STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 959 By: Brown of the Senate

and

Mulready of the House

COMMITTEE SUBSTITUTE

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

circumstances for award of certain attorney fees; modifying conditions in which insurance may be procured from surplus lines insurers; providing procedures for the procurement of certain insurance for an exempt commercial purchaser; defining term; specifying information to be submitted to the surplus lines clearinghouse; providing schedule for filing and payment of certain taxes; providing penalty for failure to file certain information; allowing certain coverage to be placed with certain insurers; clarifying type of licensee; requiring surplus lines insurer to meet certain financial requirements; requiring certain information submitted to the surplus lines clearinghouse to be retained by certain licensees or brokers; modifying procedures relating to the levying, collection, payment and distribution of the surplus lines premium tax; providing for codification; providing an effective date; and declaring an emergency.

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

2. "Home state" means:

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

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

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

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

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

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

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

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

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

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

d. if more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home state” means the home state,

as determined pursuant to division (1) of subparagraph a of this paragraph, of the member affiliated group that has the largest percentage of premium attributed to it under such insurance contract, or

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

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

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

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

6. "Nonadmitted insurance" means any property and casualty insurance permitted in a state to be placed directly through a surplus lines licensee or broker with a nonadmitted insurer eligible

to accept such insurance. For purposes of the Unauthorized Insurers and Surplus Lines Insurance Act, nonadmitted insurance includes independently procured insurance and surplus lines insurance;

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

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

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

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

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

For the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, the Insurance Commissioner is authorized to enter into the Nonadmitted Insurance Multi-State Agreement or any

other multistate agreement or compact with the same function and purpose, in order to:

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

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

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

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

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

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

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

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

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

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

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

~~F. Insurance companies not licensed in the State of Oklahoma~~ E. Nonadmitted insurers shall ~~not~~ contract with the trustees of any fund which will insure residents in this state ~~without the previous written approval of the Insurance Commissioner~~ in a manner

consistent with the requirements, nature and scope of the Unauthorized Insurers and Surplus Lines Insurance Act.

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

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

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

C. A domestic surplus line insurer may not issue a policy designed to satisfy the motor vehicle financial responsibility requirement of this state, the Oklahoma Workers' Compensation Act,

or any other law mandating insurance coverage by a licensed insurance company.

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

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

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

B. Service of process shall be made by delivering to and leaving with the Insurance Commissioner three copies thereof. At time of service the plaintiff shall pay Twenty Dollars ($20.00) to the Insurance Commissioner, taxable as costs in the action. The Insurance Commissioner shall mail by registered mail one of the copies of the process to the defendant at ~~its principal place of~~

~~business~~ any home state address as last known to the Insurance Commissioner, and shall keep a record of all process so served.

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

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

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

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

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

Section 1105. In any action against a surplus lines insurer pursuant to Section 1103 of this ~~article~~ title, if the insurer has failed for thirty (30) days after demand prior to the commencement

of the action to make payment in accordance with the terms of the contract of insurance or in accordance with Section 1115 of this title, and it appears to the court that the refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include the fee in any judgment that may be rendered in the action. The fee shall not exceed one-third (1/3) of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall a fee be less than One Hundred Dollars ($100.00). Failure of an insurer to defend any action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

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

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

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

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

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

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

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

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

b. the requirements of subparagraph a of this paragraph may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the Insurance Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. In no event shall the Insurance Commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than

Four Million Five Hundred Thousand Dollars ($4,500,000.00), and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~B. The Insurance Commissioner shall prescribe and furnish the required report form. The Insurance Commissioner shall have the authority to grant approval to the surplus line broker for the master bordereau style reporting of surplus line activity on a quarterly basis~~ submit such information required to be submitted to

the surplus lines clearinghouse as established by the Insurance Commissioner through joining the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact with the same function and purpose.

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

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

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

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

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

C. Failure to ~~file~~ submit the ~~report~~ required information with the clearinghouse pursuant to this section and Section 1115 of this title if Oklahoma is the home state shall result, after notice and hearing, in censure, suspension, or revocation of license or a fine of up to Five Hundred Dollars ($500.00) for each occurrence or by both such fine and licensure penalty.

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

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

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

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

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

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

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

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

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

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

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

B. For violation of this section, in addition to any other penalty provided by law, the broker's license shall be revoked, and the broker shall not again be so licensed within a period of two (2) years thereafter. In addition, any surplus ~~line~~ lines licensee and broker licensed in Oklahoma who violates this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished for each offense, by a fine of not more than One Thousand

Dollars ($1,000.00) or by confinement in jail for not more than ninety (90) days, or by both such fine and imprisonment.

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

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

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

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

~~3. Amount of insurance;~~

~~4. Gross premium charged;~~

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

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

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

~~8. Brief general description of the risks insured against and the property insured~~ such information required to be submitted to the surplus lines clearinghouse as established by the Insurance Commissioner through joining the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact with the same function and purpose.

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

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

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

~~2. Aggregate gross premiums charged,~~

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

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

~~5. Such additional information as may reasonably be required by the Insurance Commissioner~~ such information required to be submitted to the surplus lines clearinghouse as established by the Insurance Commissioner through joining the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact with the same function and purpose.

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

Section 1115. A. ~~On or before the end of each month following each calendar quarter, each surplus line broker shall remit to the~~

~~State Treasurer through the Insurance Commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by the broker for the period covered by the report. The tax shall be at the rate of six percent (6%) of the gross premiums less premiums returned on account of cancellation or reduction of premium, and shall exclude gross premiums and returned premiums upon business exempted from surplus line provisions pursuant to Section 1119 of this title.~~

~~B. Except as provided in subsection C of this section, for the purpose of determining the surplus line tax, the total premium charged for surplus line insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this state in such proportion as the total premium on the insured properties or operations in this state, computed on the exposure in this state on the basis of any single standard rating method in use in all states or countries where the insurance applies, bears to the total premium so computed in all the states or countries~~ In addition to the full amount of gross premiums charged by the insurer for the insurance, where Oklahoma is the home state of the insured, every person licensed pursuant to Section 1106 of this title shall collect and pay to the surplus lines clearinghouse, as provided in Section 3 of this act, a sum based on the total gross premiums charged in connection with any

broker-procured insurance, less any return premiums, for surplus lines insurance provided by the licensee pursuant to the license. Where the insurance covers properties, risks or exposures located or to be performed both in and out of Oklahoma, the sum payable shall be computed based on an amount equal to six percent (6%) on that portion of the gross premiums allocated to Oklahoma, plus an amount equal to the portion of the premiums allocated to other states or territories on the basis of tax rates and fees applicable to properties, risks or exposures located or to be performed outside Oklahoma pursuant to subsection E of this section less the amount of gross premium unearned at termination of the surplus lines insurance. Any such unearned gross premium credited by the state to the surplus broker or licensee shall be returned to the policyholder by the broker or licensee. The surplus lines licensee is prohibited from rebating, for any reason, any part of the tax.

B. Gross premium charged for independently procured insurance, less any return premiums, are subject to a tax at the rate of six percent (6%). At the time of filing the report required in this section, the insured procuring independently procured insurance, where Oklahoma is the home state, shall pay the tax to the surplus lines clearinghouse, as provided in Section 3 of this act, who shall transmit the same for distribution as provided by the Unauthorized Insurers and Surplus Lines Insurance Act. Where the insurance covers properties, risks or exposures located or to be performed

both in and out of Oklahoma, the sum payable shall be computed based on an amount equal to six percent (6%) on that portion of the gross premiums allocated to Oklahoma pursuant to subsection A of this section, plus an amount equal to the portion of the premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks or exposures located or to be performed outside of this state pursuant to this subsection.

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

multistate agreement or compact with the same function and purpose the Insurance Commissioner may agree to or enter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1118. A. Every surplus lines insurer issuing or delivering a surplus line policy through a surplus ~~line~~ lines

licensee or broker in this state shall conclusively be deemed thereby to have irrevocably appointed the Insurance Commissioner as its attorney for acceptance of service of all legal process, other than a subpoena, issued in this state in any action or proceeding under or arising out of the policy, and service of process upon the Insurance Commissioner shall be lawful personal service upon the insurer.

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

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

SECTION 20. This act shall become effective July 1, 2011.

SECTION 21. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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