

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 438

By: Sparks of the Senate

and

Mulready of the House

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to insurance premium taxes; amending
11 36 O.S. 2011, Section 1115, as last amended by
12 Section 2, Chapter 49, O.S.L. 2015 (36 O.S. Supp.
13 2016, Section 1115), which relates to premium tax on
14 surplus lines coverage; creating exemption for
15 certain policies; and providing an effective date.

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

17 SECTION 1. AMENDATORY 36 O.S. 2011, Section 1115, as
18 last amended by Section 2, Chapter 49, O.S.L. 2015 (36 O.S. Supp.
19 2016, Section 1115), is amended to read as follows:

20 Section 1115. A. Where Oklahoma is the home state of the
21 insured, every person licensed pursuant to Section 1106 of this
22 title shall collect and pay as provided in this section a sum for
23 premium tax based on the total gross premiums charged in connection
24 with any broker-procured surplus lines insurance, less any return

1 premiums, for surplus lines insurance sold to the Oklahoma home-
2 state insureds by the surplus lines broker or licensee.

3 B. Where Oklahoma is the home state of the insured and the
4 insurance covers properties, risks or exposures located or to be
5 performed both in and out of Oklahoma, the sum payable to the
6 Oklahoma Insurance Commissioner shall be computed based on an amount
7 equal to six percent (6%) of the total gross premiums whether the
8 properties, risks or exposures are located or to be performed inside
9 or outside Oklahoma. Any such unearned gross premium credited by
10 the state to the surplus lines broker or licensee shall be returned
11 to the policyholder by the broker or licensee. The surplus lines
12 licensee or broker is prohibited from rebating, for any reason, any
13 part of the tax.

14 C. Where Oklahoma is the home state of the insured, gross
15 premiums charged for independently procured insurance, less any
16 return premiums, are subject to a premium tax at the rate of six
17 percent (6%) payable to the Oklahoma Insurance Commissioner, whether
18 the properties, risks or exposures are located or to be performed
19 inside or outside Oklahoma.

20 D. The Insurance Commissioner is authorized, in the exercise of
21 his or her sole discretion and judgment, to participate in the
22 Nonadmitted Insurance Multi-State Agreement or any other multistate
23 agreement or compact with the same function and purpose for the
24 function of collecting and disbursing to reciprocal states any funds

1 collected pursuant to the Unauthorized Insurers and Surplus Lines
2 Insurance Act applicable to other properties, risks or exposures
3 located or to be performed outside of Oklahoma. Until such time as
4 the Insurance Commissioner may, while not being required to, join
5 such multistate agreement or compact, premium taxes relating to
6 Oklahoma home-state insureds shall continue to be paid and accounted
7 for by nonadmitted insurers through their surplus lines licensees
8 and brokers as provided in subsections A through C of this section.

9 E. When the surplus lines coverage of an Oklahoma home-state
10 insured covers properties, risks or exposures located only in
11 Oklahoma, the surplus lines licensee or broker or self-procuring
12 insured shall pay the surplus lines premium tax payable on such
13 Oklahoma-only risks solely to the Oklahoma Insurance Commissioner.

14 F. Should the Insurance Commissioner exercise his or her sole
15 discretion and judgment and decide to join the Nonadmitted Insurance
16 Multi-State Agreement or any other multistate agreement or compact
17 with the same function and purpose, the Insurance Commissioner is
18 authorized in such event to establish a uniform, statewide rate of
19 taxation applicable to lines of nonadmitted insurance. This rate
20 shall encompass all existing rates of taxation, fees and assessments
21 imposed by this state, pursuant to subsections A through C of this
22 section and the Insurance Commissioner shall document the method by
23 which the statewide rate is calculated. The Insurance Commissioner
24 is authorized to receive any monies obtained as premium tax received

1 through any multistate agreement he or she may in the future in his
2 or her discretion choose to join and then disburse such funds as
3 provided by the Insurance Code and other applicable Oklahoma law.

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

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

1 I. The surplus line premium tax on insurance on motor transit
2 operations conducted between this and other states shall be paid on
3 the total premium charged on all surplus line insurance less:

4 1. The portion of the premium charged for operations in other
5 states taxing the premium of an insured where Oklahoma is the home
6 state; or

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

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

14 K. Policies sold to any city or town in this state,
15 incorporated pursuant to law, shall be exempt from the surplus lines
16 premium tax.

17 SECTION 2. This act shall become effective November 1, 2017.

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19 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
20 04/11/2017 - DO PASS, As Amended.