An Act

ENROLLED SENATE
BILL NO. 1617

By: Brown of the Senate

and

Mulready of the House

An Act relating to insurance; amending 36 O.S. 2011, Sections 1101.1, as amended by Section 5 of Enrolled House Bill No. 2458 of the 2nd Session of the 53rd Oklahoma Legislature, 1106, as amended by Section 9 of Enrolled House Bill No. 2458 of the 2nd Session of the 53rd Oklahoma Legislature, 1107, as amended by Section 11 of the Enrolled House Bill No. 2458 of the 2nd Session of the 53rd Oklahoma Legislature, and 1115, as amended by Section 17 of Enrolled House Bill No. 2458 of the 2nd Session of the 53rd Oklahoma Legislature, which relate to surplus lines insurance; modifying who shall be responsible to pay certain premium taxes; correcting term; specifying who shall make informational filings and fee payments; clarifying who can sell surplus lines insurance; amending 36 O.S. 2011, Sections 6470.3 and 6470.19, which relate to captive insurance companies; eliminating requirements to be certain resident registered agent; specifying maximum tax paid by a captive insurance company in certain situations; and declaring an emergency.

SUBJECT: Insurance

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 1101.1, as amended by Section 5 of Enrolled House Bill No. 2458 of the 2nd Session of the 53rd Oklahoma Legislature, 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 may write surplus line insurance in this state and in any other jurisdiction allowed under the Nonadmitted and Reinsurance Reform Act of 2010.

B. The premiums of a domestic surplus line insurer shall be subject to surplus line premium tax pursuant to Section 1115 of this title. ~~All domestic surplus lines insurers~~ The surplus lines broker or licensee 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 Workers' Compensation 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 Association Act nor the Oklahoma Life and Health Insurance Guaranty Association Act.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 1106, as amended by Section 9 of Enrolled House Bill No. 2458 of the 2nd Session of the 53rd Oklahoma Legislature, is amended to read as follows:

Section 1106. If insurance required to protect the interest of the ~~assured~~ insured 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 the insurer's home state. An Oklahoma surplus lines license is required only where Oklahoma is the home state 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 3. AMENDATORY 36 O.S. 2011, Section 1107, as amended by Section 11 of Enrolled House Bill No. 2458 of the 2nd Session of the 53rd Oklahoma Legislature, 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 information relating to the transaction as may be established by the Insurance Commissioner. 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 of the insured, the surplus lines ~~insurer~~ licensee or broker shall make all ~~application and~~ informational filings and fee payments in the manner required or to be established by the Insurance Commissioner. 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 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 4. AMENDATORY 36 O.S. 2011, Section 1115, as amended by Section 17 of Enrolled House Bill No. 2458 of the 2nd Session of the 53rd Oklahoma Legislature, is amended to read as follows:

Section 1115. A. 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 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 sold to the Oklahoma home-state insureds by the surplus lines broker ~~and~~ or 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%) of the total gross premiums whether the properties, risks or exposures are located or to be performed inside or outside Oklahoma. 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. 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%) payable to the Oklahoma Insurance Commissioner, whether the properties, risks or exposures are located or to be performed inside or outside Oklahoma.

D. 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 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. 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.

E. When the surplus lines coverage of an Oklahoma homestate 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.

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 is authorized in such event to establish a uniform, statewide rate of taxation applicable to lines of nonadmitted insurance. This rate shall encompass all existing rates of taxation, fees and assessments imposed by this state, pursuant to 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 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 disburse such funds as provided by the Insurance Code and other applicable Oklahoma law.

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.

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.

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 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 5. AMENDATORY 36 O.S. 2011, Section 6470.3, is amended to read as follows:

Section 6470.3. A. A captive insurance company, when permitted by its articles of incorporation or charter, may apply to the Insurance Commissioner for a license to do any and all insurance, except workers' compensation insurance, authorized by ~~Title 36 of the Oklahoma Statutes~~ this title; however:

1. A pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof;

2. An association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies;

3. An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

4. A special purpose captive insurance company may only insure the risks of its parent. Notwithstanding any other provisions of the Oklahoma Captive Insurance Company Act, a special purpose captive insurance company may provide insurance or reinsurance, or both, for risks as approved by the Insurance Commissioner;

5. A captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or any component of these coverages; and

6. A captive insurance company may not accept or cede reinsurance except as provided in Section 6470.16 of this title.

B. To conduct insurance business in this state a captive insurance company shall:

1. Obtain from the Insurance Commissioner a license authorizing it to conduct insurance business in this state;

2. Hold at least one board of directors meeting, or in the case of a reciprocal insurer, a subscriber's advisory committee meeting, each year in this state;

3. Maintain its principal place of business in this state, or in the case of a branch captive insurance company, maintain the principal place of business for its branch operations in this state; and

4. Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. ~~The agent shall be licensed by the Oklahoma Insurance Department as a licensed third party administrator or managing general agent and maintain its principal place of business in this state.~~ In the case of a captive insurance company:

a. formed as a corporation, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Insurance Commissioner must be an agent of the captive insurance company upon whom any process, notice, or demand may be served, or

b. formed as a reciprocal insurer, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Insurance Commissioner must be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

C. 1. Before receiving a license, a captive insurance company:

a. formed as a corporation, shall file with the Insurance Commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the Insurance Commissioner, or

b. formed as a reciprocal shall:

(1) file with the Insurance Commissioner a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition and any other statements or documents required by the Insurance Commissioner, and

(2) submit to the Insurance Commissioner for approval a description of the coverages, deductibles, coverage limits, and rates and any other information the Insurance Commissioner may reasonably require. If there is a subsequent material change in an item in the description, the reciprocal captive insurance company shall submit to the Insurance Commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the Insurance Commissioner. The reciprocal captive insurance company shall inform the Insurance Commissioner of any material change in rates within thirty (30) days of the adoption of the change.

2. In addition to the information required by paragraph 1 of this subsection, an applicant captive insurance company shall file with the Insurance Commissioner evidence of:

a. the amount and liquidity of its assets relative to the risks to be assumed,

b. the adequacy of the expertise, experience, and character of the person or persons who will manage it,

c. the overall soundness of its plan of operation,

d. the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable, and

e. such other factors considered relevant by the Insurance Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

3. In addition to the information required by paragraphs 1 and 2 of this subsection, an applicant sponsored captive insurance company shall file with the Insurance Commissioner:

a. a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the Insurance Commissioner, and how it will report the experience to the Insurance Commissioner,

b. a statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the Insurance Commissioner,

c. all contracts or sample contracts between the sponsored captive insurance company and any participants, and

d. evidence that expenses will be allocated to each protected cell in an equitable manner.

4. Information submitted pursuant to this subsection is confidential and may not be made public by the Insurance Commissioner or an agent or employee of the Insurance Commissioner without the written consent of the company, except that:

a. information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:

(1) the information sought is relevant to and necessary for the furtherance of the action or case,

(2) the information sought is unavailable from other nonconfidential sources, and

(3) a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the Insurance Commissioner; however, the provisions of this paragraph do not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group, and

b. the Insurance Commissioner may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:

(1) the public official agrees in writing to maintain the confidentiality of the information, and

(2) the laws of the state in which the public official serves require the information to be confidential.

D. A captive insurance company shall pay to the Department a nonrefundable fee of Two Hundred Dollars ($200.00) for examining,

investigating, and processing its application for license, and the Insurance Commissioner may retain legal, financial, and examination services from outside the Department, the reasonable cost of which may be charged against the applicant. ~~Title 36 of the Oklahoma Statutes~~ This title applies to examinations, investigations, and processing conducted under the authority of this section. In addition, a captive insurance company shall pay a license fee for the year of registration and a renewal fee of Three Hundred Dollars ($300.00).

E. If the Insurance Commissioner is satisfied that the documents and statements filed by the captive insurance company comply with the provisions of the Oklahoma Captive Insurance Company Act, the Insurance Commissioner may grant a license authorizing the company to do insurance business in this state until March 1 at which time the license may be renewed.

SECTION 6. AMENDATORY 36 O.S. 2011, Section 6470.19, is amended to read as follows:

Section 6470.19. A. A captive insurance company shall pay to the Department, by March 1 of each year, a tax at the rate of four-tenths of one percent (0.4%) on the first Twenty Million Dollars ($20,000,000.00) and three-tenths of one percent (0.3%) on the next Twenty Million Dollars ($20,000,000.00) and two-tenths of one percent (0.2%) on the next Twenty Million Dollars ($20,000,000.00) and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

B. A captive insurance company shall pay to the Department, by March 1 of each year, a tax at the rate of two hundred twenty-five thousandths of one percent (0.225%) on the first Twenty Million Dollars ($20,000,000.00) of assumed reinsurance premium, and one hundred fifty thousandths of one percent (0.150%) on the next Twenty Million Dollars ($20,000,000.00) and fifty thousandths of one percent (0.050%) on the next Twenty Million Dollars ($20,000,000.00)

and twenty-five thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection A of this section. A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

C. If the aggregate taxes to be paid by a captive insurance company calculated under subsections A and B of this section amount to less than Five Thousand Dollars ($5,000.00) in any year, the captive insurance company shall pay a minimum tax of Five Thousand Dollars ($5,000.00) for that year. However, in the calendar year in which a captive is first licensed, the minimum tax will be prorated on a quarterly basis. For captives licensed in the first quarter, the prorated minimum tax is Five Thousand Dollars ($5,000.00). For captives licensed in the second quarter, the prorated minimum tax is Three Thousand Seven Hundred Fifty Dollars ($3,750.00). For captives licensed in the third quarter, the prorated minimum tax is Two Thousand Five Hundred Dollars ($2,500.00). For captives licensed in the fourth quarter, the prorated minimum tax is One Thousand Two Hundred Fifty Dollars ($1,250.00). In the calendar year in which a captive is first licensed, if the aggregate taxes to be paid by a captive insurance company calculated under subsections A and B of this section amount to less than the minimum tax prorated on a quarterly basis, the captive insurance company shall pay the prorated minimum tax for that calendar year.

D. <u>If the aggregate taxes to be paid by a captive insurance company calculated under subsections A and B of this section amount to more than One Hundred Thousand Dollars ($100,000.00) in any year, the captive insurance company shall pay a maximum tax of One Hundred Thousand Dollars ($100,000.00) for that year.</u>

<u>E.</u> A captive insurance company, failing to make returns or to pay all taxes required by this section, is subject to the relevant sanctions of the Oklahoma Insurance Code.

~~E.~~ F. Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

~~F.~~ G. As used in this section, "common ownership and control" means:

1. In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

2. In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two or more corporations by the same member or members.

~~G.~~ H. In the case of a branch captive insurance company, the tax provided for in this section applies only to the branch business of the company.

~~H.~~ I. The tax provided for in this section constitutes all taxes collectible under the laws of this state from a captive insurance company, and no other occupation tax or other taxes may be levied or collected from a captive insurance company by the state or a county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

SECTION 7. 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 Senate the 17th day of May, 2012.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2012.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 25th
day of May, **20** 12,
at 7:30 **o'clock** P**M.**

By: Jessie R Pryor

Approved by the Governor of the State of Oklahoma the 8 **day of**
June, **20** 12, **at** 3:10 **o'clock** P**M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
8th **day of** June, **20** 12,
at 4:45 **o'clock** P. **M.**

By: Michelle R Day