the state to which the  
24

1                   greatest percentage of the insured's taxable  
2                   premium for that insurance is allocated,

3           d.    if more than one insured from an affiliated group are  
4           named insureds on a single nonadmitted insurance  
5           contract, the term "home state" means the home state,  
6           as determined pursuant to division (1) of subparagraph  
7           a of this paragraph, of the member affiliated group  
8           that has the largest percentage of premium attributed  
9           to it under such insurance contract, or

10          e.    when the group policyholder pays one hundred percent  
11           (100%) of the premium from its own funds, the term  
12           "home state" means the home state, as determined  
13           pursuant to division (1) of subparagraph a of this  
14           paragraph, of the group policyholder. When the group  
15           policyholder does not pay one hundred percent (100%)  
16           of the premium from its own funds, the term "home  
17           state" means the home state, as determined pursuant to  
18           division (1) of subparagraph a of this paragraph, or  
19           of the group member;

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

22          4.    "Licensed" means, with respect to an insurer, authorization  
23 to transact the business of insurance by a license, certificate of  
24 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.

23

24

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:  
24

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.

23 ~~E.~~ D. The investigation and adjustment of any claim in this  
24 state arising under an insurance contract issued by an unauthorized

1 insurer shall not be deemed to constitute the transacting of  
2 insurance in this state.

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

9 SECTION 5. AMENDATORY Section 22, Chapter 176, O.S.L.  
10 2009 (36 O.S. Supp. 2010, Section 1101.1), is amended to read as  
11 follows:

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

19 B. A domestic surplus line insurer may only insure in this  
20 state any risk procured pursuant to Article 11 of the Oklahoma  
21 Insurance Code governing surplus line insurers and brokers and its  
22 premium shall be subject to surplus line premium tax pursuant to  
23 Section 1115 of this title and pursuant to the Nonadmitted Insurance  
24 Multi-State Agreement or any other multistate agreement or compact

1 with the same function and purpose the Insurance Commissioner may  
2 enter into or join.

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

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

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

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

24

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

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

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

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

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

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

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

18 SECTION 8. AMENDATORY 36 O.S. 2001, Section 1106, as  
19 last amended by Section 15, Chapter 222, O.S.L. 2010 (36 O.S. Supp.  
20 2010, Section 1106), is amended to read as follows:

21 Section 1106. If insurance required to protect the interest of  
22 the assured cannot be procured from authorized insurers after direct  
23 inquiry to authorized insurers, ~~the insurance, hereinafter~~

1 ~~designated as "surplus line",~~ may be procured from surplus lines  
2 insurers subject to the following conditions:

3 1. The surplus lines insurer shall ~~have a certificate of~~  
4 ~~approval from the Commissioner, and meet all relevant statutory~~  
5 ~~requirements, including the following~~ meet the requirements of the  
6 Unauthorized Insurers and Surplus Lines Insurance Act and the  
7 following conditions:

8 a. the insurer ~~is financially stable, and~~

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

11 c. ~~the insurer, if a foreign insurer, posts a special~~  
12 ~~deposit in an amount to be determined by the~~  
13 ~~Commissioner, or~~ has capital and surplus or its  
14 equivalent under the laws of its domiciliary  
15 jurisdiction which equals the greater of:

16 (1) the minimum capital and surplus requirements  
17 under the laws of this state, or

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

19 b. the requirements of subparagraph a of this paragraph  
20 may be satisfied by an insurer's possessing less than  
21 the minimum capital and surplus upon an affirmative  
22 finding of acceptability by the Insurance  
23 Commissioner. The finding shall be based upon such  
24 factors as quality of management, capital and surplus

1 of any parent company, company underwriting profit and  
2 investment income trends, market availability and  
3 company record and reputation within the industry. In  
4 no event shall the Insurance Commissioner make an  
5 affirmative finding of acceptability when the  
6 nonadmitted insurer's capital and surplus is less than  
7 Four Million Five Hundred Thousand Dollars  
8 (\$4,500,000.00), and

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

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

15 2. The insurance shall be procured through a licensed surplus  
16 ~~line lines licensee or broker, hereinafter in this article referred~~  
17 ~~to as the "broker" licensed in a state. An Oklahoma surplus lines~~  
18 license is required only where Oklahoma is the home state of the  
19 insured; and

20 3. ~~The broker shall file the appropriate affidavit as required~~  
21 ~~by Section 1107 of this title~~ For the purposes of carrying out the  
22 provisions of the Nonadmitted and Reinsurance Reform Act of 2010,  
23 the Insurance Commissioner is authorized to utilize the national  
24 insurance producer database of the National Association of Insurance

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

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

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

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

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

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

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

24

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

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

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

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

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

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

22           e. the person is a municipality with a population in  
23 excess of fifty thousand (50,000) persons; and  
24

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

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

10 Section 1107. A. After procuring any surplus line insurance  
11 where Oklahoma is the home state, the surplus lines licensee and  
12 ~~broker shall execute and file with the Insurance Commissioner a~~  
13 ~~report under oath, setting forth facts from which it may be~~  
14 ~~determined whether the requirements of Section 1106 of this title~~  
15 ~~have been met, and in addition thereto the following:~~

- 16 ~~1. Name and address of the insurer, and name and address of the~~  
17 ~~person named in the policy pursuant to Section 1118 of this title to~~  
18 ~~whom the Insurance Commissioner shall send copies of legal process;~~
- 19 ~~2. Number of the policy issued;~~
- 20 ~~3. Name and address of the insured;~~
- 21 ~~4. Nature and amount of liability assumed by the insurer;~~
- 22 ~~5. Premium, and any membership, application, policy or~~  
23 ~~registration fees; and~~

24

1 ~~6. Other information reasonably required by the Insurance~~  
2 ~~Commissioner.~~

3 ~~B. The Insurance Commissioner shall prescribe and furnish the~~  
4 ~~required report form. The Insurance Commissioner shall have the~~  
5 ~~authority to grant approval to the surplus line broker for the~~  
6 ~~master bordereau style reporting of surplus line activity on a~~  
7 ~~quarterly basis~~ submit such information required to be submitted to  
8 the surplus lines clearinghouse as established by the Insurance  
9 Commissioner through joining the Nonadmitted Insurance Multi-State  
10 Agreement or any other multistate agreement or compact with the same  
11 function and purpose.

12 B. Pursuant to Section 1115 of this title, when Oklahoma is the  
13 home state, the surplus lines licensee and broker shall make the tax  
14 filings and payments required by subsection A of this section to the  
15 clearinghouse in a quarterly manner, utilizing the following dates  
16 only:

17 1. February 15 for the quarter ending the preceding December  
18 31;

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

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

21 4. November 15 for the quarter ending the preceding September  
22 30.

23 C. Failure to file submit the report required information with  
24 the clearinghouse pursuant to this section and Section 1115 of this

1 title if Oklahoma is the home state shall result, after notice and  
2 hearing, in censure, suspension, or revocation of license or a fine  
3 of up to Five Hundred Dollars (\$500.00) for each occurrence or by  
4 both such fine and licensure penalty.

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

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

10 Section 1108. A. ~~If after a hearing thereon the Insurance~~  
11 ~~Commissioner finds that a particular insurance coverage or type,~~  
12 ~~class, or kind of coverage is not readily procurable from authorized~~  
13 ~~insurers, he may by order declare the coverage or coverages to be~~  
14 ~~recognized surplus lines until the Insurance Commissioner's further~~  
15 ~~order. The broker's affidavit provided for in Section 1107 of this~~  
16 ~~article shall not be required as to coverages while so recognized.~~  
17 ~~Before holding any hearing the Commissioner shall give notice to~~  
18 ~~admitted insurers authorized to write such lines of insurance, to~~  
19 ~~rating organizations licensed to make rates for such lines of~~  
20 ~~insurance and to other interested persons in the manner provided by~~  
21 ~~Article 3 of this Code.~~

22 B. ~~Any order shall be subject to modification, and the~~  
23 ~~Insurance Commissioner shall so modify as to any coverage found by~~  
24 ~~the Commissioner to be no longer entitled to recognition after a~~

1 ~~hearing held upon the initiative of the Commissioner or upon request~~  
2 ~~of any insurance agent, surplus line broker, broker, insurer, rating~~  
3 ~~or advisory organization, or other person in Oklahoma, a surplus~~  
4 lines licensee or broker may place the coverage with a nonadmitted  
5 insurer or surplus lines insurer as defined in the Unauthorized  
6 Insurers and Surplus Lines Insurance Act.

7 SECTION 12. AMENDATORY 36 O.S. 2001, Section 1109, as  
8 last amended by Section 18, Chapter 222, O.S.L. 2010 (36 O.S. Supp.  
9 2010, Section 1109), is amended to read as follows:

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

15 B. Insurance contracts procured as surplus line coverage shall  
16 contain in bold-face type notification stamped by the surplus lines  
17 licensee or broker or surplus lines insurer on the declaration page  
18 of the policy that the contracts are not subject to the protection  
19 of any guaranty association in the event of liquidation or  
20 receivership of the insurer.

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

23 Section 1111. A ~~licensed~~ surplus ~~line~~ lines licensee or broker  
24 may accept and place surplus ~~line business~~ lines insurance from any

1 insurance agent or broker licensed in this state for the kind of  
2 insurance involved, and may compensate such agent or broker  
3 therefor. The surplus lines licensee or broker shall have the right  
4 to receive from the surplus lines insurer the customary commission.

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

8 Section 1112. A. A surplus ~~line~~ lines licensee or broker shall  
9 not knowingly place any such coverage in an insurer which is in an  
10 unsound financial condition. To be considered financially sound, a  
11 surplus ~~line company~~ lines insurer shall ~~have a minimum capital and~~  
12 ~~surplus of not less than Fifteen Million Dollars (\$15,000,000.00)~~  
13 meet the requirements of Section 1106 of this title. A surplus ~~line~~  
14 lines licensee or broker shall not place any such coverage in an  
15 insurer unless the insurer meets the requirements of Section 1106 of  
16 this title or has been approved in writing by the Insurance  
17 Commissioner as a surplus ~~line~~ lines insurer and such approval has  
18 not been withdrawn. A surplus ~~line~~ lines licensee or broker shall  
19 not place any surplus ~~line~~ lines insurance in an insurer that ~~has~~  
20 ~~been disapproved by the Commissioner as a surplus line insurer~~ does  
21 not meet the requirements of Section 1106 of this title.

22 B. For violation of this section, in addition to any other  
23 penalty provided by law, the broker's license shall be revoked, and  
24 the broker shall not again be so licensed within a period of two (2)

1 years thereafter. In addition, any surplus ~~line~~ lines licensee and  
2 broker licensed in Oklahoma who violates this section shall be  
3 guilty of a misdemeanor and upon conviction thereof shall be  
4 punished for each offense, by a fine of not more than One Thousand  
5 Dollars (\$1,000.00) or by confinement in jail for not more than  
6 ninety (90) days, or by both such fine and imprisonment.

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

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

- 15 ~~1. Name and address of the insurer;~~
- 16 ~~2. Name and address of the insured;~~
- 17 ~~3. Amount of insurance;~~
- 18 ~~4. Gross premium charged;~~
- 19 ~~5. Return premium paid, if any;~~
- 20 ~~6. Rate of premium charged on the several items of coverage;~~
- 21 ~~7. Effective date of the contract and the terms thereof; and~~
- 22 ~~8. Brief general description of the risks insured against and~~  
23 ~~the property insured~~ such information required to be submitted to  
24 the surplus lines clearinghouse as established by the Insurance

1 Commissioner through joining the Nonadmitted Insurance Multi-State  
2 Agreement or any other multistate agreement or compact with the same  
3 function and purpose.

4 SECTION 16. AMENDATORY 36 O.S. 2001, Section 1114, is  
5 amended to read as follows:

6 Section 1114. Each surplus ~~line~~ lines licensee or broker  
7 licensed in Oklahoma shall on or before ~~the first day of~~ April 1 of  
8 each year file with the Insurance Commissioner a verified statement  
9 of all surplus ~~line~~ lines insurance transacted by ~~him~~ the broker  
10 during the preceding calendar year where Oklahoma was the home state  
11 of the insured. The statement shall be on a form prescribed and  
12 furnished by the Insurance Commissioner and shall show:

- 13 1. ~~Gross amount of each kind of insurance transacted,~~
- 14 2. ~~Aggregate gross premiums charged,~~
- 15 3. ~~Aggregate of return premiums paid to insureds,~~
- 16 4. ~~Aggregate of net premiums, and~~
- 17 5. ~~Such additional information as may reasonably be required by~~  
18 ~~the Insurance Commissioner~~ such information required to be submitted  
19 to the surplus lines clearinghouse as established by the Insurance  
20 Commissioner through joining the Nonadmitted Insurance Multi-State  
21 Agreement or any other multistate agreement or compact with the same  
22 function and purpose.

1 SECTION 17. AMENDATORY 36 O.S. 2001, Section 1115, as  
2 last amended by Section 19, Chapter 222, O.S.L. 2010 (36 O.S. Supp.  
3 2010, Section 1115), is amended to read as follows:

4 Section 1115. A. ~~On or before the end of each month following~~  
5 ~~each calendar quarter, each surplus line broker shall remit to the~~  
6 ~~State Treasurer through the Insurance Commissioner a tax on the~~  
7 ~~premiums, exclusive of sums collected to cover federal and state~~  
8 ~~taxes and examination fees, on surplus line insurance subject to tax~~  
9 ~~transacted by the broker for the period covered by the report. The~~  
10 ~~tax shall be at the rate of six percent (6%) of the gross premiums~~  
11 ~~less premiums returned on account of cancellation or reduction of~~  
12 ~~premium, and shall exclude gross premiums and returned premiums upon~~  
13 ~~business exempted from surplus line provisions pursuant to Section~~  
14 ~~1119 of this title.~~

15 B. ~~Except as provided in subsection C of this section, for the~~  
16 ~~purpose of determining the surplus line tax, the total premium~~  
17 ~~charged for surplus line insurance placed in a single transaction~~  
18 ~~with one underwriter or group of underwriters, whether in one or~~  
19 ~~more policies, shall be allocated to this state in such proportion~~  
20 ~~as the total premium on the insured properties or operations in this~~  
21 ~~state, computed on the exposure in this state on the basis of any~~  
22 ~~single standard rating method in use in all states or countries~~  
23 ~~where the insurance applies, bears to the total premium so computed~~  
24 ~~in all the states or countries~~ In addition to the full amount of

1 gross premiums charged by the insurer for the insurance, where  
2 Oklahoma is the home state of the insured, every person licensed  
3 pursuant to Section 1106 of this title shall collect and pay to the  
4 surplus lines clearinghouse, as provided in Section 3 of this act, a  
5 sum based on the total gross premiums charged in connection with any  
6 broker-procured insurance, less any return premiums, for surplus  
7 lines insurance provided by the licensee pursuant to the license.  
8 Where the insurance covers properties, risks or exposures located or  
9 to be performed both in and out of Oklahoma, the sum payable shall  
10 be computed based on an amount equal to six percent (6%) on that  
11 portion of the gross premiums allocated to Oklahoma, plus an amount  
12 equal to the portion of the premiums allocated to other states or  
13 territories on the basis of tax rates and fees applicable to  
14 properties, risks or exposures located or to be performed outside  
15 Oklahoma pursuant to subsection E of this section less the amount of  
16 gross premium unearned at termination of the surplus lines  
17 insurance. Any such unearned gross premium credited by the state to  
18 the surplus broker or licensee shall be returned to the policyholder  
19 by the broker or licensee. The surplus lines licensee is prohibited  
20 from rebating, for any reason, any part of the tax.

21 B. Gross premium charged for independently procured insurance,  
22 less any return premiums, are subject to a tax at the rate of six  
23 percent (6%). At the time of filing the report required in this  
24 section, the insured procuring independently procured insurance,

1 where Oklahoma is the home state, shall pay the tax to the surplus  
2 lines clearinghouse, as provided in Section 3 of this act, who shall  
3 transmit the same for distribution as provided by the Unauthorized  
4 Insurers and Surplus Lines Insurance Act. Where the insurance  
5 covers properties, risks or exposures located or to be performed  
6 both in and out of Oklahoma, the sum payable shall be computed based  
7 on an amount equal to six percent (6%) on that portion of the gross  
8 premiums allocated to Oklahoma pursuant to subsection A of this  
9 section, plus an amount equal to the portion of the premiums  
10 allocated to other states or territories on the basis of the tax  
11 rates and fees applicable to properties, risks or exposures located  
12 or to be performed outside of this state pursuant to this  
13 subsection.

14 C. The Insurance Commissioner is authorized to participate in  
15 the Nonadmitted Insurance Multi-State Agreement or any other  
16 multistate agreement or compact with the same function and purpose  
17 for the purpose of collecting and disbursing to reciprocal states  
18 any funds collected pursuant to the Unauthorized Insurers and  
19 Surplus Lines Insurance Act applicable to other properties, risks or  
20 exposures located or to be performed outside of Oklahoma. To the  
21 extent that other states where portions of the properties, risks or  
22 exposures reside have failed to enter into compact or reciprocal  
23 allocation procedure with Oklahoma, the net premium tax collected  
24 shall be retained by Oklahoma. When the surplus lines coverage of

1 an Oklahoma home-state insured covers properties, risks or exposures  
2 located only in Oklahoma, the surplus lines licensee or broker shall  
3 nevertheless make the required surplus premium tax filings and  
4 remittances as described in subsection A of this section pursuant to  
5 the Nonadmitted Insurance Multi-State Agreement or any other  
6 multistate agreement or compact with the same function and purpose  
7 the Insurance Commissioner may agree to or enter.

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

20 E. The Insurance Commissioner is authorized to utilize or adopt  
21 the allocation schedule included in the Nonadmitted Insurance Multi-  
22 State Agreement or any other multistate agreement or compact with  
23 the same function and purpose of allocating risk and computing the  
24 tax due on the portion of premium attributable to each risk

1 classification and to each state where properties, risks or  
2 exposures are located.

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

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

12 ~~G.~~ H. The surplus line tax on insurance on motor transit  
13 operations conducted between this and other states shall be paid on  
14 the total premium charged on all surplus line insurance less:

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

19 2. The premium for operations outside of this state of an  
20 insured maintaining its headquarters office outside of this state  
21 and branch office in this state.

22 ~~D. Every person, association, or legal entity procuring or~~  
23 ~~accepting any insurance coverage from a surplus lines insurer, upon,~~  
24 ~~covering, or relating to a subject of insurance resident or having a~~

1 ~~situs in the this state, or any insurance coverage which is to be~~  
2 ~~performed in whole or part in this state, except coverages as are~~  
3 ~~lawfully obtained through a licensed surplus line broker in this~~  
4 ~~state, shall report, within thirty (30) days next succeeding the~~  
5 ~~issuance of evidence of coverage, the purchase of the coverages of~~  
6 ~~insurance to the Insurance Commissioner, on forms prescribed by the~~  
7 ~~Commissioner, and at the same time shall remit to the Insurance~~  
8 ~~Commissioner a tax in the amount of six percent (6%) of the annual~~  
9 ~~premium agreed to be paid, or paid, for the insurance. The~~  
10 ~~insurance coverages, providing for the payment of retrospective~~  
11 ~~premiums, or coverages on which the premiums are not determinable at~~  
12 ~~the time of issuance, shall be reported to the Insurance~~  
13 ~~Commissioner, by the insured, within thirty (30) days next~~  
14 ~~succeeding the date the coverages are issued and the tax payable on~~  
15 ~~the coverages shall be remitted, by the insured, to the Insurance~~  
16 ~~Commissioner within thirty (30) days next succeeding the date the~~  
17 ~~premiums can be determined. The tax on renewal premiums shall be~~  
18 ~~paid by the insured in accordance with this section, in like manner~~  
19 ~~as provided for payment of the original premium tax, within thirty~~  
20 ~~(30) days next succeeding the date the premiums can be determined.~~

21 SECTION 18. AMENDATORY 36 O.S. 2001, Section 1116, as  
22 last amended by Section 20, Chapter 222, O.S.L. 2010 (36 O.S. Supp.  
23 2010, Section 1116), is amended to read as follows:  
24

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

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

1 SECTION 19. AMENDATORY 36 O.S. 2001, Section 1118, as  
2 amended by Section 21, Chapter 222, O.S.L. 2010 (36 O.S. Supp. 2010,  
3 Section 1118), is amended to read as follows:

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

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

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



1 ENGROSSED SENATE  
2 BILL NO. 959

By: Brown of the Senate

3 and

4 Mulready of the House

5  
6 An Act relating to collection of surplus lines taxes;  
7 authorizing the Insurance Commissioner to enter into  
8 certain agreement for the purpose of complying with  
9 federal law; providing for codification; and  
10 declaring an emergency.

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

12 SECTION 20. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1115.1 of Title 36, unless there  
14 is created a duplication in numbering, reads as follows:

15 The Insurance Commissioner may join a multi-state agreement or  
16 compact for the purpose of complying with the surplus lines tax  
17 provisions of the Nonadmitted and Reinsurance Reform Act. Such  
18 agreement or compact shall facilitate the payment and allocation of  
19 premium tax on surplus lines among the participating states.

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

24

