

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 2458

By: Key of the House

and

Brown of the Senate

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10                                   COMMITTEE SUBSTITUTE

11                   An Act relating to unauthorized insurers and surplus  
12 lines insurance; amending 36 O.S. 2011, Sections  
13 1100, 1100.1, 1100.2, 1101, 1101.1, 1103, 1104, 1105,  
14 1106, 1106.1, 1107, 1109, 1111, 1112, 1113, 1114,  
15 1115, 1116, 1118 and 1120, which relate to the  
16 Unauthorized Insurers and Surplus Lines Insurance  
17 Act; updating short title; specifying purpose;  
18 modifying definitions; authorizing the Insurance  
19 Commissioner in his or her discretion to enter into  
20 certain agreement if deemed to be in the best  
21 interest of the state; clarifying that certain  
22 actions must be performed by a broker or licensee as  
23 defined in the Unauthorized Insurers and Surplus  
24 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

1 lines insurance with a multistate risk; clarifying  
2 information on certain notice; specifying that  
3 insurance agent shall have the right to receive  
4 certain commission; modifying requirements that a  
5 surplus lines licensee or broker must meet;  
6 specifying that information in records of surplus  
7 line brokers shall be determined by law; requiring  
8 certain information relating to surplus lines brokers  
9 to be provided to the Insurance Commissioner;  
10 modifying procedures relating to the calculation and  
11 payment of the premium tax; clarifying language;  
12 clarifying that legal process procedures apply to  
13 surplus lines or nonadmitted insurer; modifying scope  
14 of subjects that shall produce certain records for  
15 examination by the Insurance Commissioner; and  
16 declaring an emergency.

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

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

20 Section 1100. A. Sections ~~4, 5, 6 and 12~~ of this act and  
21 ~~Sections 1101~~ 1100 through 1120 of Title 36 of the Oklahoma Statutes  
22 shall be known and may be cited as the "Unauthorized Insurers and  
23 Surplus Lines Insurance Act".

24 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.

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

3 Section 1100.1 As used in the Unauthorized Insurers and Surplus  
4 Lines Insurance Act:

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

8 2. "Home state" means:

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

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

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

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

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

5 (2) if the insured maintains its headquarters or the  
6 insured's high-level officers direct, control and  
7 coordinate the business activities outside ~~any~~  
8 ~~state~~ Oklahoma, the state to which the greatest  
9 percentage of the insured's taxable premium for  
10 that 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  
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1 a of this paragraph, of the member affiliated group  
2 that has the largest percentage of premium attributed  
3 to it under such insurance contract, or

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

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

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

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

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

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

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

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

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

13 10. "Surplus lines licensee" or "surplus lines broker" means an  
14 individual, firm or corporation that is licensed in ~~a state~~ the  
15 insured's home state to sell, solicit, or negotiate insurance,  
16 including the agent of record on a nonadmitted insurance policy, on  
17 properties, risks or exposures located or to be performed in a state  
18 ~~with~~ allowing nonadmitted insurers to do business.

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

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

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1 discretion and judgment to enter into the Nonadmitted Insurance  
2 Multi-State Agreement or any other multistate agreement or compact  
3 with the same function and purpose, in order to:

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

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

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

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

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

22 Section 1101. A. No person in Oklahoma shall in any manner:  
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1 1. Represent or assist any nonadmitted insurer ~~as defined in~~  
2 ~~the Unauthorized Insurers and Surplus Lines Insurance Act,~~ in the  
3 soliciting, procuring, placing, or maintenance of any nonadmitted  
4 insurance coverage upon or with relation to any subject of insurance  
5 resident, located, or to be performed in Oklahoma without being a  
6 surplus lines licensee or broker as defined in the Unauthorized  
7 Insurers and Surplus Lines Insurance Act; or

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

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

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



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

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

9 SECTION 5. AMENDATORY 36 O.S. 2011, Section 1101.1, is  
10 amended to read as follows:

11 Section 1101.1 A. An Oklahoma domestic insurer possessing  
12 policyholder surplus of at least Fifteen Million Dollars  
13 (\$15,000,000.00) may, pursuant to a resolution by its board of  
14 directors, and with the written approval of the Insurance  
15 Commissioner, be designated as a domestic surplus line insurer.  
16 Such insurers ~~shall~~ may write surplus line insurance in this state  
17 and in any other jurisdiction within which it does business,  
18 ~~including this state~~ allowed under the Nonadmitted and Reinsurance  
19 Reform Act of 2010.

20 B. ~~A~~ The premiums of a domestic surplus line insurer ~~may only~~  
21 ~~insure in this state any risk procured pursuant to Article 11 of the~~  
22 ~~Oklahoma Insurance Code governing surplus line insurers and brokers~~  
23 ~~and its premium~~ shall be subject to surplus line premium tax

1 pursuant to Section 1115 of this title ~~and pursuant to the~~  
2 ~~Nonadmitted Insurance Multi-State Agreement or any other multistate~~  
3 ~~agreement or compact with the same function and purpose the~~  
4 ~~Insurance Commissioner may, in the exercise of his or her sole~~  
5 ~~discretion and judgment, enter into or join. All domestic surplus~~  
6 lines insurers shall pay all premium taxes to the Insurance  
7 Commissioner when Oklahoma is the home state of the insured until  
8 and unless in the exercise of his or her sole discretion and  
9 judgment, the Insurance Commissioner decides to join the Nonadmitted  
10 Insurance Multi-State Agreement or any other multistate agreement or  
11 compact with the same function and purpose.

12 C. A domestic surplus line insurer may not issue a policy  
13 designed to satisfy the motor vehicle financial responsibility  
14 requirement of this state, the ~~Oklahoma~~ Workers' Compensation ~~Act~~  
15 Code, or any other law mandating insurance coverage by a licensed  
16 insurance company.

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

21 SECTION 6. AMENDATORY 36 O.S. 2011, Section 1103, is  
22 amended to read as follows:  
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1 Section 1103. A. Delivery, effectuation, or solicitation of  
2 any insurance contract, by mail or otherwise, within this state by a  
3 surplus lines insurer, or the performance within this state of any  
4 other service or transaction connected with the insurance by or on  
5 behalf of the insurer, shall be deemed to constitute an appointment  
6 by the insurer of the Insurance Commissioner ~~and the Commissioner's~~  
7 ~~successors in office~~ as its attorney, upon whom may be served all  
8 lawful process issued within this state in any action or proceeding  
9 against the insurer arising out of any such contract or transaction.

10 B. Service of process shall be made by delivering to and  
11 leaving with the Insurance Commissioner three copies thereof. At  
12 time of service the plaintiff shall pay Twenty Dollars (\$20.00) to  
13 the Insurance Commissioner, taxable as costs in the action. The  
14 Insurance Commissioner shall mail by registered mail one of the  
15 copies of the process to the defendant at any home state address as  
16 last known to the Insurance Commissioner, and shall keep a record of  
17 all process so served.

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

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

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

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

11 SECTION 7. AMENDATORY 36 O.S. 2011, Section 1104, is  
12 amended to read as follows:

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

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

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UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

11 Section 1105. In any action against a surplus lines insurer  
12 pursuant to Section 1103 of this title, if the insurer has failed  
13 for thirty (30) days after demand prior to the commencement of the  
14 action to make payment in accordance with the terms of the contract  
15 of insurance or in accordance with Section 1115 of this title, and  
16 it appears to the court that the refusal was vexatious and without  
17 reasonable cause, the court may allow to the plaintiff or an  
18 aggrieved agency of this state a reasonable attorney fee and include  
19 the fee in any judgment that may be rendered in the action. The fee  
20 shall not exceed one-third (1/3) of the amount which the court or  
21 jury finds the plaintiff is entitled to recover against the insurer,  
22 but in no event shall a fee be less than One Hundred Dollars  
23 (\$100.00). Failure of an insurer to defend any action shall be

1 deemed prima facie evidence that its failure to make payment was  
2 vexatious and without reasonable cause.

3 SECTION 9. AMENDATORY 36 O.S. 2011, Section 1106, is  
4 amended to read as follows:

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

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

12 a. the insurer has capital and surplus or its equivalent  
13 under the laws of its domiciliary jurisdiction which  
14 equals the greater of:

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

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

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

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1 factors as quality of management, capital and surplus  
2 of any parent company, company underwriting profit and  
3 investment income trends, market availability and  
4 company record and reputation within the industry. In  
5 no event shall the Insurance Commissioner make an  
6 affirmative finding of acceptability when the  
7 nonadmitted insurer's capital and surplus is less than  
8 Four Million Five Hundred Thousand Dollars  
9 (\$4,500,000.00), and

10 c. the insurer, if an alien insurer, is listed on the  
11 National Association of Insurance Commissioners  
12 Nonadmitted Insurers Quarterly Listing; and

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

17 For the purposes of carrying out the provisions of the  
18 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance  
19 Commissioner is authorized to utilize the national insurance  
20 producer database of the National Association of Insurance  
21 Commissioners, or any other equivalent uniform national database,  
22 for the licensure of an individual or entity as a surplus lines  
23 licensee or broker and for renewal of such license.

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

3 Section 1106.1 A. A surplus lines licensee or broker is not  
4 required to make a due diligence search to determine whether the  
5 full amount or type of insurance can be obtained from admitted  
6 insurers when the surplus lines licensee or broker is seeking to  
7 procure or place nonadmitted insurance for an exempt commercial  
8 purchaser, provided:

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

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

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

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

22 2. The person has paid aggregate nationwide commercial property  
23 and casualty insurance premiums in excess of One Hundred Thousand

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1 Dollars (\$100,000.00) in the immediately preceding twelve (12)  
2 months;

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

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

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

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

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

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

22 4. Effective on January 1, 2015, and every five (5) years  
23 thereafter, the amounts in subparagraphs a, b and d of paragraph 3

1 of this subsection shall be adjusted to reflect the percentage  
2 change for such five-year period in the Consumer Price Index of All  
3 Urban Consumers published by the Bureau of Labor Statistics of the  
4 U.S. Department of Labor.

5 SECTION 11. AMENDATORY 36 O.S. 2011, Section 1107, is  
6 amended to read as follows:

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

18 B. When Oklahoma is the home state in connection with either a  
19 single state or a multistate risk or any combination thereof, the  
20 surplus lines licensee and broker shall make ~~the~~ all required  
21 applications, informational and notification of doing business  
22 submissions and filings, tax filings and all premium tax payments  
23 required in the manner established by the Insurance Commissioner

1 ~~through joining, in.~~ The tax filings and premium tax payments shall  
2 be provided entirely to the Insurance Commissioner until and unless,  
3 in the exercise of his or her sole discretion and judgment, the  
4 Insurance Commissioner decides to enter or join the Nonadmitted  
5 Insurance Multi-State Agreement or any other multistate agreement or  
6 compact with the same function and purpose and other reporting and  
7 filing requirements are thereby established.

8 C. Failure to file the required information, any required fee  
9 payments and make the required premium tax payments in the manner  
10 established by the Insurance Commissioner ~~in the exercise of his or~~  
11 ~~her sole discretion and judgment~~ pursuant to this section and  
12 Section 1115 of this title where Oklahoma is the home state of the  
13 insured shall result, after notice and hearing, in censure,  
14 suspension, or revocation of license or a fine of up to Five Hundred  
15 Dollars (\$500.00) for each occurrence or by both such fine and  
16 licensure penalty.

17 SECTION 12. AMENDATORY 36 O.S. 2011, Section 1109, is  
18 amended to read as follows:

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

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

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

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

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

17 Section 1112. A. A surplus lines licensee or broker shall not  
18 knowingly place any such coverage ~~in an~~ with a nonadmitted insurer  
19 which is in an unsound financial condition. To be considered  
20 financially sound, a surplus lines insurer shall meet the  
21 requirements of Section 1106 of this title. ~~A surplus lines~~  
22 ~~licensee or broker shall not place any such coverage in an insurer~~  
23 ~~unless the insurer meets the requirements of Section 1106 of this~~

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

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

15 SECTION 15. AMENDATORY 36 O.S. 2011, Section 1113, is  
16 amended to read as follows:

17 Section 1113. Each surplus lines licensee or broker licensed in  
18 Oklahoma shall keep ~~in the broker's office in this state~~ a full and  
19 true record of each surplus lines contract procured by the surplus  
20 lines broker, and such record may be examined at any time within  
21 three (3) years thereafter by the Insurance Commissioner. The  
22 record shall include such information required to be submitted as  
23 established by the Insurance Commissioner ~~through joining, in the~~

1 ~~manner established by the Insurance Commissioner in his or her sole~~  
2 ~~discretion and judgment, the Nonadmitted Insurance Multi-State~~  
3 ~~Agreement or any other multistate agreement or compact with the same~~  
4 ~~function and purpose~~ in this article.

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

7 Section 1114. Each surplus lines licensee or broker licensed or  
8 transacting business in Oklahoma shall on or before April 1 of each  
9 year file with the Insurance Commissioner a verified statement of  
10 all surplus lines insurance transacted by the broker during the  
11 preceding calendar year where Oklahoma is the home state of the  
12 insured ~~or there is a single-state risk in Oklahoma.~~ The statement  
13 shall be on a form prescribed and furnished by the Insurance  
14 Commissioner and shall show such information required to be  
15 submitted as established by the Insurance Commissioner ~~through~~  
16 ~~joining, in the manner established by the Insurance Commissioner.~~  
17 The information shall be provided to the Insurance Commissioner  
18 until and unless, in the exercise of his or her sole discretion and  
19 judgment, the Insurance Commissioner decides to enter or join the  
20 Nonadmitted Insurance Multi-State Agreement or any other multistate  
21 agreement or compact with the same function and purpose and other  
22 transaction reporting requirements are thereby established.

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

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

13 B. Where Oklahoma is the home state of the insured and the  
14 insurance covers properties, risks or exposures located or to be  
15 performed both in and out of Oklahoma, the sum payable to the  
16 Oklahoma Insurance Commissioner shall be computed based on an amount  
17 equal to six percent (6%) ~~on that portion of the~~ total gross  
18 premiums ~~allocated to Oklahoma, plus an amount equal to the portion~~  
19 ~~of the premiums allocated to other states or territories on the~~  
20 ~~basis of tax rates and fees applicable to~~ whether the properties,  
21 risks or exposures are located or to be performed inside or outside  
22 Oklahoma ~~pursuant to subsection H of this section less the amount of~~  
23 ~~gross premium unearned at termination of the surplus lines~~

1 ~~insurance.~~ Any such unearned gross premium credited by the state to  
2 the surplus lines broker or licensee shall be returned to the  
3 policyholder by the broker or licensee. The surplus lines licensee  
4 or broker is prohibited from rebating, for any reason, any part of  
5 the tax.

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

18 D. ~~Where the insurance covers properties, risks or exposures~~  
19 ~~located or to be performed both in and out of Oklahoma, the sum~~  
20 ~~payable shall be computed based on an amount equal to six percent~~  
21 ~~(6%) on that portion of the gross premiums allocated to Oklahoma~~  
22 ~~pursuant to subsection A of this section, plus an amount equal to~~  
23 ~~the portion of the premiums allocated to other states or territories~~

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.



1 ~~on the basis of the tax rates and fees applicable to properties,~~  
2 ~~risks or exposures located or to be performed outside of this state~~  
3 ~~pursuant to this subsection.~~

4 ~~E.~~ The Insurance Commissioner is authorized, in the exercise of  
5 his or her sole discretion and judgment, to participate in the  
6 Nonadmitted Insurance Multi-State Agreement or any other multistate  
7 agreement or compact with the same function and purpose for the  
8 ~~purpose~~ function of collecting and disbursing to reciprocal states  
9 any funds collected pursuant to the Unauthorized Insurers and  
10 Surplus Lines Insurance Act applicable to other properties, risks or  
11 exposures located or to be performed outside of Oklahoma. ~~To the~~  
12 ~~extent that other states where portions of the properties, risks or~~  
13 ~~exposures reside have failed to enter into a compact or reciprocal~~  
14 ~~allocation procedure with Oklahoma, the net premium tax collected~~  
15 ~~shall be retained by Oklahoma~~ Until such time as the Insurance  
16 Commissioner may, while not being required to, join such multistate  
17 agreement or compact, premium taxes relating to Oklahoma home-state  
18 insureds shall continue to be paid and accounted for by nonadmitted  
19 insurers through their surplus lines licensees and brokers as  
20 provided in subsections A through C of this section.

21 ~~F.~~ E. When the surplus lines coverage of an Oklahoma home-state  
22 insured covers properties, risks or exposures located only in  
23 Oklahoma, the surplus lines licensee or broker or self-procuring  
24

1 insured shall pay the surplus lines premium tax payable on such  
2 Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.

3 ~~G. In order to participate in~~ F. Should the Insurance  
4 Commissioner exercise his or her sole discretion and judgment and  
5 decide to join the Nonadmitted Insurance Multi-State Agreement or  
6 any other multistate agreement or compact with the same function and  
7 purpose, the Insurance Commissioner, ~~in the exercise of his or her~~  
8 ~~sole discretion and judgment~~, is authorized in such event to  
9 establish a uniform, statewide rate of taxation applicable to lines  
10 of nonadmitted insurance ~~subject to the Agreement~~. This rate shall  
11 encompass all existing rates of taxation, fees and assessments  
12 imposed by this state ~~and any political subdivision hereof~~, pursuant  
13 to ~~subsection~~ subsections A through C of this section and the  
14 Insurance Commissioner shall document the method by which the  
15 statewide rate is calculated. The Insurance Commissioner is  
16 authorized to receive any monies obtained ~~through the Insurance~~  
17 ~~Commissioner in the exercise of his or her sole discretion and~~  
18 ~~judgment for the collection~~ as premium tax received through any  
19 multistate agreement he or she may in the future in his or her  
20 discretion choose to join and then ~~the disbursement of~~ disburse such  
21 funds as provided by the Insurance Code and other applicable  
22 Oklahoma law.

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1        ~~H.~~ G. Should the Insurance Commissioner exercise his or  
2 her sole discretion and decide to join the Nonadmitted Insurance  
3 Multi-State Agreement or any other multistate agreement or compact  
4 with the same function and purpose, the Insurance Commissioner is  
5 authorized in such circumstances to utilize or adopt any allocation  
6 schedule included in the Nonadmitted Insurance Multi-State Agreement  
7 or any other multistate agreement or compact the Insurance  
8 Commissioner may enter in the exercise of his or her sole discretion  
9 and judgment which schedule has the function and purpose of  
10 allocating risk and computing the tax due on the portion of premium  
11 attributable to each risk classification and to each state where  
12 properties, risks or exposures are located.

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

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

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1 1. The portion of the premium ~~determined as provided in~~  
2 ~~subsection C of this section~~ charged for operations in other states  
3 taxing the premium of an insured where Oklahoma is the home state;  
4 or

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

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

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

19 B. If any person, association or legal entity procuring or  
20 accepting any insurance coverage from a surplus lines insurer where  
21 Oklahoma is the home state of the insured, otherwise than through a  
22 surplus lines licensee or broker, fails to remit the surplus line  
23 tax provided for by Section 1115 of this title, the person,

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1 association or legal entity shall, in addition to the tax, be liable  
2 to a civil penalty in an amount equal to one percent (1%) of the  
3 premiums paid or agreed to be paid for the policy or policies of  
4 insurance for each calendar month of delinquency or a civil penalty  
5 in the amount of Twenty-five Dollars (\$25.00) whichever shall be the  
6 greater. The Insurance Commissioner shall collect the tax by  
7 distraint and shall recover the civil penalty in an action in the  
8 name of the State of Oklahoma. The Commissioner may request the  
9 Attorney General to appear in the name of the state by relation of  
10 the Commissioner.

11 SECTION 19. AMENDATORY 36 O.S. 2011, Section 1118, is  
12 amended to read as follows:

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

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

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

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

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

1 the placing of the insurance as may reasonably be required by the  
2 Insurance Commissioner.

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

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8 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 03/05/2012 - DO  
9 PASS, As Amended and Coauthored.

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