

# An Act

ENROLLED HOUSE  
BILL NO. 2458

By: Key of the House

and

Brown of the Senate

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

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

SUBJECT: Unauthorized insurers and surplus lines insurance

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

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

Section 1100. A. Sections ~~4, 5, 6 and 12 of this act and Sections 1101~~ 1100 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".

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

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

Section 1100.1 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 maintains its headquarters or the insured's high-level officers direct, control and coordinate the business activities outside ~~any state~~ Oklahoma, 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 in a state 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~~ insurance" means insurance procured by a ~~surplus lines nonadmitted~~ licensee or broker from a surplus lines insurer as permitted under the law of the insured's home state; and

10. "Surplus lines licensee" or "surplus lines broker" means an individual, firm or corporation that is licensed in ~~a state~~ the insured's home 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~~ allowing nonadmitted insurers to do business.

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

Section 1100.2 A. For the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, the Insurance Commissioner is authorized in the Insurance Commissioner's sole discretion and judgment 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.

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

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

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

1. Represent or assist any nonadmitted insurer ~~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 as defined in the Unauthorized Insurers and Surplus Lines Insurance Act; or

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

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.

C. This section shall not apply as to reinsurance, to surplus line insurance lawfully procured pursuant to 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.

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

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

SECTION 5. AMENDATORY 36 O.S. 2011, 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~~ may write surplus line insurance in this state and in any other jurisdiction ~~within which it does business,~~

including this state allowed under the Nonadmitted and Reinsurance Reform Act of 2010.

B. ~~A The premiums of 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, in the exercise of his or her sole discretion and judgment, enter into or join. All domestic surplus lines insurers shall pay all premium taxes to the Insurance Commissioner when Oklahoma is the home state of the insured until and unless in the exercise of his or her sole discretion and judgment, the Insurance Commissioner decides to join the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact with the same function and purpose.~~

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~~ Code, 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 & Casualty Insurance Guaranty Act nor the Oklahoma Life and Health Insurance Guaranty Association Act.

SECTION 6. AMENDATORY 36 O.S. 2011, 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 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. 2011, Section 1104, is amended to read as follows:

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

1. Ocean marine and foreign trade insurance,
2. Insurance on subjects located, resident, or to be performed wholly outside this state, or on vehicles or aircraft owned and principally garaged outside this state,
3. Insurance on property or operations of railroads engaged in interstate commerce, or

4. Insurance on aircraft or cargo of the aircraft, or against liability, other than employers' liability, arising out of the ownership, maintenance, or use of the aircraft, where the policy or contract contains a provision designating the Insurance Commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any policy, or where the insurer enters a general appearance in any action.

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

Section 1105. In any action against a surplus lines insurer pursuant to Section 1103 of this 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 or an aggrieved agency of this state 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 9. AMENDATORY 36 O.S. 2011, Section 1106, is amended to read as follows:

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

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

- a. the insurer 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 for nonadmitted insurers, 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
- c. the insurer, if an alien insurer, is listed on the National Association of Insurance Commissioners Nonadmitted Insurers Quarterly Listing; and

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

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

Section 1106.1 A. A surplus lines licensee or 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 surplus lines licensee or broker is seeking to

procure or place nonadmitted insurance for an exempt commercial purchaser, provided:

1. The licensee or 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 surplus lines 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 11. AMENDATORY 36 O.S. 2011, Section 1107, is amended to read as follows:

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

B. When Oklahoma is the home state ~~in connection with a multistate risk of the insured,~~ the surplus lines license and broker ~~insurer~~ shall make ~~the tax filings and payments required~~ all application and informational filings and fee payments in the manner ~~required or to be established by the Insurance Commissioner through joining, in.~~ When Oklahoma is the home state of the insured, the premium tax filings and premium tax payments shall be provided entirely to the Insurance Commissioner until and unless, in the exercise of his or her sole discretion and judgment, the Insurance Commissioner decides to enter or join the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact with the same function and purpose.

C. ~~Failure to file the required information, any required fee payments and make the required premium tax payments~~ in the manner established by the Insurance Commissioner ~~in the exercise of his or her sole discretion and judgment~~ pursuant to this section and

Section 1115 of this title where Oklahoma is the home state of the insured 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.

SECTION 12. AMENDATORY 36 O.S. 2011, 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 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 surplus lines insurer.

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

Section 1111. A surplus lines licensee or broker may accept and place surplus 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~~ insurance agent or broker shall have the right to receive from the surplus lines insurer the customary commission.

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

Section 1112. A. A surplus lines licensee or broker shall not knowingly place any such coverage ~~in an~~ with a nonadmitted insurer which is in an unsound financial condition. To be considered financially sound, a surplus lines insurer shall meet the requirements of Section 1106 of this title. ~~A surplus 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 lines insurer and such approval has not been withdrawn. A surplus lines licensee or broker shall not place any surplus lines~~

~~insurance in an insurer that 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 surplus lines 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 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. 2011, Section 1113, is amended to read as follows:

Section 1113. Each surplus 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 lines contract procured by the surplus lines broker, and such record may be examined at any time within three (3) years thereafter by the Insurance Commissioner. The record shall include such information required to be submitted as established by the Insurance Commissioner ~~through joining, in the manner established by the Insurance Commissioner in his or her sole discretion and judgment, the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact with the same function and purpose~~ in this article.

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

Section 1114. Each surplus lines licensee or broker licensed or transacting business in Oklahoma shall on or before April 1 of each year file with the Insurance Commissioner a verified statement of all surplus lines insurance transacted by the broker during the preceding calendar year where Oklahoma is the home state of the insured ~~or there is a single-state risk in Oklahoma.~~ The statement shall be on a form prescribed and furnished by the Insurance Commissioner and shall show such information required to be submitted as established by the Insurance Commissioner ~~through joining, in the manner established by the Insurance Commissioner.~~ The information shall be provided to the Insurance Commissioner until and unless, in the exercise of his or her sole discretion and judgment, the Insurance Commissioner decides to enter or join the Nonadmitted Insurance Multi-State Agreement or any other multistate

agreement or compact with the same function and purpose and other transaction reporting requirements are thereby established.

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

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

B. Where Oklahoma is the home state of the insured and the insurance covers properties, risks or exposures located or to be performed both in and out of Oklahoma, the sum payable to the Oklahoma Insurance Commissioner shall be computed based on an amount equal to six percent (6%) on that portion of the total 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 whether the properties, risks or exposures are located or to be performed inside or outside Oklahoma pursuant to subsection H 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 lines broker or licensee shall be returned to the policyholder by the broker or licensee. The surplus lines licensee or broker is prohibited from rebating, for any reason, any part of the tax.

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

or exposures are located or to be performed inside or outside Oklahoma.

~~D. 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.~~

~~E. The Insurance Commissioner is authorized, in the exercise of his or her sole discretion and judgment, 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 function 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 a compact or reciprocal allocation procedure with Oklahoma, the net premium tax collected shall be retained by Oklahoma Until such time as the Insurance Commissioner may, while not being required to, join such multistate agreement or compact, premium taxes relating to Oklahoma home-state insureds shall continue to be paid and accounted for by nonadmitted insurers through their surplus lines licensees and brokers as provided in subsections A through C of this section.~~

~~F. E. 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 or self-procuring insured shall pay the surplus lines premium tax payable on such Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.~~

~~G. In order to participate in F. Should the Insurance Commissioner exercise his or her sole discretion and judgment and decide to join the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact with the same function and purpose, the Insurance Commissioner, in the exercise of his or her sole discretion and judgment, is authorized in such event 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~~ subsections A through C 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 Insurance Commissioner in the exercise of his or her sole discretion and judgment for the collection~~ as premium tax received through any multistate agreement he or she may in the future in his or her discretion choose to join and then ~~the disbursement of~~ disburse such funds as provided by the Insurance Code and other applicable Oklahoma law.

~~H.~~ G. Should the Insurance Commissioner exercise his or her sole discretion and decide to join the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact with the same function and purpose, the Insurance Commissioner is authorized in such circumstances to utilize or adopt any allocation schedule included in the Nonadmitted Insurance Multi-State Agreement or any other multistate agreement or compact the Insurance Commissioner may enter in the exercise of his or her sole discretion and judgment which schedule has the 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.

~~I.~~ H. 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 premium 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.

~~J.~~ I. The surplus line premium 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 C of this section~~ charged for operations in other states taxing the premium of an insured 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.

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

Section 1116. A. Any surplus 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~~ for 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 surplus lines licensee or broker, fails to remit the surplus line tax provided for by 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. 2011, 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 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 surplus lines or nonadmitted 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 surplus lines or nonadmitted insurer shall have forty (40) days after the date of mailing within which to plead, answer, or otherwise defend the action.

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

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

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.

Passed the House of Representatives the 13th day of March, 2012.

\_\_\_\_\_  
Presiding Officer of the House of  
Representatives

Passed the Senate the 9th day of April, 2012.

**OFFICE OF THE GOVERNOR**

\_\_\_\_\_  
Presiding Officer of the Senate

Received by the Governor this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

**OFFICE OF THE SECRETARY OF STATE**

Received by the Secretary of State this \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_