

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 959

6 By: Brown

7 COMMITTEE SUBSTITUTE

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

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

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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  
1121 of Title 36 of the Oklahoma Statutes shall be known and may be  
cited as the "Unauthorized Insurers and Surplus Lines Insurance  
Act".

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

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

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

4 2. "Home state" means:

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

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

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

17 b. with respect to determining the home state of the  
18 insured, "Principal place of business" means:

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

23 (2) if the insured's high-level officers direct,  
24 control and coordinate business activities in

1 more than one state, the state in which the  
2 greatest percentage of the insured's taxable  
3 premium for the insurance contract is allocated,  
4 or

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

11 c. with respect to determining the home state of the  
12 insured "Principal residence" means:

13 (1) the state where the insured resides for the  
14 greatest number of days during the calendar year,  
15 or

16 (2) if the insured's principal residence is located  
17 outside any state, the state to which the  
18 greatest percentage of the insured's taxable  
19 premium for that insurance is allocated,

20 d. if more than one insured from an affiliated group are  
21 named insureds on a single nonadmitted insurance  
22 contract, the term "home state" means the home state,  
23 as determined pursuant to division (1) of subparagraph  
24 a of this paragraph, of the member affiliated group

1           that has the largest percentage of premium attributed  
2           to it under such insurance contract, or

3           e.    when the group policyholder pays one hundred (100%) of  
4           the premium from its own funds, the term "home state"  
5           means the home state, as determined pursuant to  
6           division (1) of subparagraph a of this paragraph, of  
7           the group policyholder.  When the group policyholder  
8           does not pay one hundred percent (100%) of the premium  
9           from its own funds, the term home state means the home  
10          state, as determined pursuant to division (1) of  
11          subparagraph a of this paragraph, or of the group  
12          member;

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

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

18          5.    "Multi-state risk" means a risk covered by a nonadmitted  
19          insurer with insured exposures in more than one state;

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

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

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

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

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

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

20 A. For the purposes of carrying out the Nonadmitted and  
21 Reinsurance Reform Act of 2010, the Insurance Commissioner is  
22 authorized to enter into the Nonadmitted Insurance Multi-State  
23 Agreement or any other multi-state agreement or compact with the  
24 same function and purpose, in order to:

1 1. Facilitate the collection, allocation and disbursement of  
2 premium taxes attributable to the placement of nonadmitted  
3 insurance;

4 2. Provide for uniform methods of allocation and reporting  
5 among nonadmitted insurance risk classifications; and

6 3. Share information among states relating to nonadmitted  
7 insurance premium taxes.

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

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

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

15 1. Represent or assist any nonadmitted insurer ~~not then duly~~  
16 ~~authorized to transact insurance in Oklahoma~~ as defined in the  
17 Unauthorized Insurers and Surplus Lines Insurance Act, in the  
18 soliciting, procuring, placing, or maintenance of any nonadmitted  
19 insurance coverage upon or with relation to any subject of insurance  
20 resident, located, or to be performed in Oklahoma without being a  
21 surplus lines licensee or broker.

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

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

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

17        ~~F.~~ E. ~~Insurance companies not licensed in the State of Oklahoma~~  
18 Nonadmitted insurers shall ~~not~~ contract with the trustees of any  
19 fund which will insure residents in this state ~~without the previous~~  
20 ~~written approval of the Insurance Commissioner~~ in a manner  
21 consistent with requirements, nature and scope of the Unauthorized  
22 Insurers and Surplus Lines Insurance Act.

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1 SECTION 5. AMENDATORY Section 22, Chapter 176, O.S.L.  
2 2009 (36 O.S. Supp. 2010, Section 1101.1), is amended to read as  
3 follows:

4 Section 1101.1. A. An Oklahoma domestic insurer possessing  
5 policyholder surplus of at least Fifteen Million Dollars  
6 (\$15,000,000.00) may, pursuant to a resolution by its board of  
7 directors, and with the written approval of the Insurance  
8 Commissioner, be designated as a domestic surplus line insurer.  
9 Such insurers shall write surplus line insurance in any jurisdiction  
10 within which it does business, including this state.

11 B. A domestic surplus line insurer may only insure in this  
12 state any risk procured pursuant to Article 11 of the Oklahoma  
13 Insurance Code governing surplus line insurers and brokers and its  
14 premium shall be subject to surplus line premium tax pursuant to  
15 Section 1115 of this title and pursuant to the Nonadmitted Insurance  
16 Multi-State Agreement or any other multi-state agreement or compact  
17 with the same function and purpose the Insurance Commissioner may  
18 enter into or join.

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

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

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

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

17 B. Service of process shall be made by delivering to and  
18 leaving with the Insurance Commissioner three copies thereof. At  
19 time of service the plaintiff shall pay Twenty Dollars (\$20.00) to  
20 the Insurance Commissioner, taxable as costs in the action. The  
21 Insurance Commissioner shall mail by registered mail one of the  
22 copies of the process to the defendant at ~~its principal place of~~  
23 ~~business~~ any home state address as last known to the Insurance  
24 Commissioner, and shall keep a record of all process so served.

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

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

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

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

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

20 Section 1105. In any action against a surplus lines insurer  
21 pursuant to Section 1103 of this ~~article~~ title, if the insurer has  
22 failed for thirty (30) days after demand prior to the commencement  
23 of the action to make payment in accordance with the terms of the  
24 contract of insurance or in accordance with Section 1115 of this

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

10 SECTION 8. AMENDATORY 36 O.S. 2001, Section 1106, as  
11 last amended by Section 15, Chapter 222, O.S.L. 2010 (36 O.S. Supp.  
12 2010, Section 1106), is amended to read as follows:

13 Section 1106. If insurance required to protect the interest of  
14 the assured cannot be procured from authorized insurers after direct  
15 inquiry to authorized insurers, ~~the insurance, hereinafter~~  
16 ~~designated as "surplus line"~~, may be procured from surplus lines  
17 insurers subject to the following conditions:

18 1. The surplus lines insurer shall have a certificate of  
19 approval from the Commissioner, ~~and meet all relevant statutory~~  
20 ~~requirements, including the following~~ if it meets the requirements  
21 of the Unauthorized Insurers and Surplus Lines Insurance Act and the  
22 following conditions:

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

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

3 ~~c. the insurer, if a foreign insurer, posts a special~~  
4 ~~deposit in an amount to be determined by the~~  
5 ~~Commissioner, or has capital and surplus or its~~  
6 ~~equivalent under the laws of its domiciliary~~  
7 ~~jurisdiction which equals the greater of:~~

8 ~~(1) the minimum capital and surplus requirements~~  
9 ~~under the laws of this state, or~~

10 ~~(2) fifteen thousand dollars (\$15,000.00),~~

11 b. the requirements of subparagraph a of this paragraph  
12 may be satisfied by an insurer's possessing less than  
13 the minimum capital and surplus upon an affirmative  
14 finding of acceptability by the Insurance  
15 Commissioner. The finding shall be based upon such  
16 factors as quality of management, capital and surplus  
17 of any parent company, company underwriting profit and  
18 investment income trends, market availability and  
19 company record and reputation within the industry. In  
20 no event shall the Insurance Commissioner make an  
21 affirmative finding of acceptability when the  
22 nonadmitted insurer's capital and surplus is less than  
23 Four Million Five Hundred Thousand Dollars  
24 (\$4,500,000.00), and

1           d.

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

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

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

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

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

22          A.     A surplus lines broker is not required to make a due  
23          diligence search to determine whether the full amount or type of  
24          insurance can be obtained from admitted insurers when the broker is

1 seeking to procure or place nonadmitted insurance for an exempt  
2 commercial purchaser provided:

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

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

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

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

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

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

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

23 b. the person generates annual revenues in excess of  
24 Fifty Million Dollars (\$50,000,000.00), as such amount

1 is adjusted pursuant to paragraph 4 of this  
2 subsection,

3 c. the person employs more than five hundred (500) full-  
4 time-equivalent employees per individual insured or is  
5 a member of an affiliated group employing more than  
6 one thousand (1,000) employees in the aggregate,

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

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

14 4. Effective on January 1, 2015, and every five years  
15 thereafter, the amounts in subparagraphs a, b and d of paragraph 3  
16 of this subsection shall be adjusted to reflect the percentage  
17 change for such five-year period in the Consumer Price Index of All  
18 Urban Consumers published by the Bureau of Labor Statistics of the  
19 Department of Labor.

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

23 Section 1107. A. After procuring any surplus line insurance,  
24 the broker shall execute and ~~file with the Insurance Commissioner a~~

1 ~~report under oath, setting forth facts from which it may be~~  
2 ~~determined whether the requirements of Section 1106 of this title~~  
3 ~~have been met, and in addition thereto the following:~~

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

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

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

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

10 5. ~~Premium, and any membership, application, policy or~~  
11 ~~registration fees; and~~

12 6. ~~Other information reasonably required by the Insurance~~  
13 ~~Commissioner.~~

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

23 B. Pursuant to Section 1115 of this title, when Oklahoma is the  
24 home state, the surplus lines licensee and broker shall make the tax

1 filings and payments required by subsection A of this section to the  
2 clearinghouse in a quarterly manner, utilizing the following dates  
3 only:

4 1. February 15 for the quarter ending the preceding December  
5 31;

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

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

8 4. November 15 for the quarter ending the preceding September  
9 30.

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

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

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

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

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

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

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

21 Section 1109. A. Insurance contracts procured as surplus line  
22 coverage from surplus lines insurers in accordance with this article  
23 shall be fully valid and enforceable as to all parties, and shall be  
24

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

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

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

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

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

20 Section 1112. A. A surplus ~~line~~ lines licensee or broker shall  
21 not knowingly place any such coverage in an insurer which is in an  
22 unsound financial condition. To be considered financially sound, a  
23 surplus ~~line company~~ lines insurer shall ~~have a minimum capital and~~  
24 ~~surplus of not less than Fifteen Million Dollars (\$15,000,000.00)~~

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

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

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

20 Section 1113. Each surplus ~~line~~ lines licensee or broker shall  
21 keep in the broker's office in this state a full and true record of  
22 each surplus ~~line~~ lines contract procured by the broker, and such  
23 record may be examined at any time within three (3) years thereafter  
24

1 by the Insurance Commissioner. The record shall include ~~the~~  
2 ~~following items as are applicable:~~

- 3 ~~1. Name and address of the insurer,~~
- 4 ~~2. Name and address of the insured,~~
- 5 ~~3. Amount of insurance,~~
- 6 ~~4. Gross premium charged,~~
- 7 ~~5. Return premium paid, if any,~~
- 8 ~~6. Rate of premium charged on the several items of coverage,~~
- 9 ~~7. Effective date of the contract and the terms thereof; and~~
- 10 ~~8. Brief general description of the risks insured against and~~  
11 the property insured such information required to be submitted to  
12 the surplus lines clearinghouse as established by the Insurance  
13 Commissioner through joining the Nonadmitted Insurance Multi-State  
14 Agreement or any other multi-state agreement or compact with the  
15 same function and purpose.

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

18 Section 1114. Each surplus ~~line~~ lines licensee or broker shall  
19 on or before the first day of April of each year file with the  
20 Insurance Commissioner a verified statement of all surplus ~~line~~  
21 lines insurance transacted by ~~him~~ the broker during the preceding  
22 calendar year. The statement shall be on a form prescribed and  
23 furnished by the Insurance Commissioner and shall show:

- 24 ~~1. Gross amount of each kind of insurance transacted,~~

1       ~~2. Aggregate gross premiums charged,~~  
2       ~~3. Aggregate of return premiums paid to insureds,~~  
3       ~~4. Aggregate of net premiums, and~~  
4       ~~5. Such additional information as may reasonably be required by~~  
5 ~~the Insurance Commissioner~~ such information required to be submitted  
6 to the surplus lines clearinghouse as established by the Insurance  
7 Commissioner through joining the Nonadmitted Insurance Multi-State  
8 Agreement or any other multi-state agreement or compact with the  
9 same function and purpose.

10       SECTION 17.        AMENDATORY        36 O.S. 2001, Section 1115, as  
11 last amended by Section 19, Chapter 222, O.S.L. 2010 (36 O.S. Supp.  
12 2010, Section 1115), is amended to read as follows:

13       Section 1115. A. ~~On or before the end of each month following~~  
14 ~~each calendar quarter, each surplus line broker shall remit to the~~  
15 ~~State Treasurer through the Insurance Commissioner a tax on the~~  
16 ~~premiums, exclusive of sums collected to cover federal and state~~  
17 ~~taxes and examination fees, on surplus line insurance subject to tax~~  
18 ~~transacted by the broker for the period covered by the report. The~~  
19 ~~tax shall be at the rate of six percent (6%) of the gross premiums~~  
20 ~~less premiums returned on account of cancellation or reduction of~~  
21 ~~premium, and shall exclude gross premiums and returned premiums upon~~  
22 ~~business exempted from surplus line provisions pursuant to Section~~  
23 ~~1119 of this title.~~

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

1 unearned at termination of insurance having been credited by the  
2 state to the licensee shall be returned to the policyholder directly  
3 by the surplus lines licensee or through the producing broker, if  
4 any. The surplus lines licensee is prohibited from rebating, for  
5 any reason, any part of the tax.

6 B. Gross premium charged for independently procured insurance,  
7 less any return premiums, are subject to a tax at the rate of six  
8 percent (6%). At the time of filing the report required in this  
9 section, the insured procuring independently procured insurance  
10 shall pay the tax to the Insurance Commissioner, who shall transmit  
11 the same for distribution as provided by the Unauthorized Insurers  
12 and Surplus Lines Insurance Act. Where the insurance covers  
13 properties, risks or exposures located or to be performed both in  
14 and out of Oklahoma, the sum payable shall be computed based on an  
15 amount equal to six percent (6%) on that portion of the gross  
16 premiums allocated to Oklahoma pursuant to subsection A of this  
17 section, plus an amount equal to the portion of the premiums  
18 allocated to other states or territories on the basis of the tax  
19 rates and fees applicable to properties, risks or exposures located  
20 or to be performed outside of this state pursuant to this  
21 subsection.

22 C. The Insurance Commissioner is authorized to participate in  
23 the Nonadmitted Insurance Multi-State Agreement or any other multi-  
24 state agreement or compact with the same function and purpose for

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

16 D. In order to participate in the Nonadmitted Insurance Multi-  
17 State Agreement, the Insurance Commissioner is authorized to  
18 establish a uniform, statewide rate of taxation applicable to lines  
19 of nonadmitted insurance subject to the Agreement. This rate shall  
20 encompass all existing rates of taxation, fees and assessments  
21 imposed by this state and any political subdivision hereof, pursuant  
22 to subsection A of this section and the Insurance Commissioner shall  
23 document the method by which the statewide rate is calculated. The  
24 Insurance Commissioner is authorized to receive any monies obtained

1 through the clearinghouse established through the Agreement for the  
2 collection and then the disbursement of such funds as provided by  
3 the Insurance Code.

4 E. The Insurance Commissioner is authorized to utilize or adopt  
5 the allocation schedule included in the Nonadmitted Insurance Multi-  
6 State Agreement or any other multi-state agreement or compact with  
7 the same function and purpose for the purpose of allocating risk and  
8 computing the tax due on the portion of premium attributable to each  
9 risk classification and to each state where properties, risks or  
10 exposures are located.

11 F. Paragraphs A through F of this section shall apply equally  
12 to single state risks and multi-state risks.

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

20 ~~E.~~ H. The surplus line tax on insurance on motor transit  
21 operations conducted between this and other states shall be paid on  
22 the total premium charged on all surplus line insurance less:

23 1. The portion of the premium determined as provided in  
24 subsection B of this section charged for operations in other states

1 taxing the premium of an insured maintaining its headquarters office  
2 in this state; or

3 2. The premium for operations outside of this state of an  
4 insured maintaining its headquarters office outside of this state  
5 and branch office in this state.

6 ~~D. Every person, association, or legal entity procuring or~~  
7 ~~accepting any insurance coverage from a surplus lines insurer, upon,~~  
8 ~~covering, or relating to a subject of insurance resident or having a~~  
9 ~~situs in the this state, or any insurance coverage which is to be~~  
10 ~~performed in whole or part in this state, except coverages as are~~  
11 ~~lawfully obtained through a licensed surplus line broker in this~~  
12 ~~state, shall report, within thirty (30) days next succeeding the~~  
13 ~~issuance of evidence of coverage, the purchase of the coverages of~~  
14 ~~insurance to the Insurance Commissioner, on forms prescribed by the~~  
15 ~~Commissioner, and at the same time shall remit to the Insurance~~  
16 ~~Commissioner a tax in the amount of six percent (6%) of the annual~~  
17 ~~premium agreed to be paid, or paid, for the insurance. The~~  
18 ~~insurance coverages, providing for the payment of retrospective~~  
19 ~~premiums, or coverages on which the premiums are not determinable at~~  
20 ~~the time of issuance, shall be reported to the Insurance~~  
21 ~~Commissioner, by the insured, within thirty (30) days next~~  
22 ~~succeeding the date the coverages are issued and the tax payable on~~  
23 ~~the coverages shall be remitted, by the insured, to the Insurance~~  
24 ~~Commissioner within thirty (30) days next succeeding the date the~~

1 ~~premiums can be determined. The tax on renewal premiums shall be~~  
2 ~~paid by the insured in accordance with this section, in like manner~~  
3 ~~as provided for payment of the original premium tax, within thirty~~  
4 ~~(30) days next succeeding the date the premiums can be determined.~~

5 SECTION 18. AMENDATORY 36 O.S. 2001, Section 1116, as  
6 last amended by Section 20, Chapter 222, O.S.L. 2010 (36 O.S. Supp.  
7 2010, Section 1116), is amended to read as follows:

8 Section 1116. A. Any surplus ~~line~~ lines licensee or broker who  
9 fails to remit the surplus line tax provided for by Section 1115 of  
10 this title for more than sixty (60) days after it is due shall be  
11 liable to a civil penalty of not to exceed Twenty-five Dollars  
12 (\$25.00) for each additional day of delinquency. The Insurance  
13 Commissioner shall collect the tax by distraint and shall recover  
14 the penalty by an action in the name of the State of Oklahoma. The  
15 Commissioner may request the Attorney General to appear in the name  
16 of the state by relation of the Commissioner.

17 B. If any person, association or legal entity procuring or  
18 accepting any insurance coverage from a surplus lines insurer,  
19 otherwise than through a ~~licensed~~ surplus ~~line~~ lines licensee or  
20 broker in this state, fails to remit the surplus line tax provided  
21 for by subsection D of Section 1115 of this title, the person,  
22 association or legal entity shall, in addition to the tax, be liable  
23 to a civil penalty in an amount equal to one percent (1%) of the  
24 premiums paid or agreed to be paid for the policy or policies of

1 insurance for each calendar month of delinquency or a civil penalty  
2 in the amount of Twenty-five Dollars (\$25.00) whichever shall be the  
3 greater. The Insurance Commissioner shall collect the tax by  
4 distraint and shall recover the civil penalty in an action in the  
5 name of the State of Oklahoma. The Commissioner may request the  
6 Attorney General to appear in the name of the state by relation of  
7 the Commissioner.

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

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

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

24

1 C. Triplicate copies of legal process against such an insurer  
2 shall be served upon the Insurance Commissioner, and at time of  
3 service the plaintiff shall pay to the Insurance Commissioner Twenty  
4 Dollars (\$20.00), taxable as costs in the action. The Insurance  
5 Commissioner shall immediately mail one copy of the process so  
6 served to the person designated by the insurer in the policy for the  
7 purpose, by mail with return receipt requested. The insurer shall  
8 have forty (40) days after the date of mailing within which to  
9 plead, answer, or otherwise defend the action.

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

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