An Act

ENROLLED SENATE
BILL NO. 487

By: Quinn of the Senate

and

Faught of the House

An Act relating to insurance; amending 36 O.S. 2011, Sections 1102 and 1115, as last amended by Section 4, Chapter 365, O.S.L. 2012 (36 O.S. Supp. 2014, Section 1115), which relates to surplus lines insurance; modifying circumstances under which certain insurance contracts are voidable; exempting certain flood insurance policies from surplus lines premium tax; providing that surplus lines licensee or broker not required to make certain due diligence searches; providing for codification; and providing an effective date.

SUBJECT: Surplus lines exceptions

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

SECTION 1. AMENDATORY 36 O.S. 2011, Section 1102, is amended to read as follows:

Section 1102. A contract of insurance effectuated by a surplus lines insurer in violation of this Code shall be voidable except at the instance of the ~~insurer~~ insured.

SECTION 2. AMENDATORY 36 O.S. 2011, Section 1115, as last amended by Section 4, Chapter 365, O.S.L. 2012 (36 O.S. Supp. 2014, Section 1115), 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 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 home-state insured covers properties, risks or exposures located only in Oklahoma, the surplus lines licensee or broker or self-procuring insured shall pay the surplus lines premium tax payable on such Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.

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.

J. Flood insurance policies where Oklahoma is the home state of the insured and the insurance covers properties, risks, or exposures located in Oklahoma shall be exempt from the surplus line premium tax.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1106.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A surplus lines licensee or broker is not required to make a due diligence search to determine whether the full amount or type of insurance can be obtained from admitted insurers when the surplus lines licensee or broker is seeking to procure or place flood insurance with a nonadmitted insurer.

SECTION 4. This act shall become effective November 1, 2015.

Passed the Senate the 11th day of March, 2015.

Presiding Officer of the Senate

Passed the House of Representatives the 7th day of April, 2015.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 8th
day of April, 2015, at 3:11 o'clock P M.
By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 10th
day of April, 2015, at 9:54 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 10th
day of April, 2015, at 1:48 o'clock P. M.
By: Chris Morris