

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2458

By: Key

4
5
6 AS INTRODUCED

7 An Act relating to insurance; amending 36 O.S. 2011,
8 Sections 1100.1, 1100.2, 1101, 1101.1, 1103, 1104,
9 1105, 1106, 1106.1, 1107, 1109, 1111, 1112, 1113,
10 1114, 1115, 1116 and 1118, which relate to the
11 Unauthorized and Surplus Lines Insurance Act;
12 modifying definitions; specifying the Insurance
13 Commissioner shall not be compelled to join certain
14 agreements or compacts; allowing exception; modifying
15 prohibited insurer actions; modifying domestic
16 surplus lines insurer requirements; modifying service
17 of process requirement; modifying exemption from
18 service of process; modifying attorney fee allowance;
19 modifying capital and surplus requirements; modifying
20 due diligence search requirements; modifying insurer
21 information filing requirements; specifying certain
22 tax filings shall be provided to Commissioner;
23 authorizing Commissioner to enter certain agreements
24 or compacts; modifying failure to file certain
payment penalties; specifying certain surplus line
coverage contracts shall contain certain notice;
allowing insurance producer to receive certain
commission; modifying requirements prohibiting
placement of coverage in an insolvent insurer;
modifying surplus lines broker record keeping
requirements; specifying certain information shall be
provided to the Commissioner; authorizing
Commissioner to enter into certain agreements or
compacts; modifying surplus lines tax payment
requirements; specifying certain taxes shall be paid
through certain licensee and broker; authorizing
Commissioner to join certain agreements or compacts;
specifying certain liability shall be a civil
penalty; authorizing Commissioner to accept service

1 upon certain insurers; modifying reinsurance
2 exemption; and providing an effective date.
3

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

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

7 Section 1100.1 As used in the Unauthorized Insurers and Surplus
8 Lines Insurance Act:

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

12 2. "Home state" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 6. "Nonadmitted insurance" means any property and casualty
23 insurance permitted in a state to be placed directly through a
24 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 home state of the insured;
13 and

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

20 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1100.2, is
21 amended to read as follows:

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

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 Commissioner shall not be compelled to join the
13 Nonadmitted Insurance Multi-State Agreement or any other multistate
14 agreement or compact with the function and purpose of distributing
15 surplus lines, premium tax proceeds based upon a formula of
16 multistate risk allocation unless, in the discretion of the
17 Commissioner, the Commissioner determines that the best interest of
18 the state and its citizens would be served by joining such a
19 multistate compact or agreement.

20 SECTION 3. 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:

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

1 soliciting, procuring, placing, or maintenance of any nonadmitted
2 insurance coverage upon or with relation to any subject of insurance
3 resident, located, or to be performed in Oklahoma without being a
4 surplus lines licensee or broker as defined in the Unauthorized
5 Insurers and Surplus Lines Insurance Act; or

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

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

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

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

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

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

7 SECTION 4. AMENDATORY 36 O.S. 2011, Section 1101.1, is
8 amended to read as follows:

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

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

1 ~~function and purpose the Insurance Commissioner may, in the exercise~~
2 ~~of his or her sole discretion and judgment, enter into or join. All~~
3 ~~domestic surplus lines insurers shall pay all premium tax to the~~
4 ~~Commissioner unless, pursuant to Section 1100.2 of the Unauthorized~~
5 ~~Insurers and Surplus Lines Insurance Act, the Commissioner elects to~~
6 ~~join the Nonadmitted Insurance Multi-State Agreement or any other~~
7 ~~multistate agreement or compact with the same function and purpose.~~

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

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

17 SECTION 5. AMENDATORY 36 O.S. 2011, Section 1103, is
18 amended to read as follows:

19 Section 1103. A. Delivery, effectuation, or solicitation of
20 any insurance contract, by mail or otherwise, within this state by a
21 surplus lines insurer, or the performance within this state of any
22 other service or transaction connected with the insurance by or on
23 behalf of the insurer, shall be deemed to constitute an appointment
24 by the insurer of the Insurance Commissioner ~~and the Commissioner's~~

1 ~~successors in office~~ as its attorney, upon whom may be served all
2 lawful process issued within this state in any action or proceeding
3 against the insurer arising out of any such contract or transaction.

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

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

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

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

24

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

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

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

11 1. Ocean marine and foreign trade insurance ;

12 2. Insurance on subjects located, resident, or to be performed
13 wholly outside this state, or on vehicles or aircraft owned and
14 principally garaged outside this state ;

15 3. Insurance on property or operations of railroads engaged in
16 interstate commerce ; or

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

1 SECTION 7. AMENDATORY 36 O.S. 2011, Section 1105, is
2 amended to read as follows:

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

18 SECTION 8. AMENDATORY 36 O.S. 2011, Section 1106, is
19 amended to read as follows:

20 Section 1106. If insurance required to protect the interest of
21 the assured cannot be procured from admitted insurers after direct
22 inquiry to authorized insurers, insurance may be procured from
23 surplus lines insurers subject to the following conditions:
24

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

4 a. the insurer has capital and surplus or its equivalent
5 under the laws of its domiciliary jurisdiction which
6 equals the greater of:

7 (1) the minimum capital and surplus requirements
8 under the laws of this state for nonadmitted
9 insurers, or

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

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

1 c. the insurer, if an alien insurer, is listed on the
2 National Association of Insurance Commissioners
3 Nonadmitted Insurers Quarterly Listing; and

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

8 For the purposes of carrying out the provisions of the
9 Nonadmitted and Reinsurance Reform Act of 2010, the Insurance
10 Commissioner is authorized to utilize the national insurance
11 producer database of the National Association of Insurance
12 Commissioners, or any other equivalent uniform national database,
13 for the licensure of an individual or entity as a surplus lines
14 licensee or broker and for renewal of such license.

15 SECTION 9. AMENDATORY 36 O.S. 2011, Section 1106.1, is
16 amended to read as follows:

17 Section 1106.1 A. A surplus lines licensee or broker is not
18 required to make a due diligence search to determine whether the
19 full amount or type of insurance can be obtained from admitted
20 insurers when the surplus lines licensee or broker is seeking to
21 procure or place nonadmitted insurance for an exempt commercial
22 purchaser, provided:

23 1. The licensee or broker procuring or placing the surplus
24 lines insurance has disclosed to the exempt commercial purchaser

1 that such insurance may or may not be available from the admitted
2 market that may provide greater protection with more regulatory
3 oversight; and

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

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

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

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

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

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

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

24

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

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

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

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

18 SECTION 10. AMENDATORY 36 O.S. 2011, Section 1107, is
19 amended to read as follows:

20 Section 1107. A. After procuring any surplus line insurance
21 where Oklahoma is the home state and the insurance involves a
22 multistate risk, the surplus lines licensee and broker shall submit
23 such ~~clearinghouse or other entity~~ information relating to the
24 transaction as may be established by the Insurance Commissioner

1 ~~through joining, in his or her sole discretion and judgment,~~. The
2 information shall be provided to the Commissioner unless, pursuant
3 to Section 1100.2 of this title, the Commissioner elects to enter or
4 join the Nonadmitted Insurance Multi-State Agreement or any other
5 multistate agreement or compact with the same function and purpose
6 and other reporting requirements are thereby established.

7 B. When Oklahoma is the home state in connection with either a
8 single state or a multistate risk, the surplus lines licensee and
9 broker shall make the required application, informational and
10 notification of doing business in Oklahoma submissions, tax filings
11 and all premium tax payments required in the manner established by
12 the Insurance Commissioner ~~through joining, in his or her sole~~
13 ~~discretion and judgment,~~. The tax filings and premium tax payments
14 shall be provided only to the Commissioner unless, pursuant to
15 Section 1100.2 of this title, the Commissioner elects to enter or
16 join the Nonadmitted Insurance Multi-State Agreement or any other
17 multistate agreement or compact with the same function and purpose
18 and other reporting requirements are thereby established.

19 C. Failure to file the required information, any required fee
20 payments or to make the required premium tax payments in the manner
21 established by the Insurance Commissioner ~~in the exercise of his or~~
22 ~~her sole discretion and judgment~~ pursuant to this section and
23 Section 1115 of this title where Oklahoma is the home state shall
24 result, after notice and hearing, in censure, suspension, or

1 revocation of license or a fine of up to Five Hundred Dollars
2 (\$500.00) for each occurrence or by both such fine and licensure
3 penalty.

4 SECTION 11. AMENDATORY 36 O.S. 2011, Section 1109, is
5 amended to read as follows:

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

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

17 SECTION 12. AMENDATORY 36 O.S. 2011, Section 1111, is
18 amended to read as follows:

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

1 SECTION 13. AMENDATORY 36 O.S. 2011, Section 1112, is
2 amended to read as follows:

3 Section 1112. A. A surplus lines licensee or broker shall not
4 knowingly place any ~~such~~ coverage ~~in an~~ with a nonadmitted insurer
5 which is in an unsound financial condition. To be considered
6 financially sound, a surplus lines insurer shall meet the
7 requirements of Section 1106 of this title. ~~A surplus lines~~
8 ~~licensee or broker shall not place any such coverage in an insurer~~
9 ~~unless the insurer meets the requirements of Section 1106 of this~~
10 ~~title or has been approved in writing by the Insurance Commissioner~~
11 ~~as a surplus lines insurer and such approval has not been withdrawn.~~
12 ~~A surplus lines licensee or broker shall not place any surplus lines~~
13 ~~insurance in an insurer that does not meet the requirements of~~
14 ~~Section 1106 of this title.~~

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

24

1 SECTION 14. AMENDATORY 36 O.S. 2011, Section 1113, is
2 amended to read as follows:

3 Section 1113. Each surplus lines licensee or broker licensed in
4 Oklahoma shall keep in the broker's office in this state a full and
5 true record of each surplus lines contract procured by the surplus
6 lines broker, and such record may be examined at any time within
7 three (3) years thereafter by the Insurance Commissioner. The
8 record shall include such information required to be submitted as
9 established by the Insurance Commissioner ~~through joining, in the~~
10 ~~manner established by the Insurance Commissioner in his or her sole~~
11 ~~discretion and judgment, the Nonadmitted Insurance Multi-State~~
12 ~~Agreement or any other multistate agreement or compact with the same~~
13 ~~function and purpose~~ in the Unauthorized Insurers and Surplus Lines
14 Insurance Act.

15 SECTION 15. AMENDATORY 36 O.S. 2011, Section 1114, is
16 amended to read as follows:

17 Section 1114. Each surplus lines licensee or broker licensed or
18 transacting business in Oklahoma shall on or before April 1 of each
19 year file with the Insurance Commissioner a verified statement of
20 all surplus lines insurance transacted by the broker during the
21 preceding calendar year where Oklahoma is the state of the insured
22 ~~or there is a single state risk in Oklahoma.~~ The statement shall be
23 on a form prescribed and furnished by the Insurance Commissioner and
24 shall show such information required to be submitted as established

1 by the Insurance Commissioner ~~through joining, in the manner~~
2 ~~established by the Insurance Commissioner in the exercise of his or~~
3 ~~her sole discretion and judgment,~~. The information shall be
4 provided to the Insurance Commissioner unless, pursuant to Section
5 1100.2 of this title, the Commissioner elects to enter or join the
6 Nonadmitted Insurance Multi-State Agreement or any other multistate
7 agreement or compact with the same function and purpose and other
8 transaction reporting requirements are thereby established.

9 SECTION 16. AMENDATORY 36 O.S. 2011, Section 1115, is
10 amended to read as follows:

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

20 B. ~~Where~~ If the insurance covers properties, risks or exposures
21 located or to be performed both in and out of Oklahoma, the sum
22 payable to the Insurance Commissioner shall be computed based on an
23 amount equal to six percent (6%) ~~on that portion of the~~ total gross
24 premiums ~~allocated to Oklahoma, plus an amount equal to the portion~~

1 ~~of the premiums allocated to other states or territories on the~~
2 ~~basis of tax rates and fees applicable to whether the~~ properties,
3 risks or exposures are located or to be performed inside or outside
4 Oklahoma ~~pursuant to subsection H of this section,~~ less the amount
5 of gross premium unearned at termination of the surplus lines
6 insurance. Any such unearned gross premium credited by the state to
7 the surplus lines broker or licensee shall be returned to the
8 policyholder by the broker or licensee. The surplus lines licensee
9 or broker is prohibited from rebating, for any reason, any part of
10 the tax.

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

22 D. ~~Where the insurance covers properties, risks or exposures~~
23 ~~located or to be performed both in and out of Oklahoma, the sum~~
24 ~~payable shall be computed based on an amount equal to six percent~~

1 ~~(6%) on that portion of the gross premiums allocated to Oklahoma~~
2 ~~pursuant to subsection A of this section, plus an amount equal to~~
3 ~~the portion of the premiums allocated to other states or territories~~
4 ~~on the basis of the tax rates and fees applicable to properties,~~
5 ~~risks or exposures located or to be performed outside of this state~~
6 ~~pursuant to this subsection.~~

7 E. The Insurance Commissioner is authorized, ~~in the exercise of~~
8 ~~his or her sole discretion and judgment~~ pursuant to Section 1100.2
9 of this title, to participate in the Nonadmitted Insurance Multi-
10 State Agreement or any other multistate agreement or compact with
11 the same function and purpose for the ~~purpose~~ function of collecting
12 and disbursing to reciprocal states any funds collected pursuant to
13 the Unauthorized Insurers and Surplus Lines Insurance Act applicable
14 to other properties, risks or exposures located or to be performed
15 outside of Oklahoma. ~~To the extent that other states where portions~~
16 ~~of the properties, risks or exposures reside have failed to enter~~
17 ~~into a compact or reciprocal allocation procedure with Oklahoma, the~~
18 ~~net premium tax collected shall be retained by Oklahoma~~ Provided
19 that, unless the Insurance Commissioner elects to join a multistate
20 agreement or compact, premium taxes relating to Oklahoma home state
21 insureds shall continue to be paid and accounted for by nonadmitted
22 insurers through their surplus lines licensees and brokers as
23 provided in subsections A through C of this section.

1 ~~F.~~ E. When the surplus lines coverage of an Oklahoma home-state
2 insured covers properties, risks or exposures located only in
3 Oklahoma, the surplus lines licensee or broker or self-procuring
4 insured shall pay the surplus lines premium tax payable on such
5 Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.

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

24

1 ~~H.~~ G. If the Insurance Commissioner elects to join 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 is authorized to utilize or adopt any
5 allocation schedule included in the Nonadmitted Insurance Multi-
6 State Agreement or any other multistate agreement or compact ~~the~~
7 with the same function and purpose. The Insurance Commissioner may
8 enter, in the exercise of ~~his or her~~ the sole discretion and
9 judgment ~~which~~ of the Commissioner, a schedule which has the
10 function and purpose of allocating risk and computing the tax due on
11 the portion of premium attributable to each risk classification and
12 to each state where 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:
24

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 17. 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,
24 association or legal entity shall, in addition to the tax, be liable

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

10 SECTION 18. AMENDATORY 36 O.S. 2011, Section 1118, is
11 amended to read as follows:

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

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

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

11 SECTION 19. This act shall become effective November 1, 2012.

12

13 53-2-8891 SDR 01/16/12

14

15

16

17

18

19

20

21

22

23

24