

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 321
Insurance Committee Substitute Adopted 4/14/11

Short Title: Surplus Lines/Premium Tax.-AB

(Public)

Sponsors:

Referred to:

March 14, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO CONFORM PROVISIONS OF NORTH CAROLINA SURPLUS LINES
3 INSURANCE LAWS TO THE FEDERAL NONADMITTED AND REINSURANCE
4 REFORM ACT OF 2010, TO STREAMLINE APPLICATIONS FOR COMMERCIAL
5 PURCHASERS, TO PREVENT ANY LOSS OF PREMIUM TAX REVENUE TO THE
6 STATE, AND TO CONFORM THE DEFINITION OF RISK RETENTION GROUP TO
7 FEDERAL LAW.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Article 21 of Chapter 58 of the General Statutes is amended by
10 adding the following new sections to read:

11 "**§ 58-21-3. Cooperative or interstate agreements.**

12 (a) The Commissioner is authorized to enter into a cooperative agreement or interstate
13 agreement or compact to do the following:

14 (1) Establish additional and alternative nationwide uniform eligibility
15 requirements that shall be applicable to nonadmitted insurers domiciled in
16 another state or territory of the United States.

17 (2) Facilitate the collection, allocation, and disbursement of premium taxes
18 attributable to the placement of nonadmitted insurance, provide for uniform
19 methods of allocation and reporting among nonadmitted insurance risk
20 classifications, and share information among states relating to nonadmitted
21 insurance premium taxes.

22 (b) The Commissioner is authorized to enter the NAIC Nonadmitted Insurance
23 Multi-State Agreement or other compact or interstate agreement for the purpose of carrying out
24 the Nonadmitted and Reinsurance Reform Act of 2010.

25 "**§ 58-21-4. Nonadmitted and Reinsurance Reform Act duties.**

26 (a) For the purposes of carrying out the provisions of the Nonadmitted and Reinsurance
27 Reform Act of 2010, the Commissioner is authorized to utilize the national insurance producer
28 database of the NAIC, or any other equivalent uniform national database, for the licensure of an
29 individual or an entity as a surplus lines producer and for renewal of such license.

30 (b) In order to assist in the performance of the Commissioner's duties, under the
31 Nonadmitted and Reinsurance Reform Act of 2010, the Commissioner may contract with
32 nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC
33 oversees, to perform any ministerial functions, including the collection of fees, related to
34 producer licensing that the Commissioner and the nongovernmental entity may deem to be
35 appropriate."

36 SECTION 2. G.S. 58-21-10 reads as rewritten:

37 "**§ 58-21-10. Definitions.**



1 As used in this Article:

- 2 (1) "Admitted insurer" means an insurer licensed to ~~do an insurance business~~
3 engage in the business of insurance in this State.
- 4 (1a) "Affiliate" means, with respect to an insured, any entity that controls, is
5 controlled by, or is under common control with the insured.
- 6 (1b) "Affiliated group" means any group of entities that are all affiliated.
- 7 (2) "Capital", as used in the financial requirements of G.S. 58-21-20, means
8 funds paid in for stock or other evidence of ownership.
- 9 (2a) "Control" means an entity that has "control" over another entity if either of
10 the following occurs:
- 11 a. The entity directly or indirectly or acting through one or more other
12 persons owns, controls, or has the power to vote twenty-five percent
13 (25%) or more of any class of voting securities of the other entity.
- 14 b. The entity controls in any manner the election of a majority of the
15 directors or trustees of the other entity.
- 16 (3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a
17 surplus lines licensee may place surplus lines insurance under
18 G.S. 58-21-20.
- 19 (4) "Export" means to place surplus lines insurance with a nonadmitted insurer.
- 20 (5) "Nonadmitted insurer" means an insurer not licensed to do an insurance
21 business in this State. ~~This definition~~ "Nonadmitted insurer" includes
22 insurance exchanges authorized under the laws of various states.
23 "Nonadmitted insurer" does not include a risk retention group, as defined in
24 G.S. 58-22-10(10).
- 25 (6) "Producing broker" means an agent or broker licensed under Article 33 of
26 this Chapter who deals directly with the party seeking insurance and who
27 may also be a surplus lines licensee.
- 28 (6a) "Reciprocal state" means a state that has enacted provisions substantially
29 similar to the following:
- 30 a. G.S. 58-21-85, 58-21-95(5), 58-21-75(10), 58-21-35(7b), and
31 58-28-5(b).
- 32 b. The allocation schedule and reporting form contained in
33 G.S. 58-21-85.
- 34 (7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means
35 funds over and above liabilities and capital of the company for the protection
36 of policyholders.
- 37 (8) "Surplus lines insurance" means any insurance in this State of risks resident,
38 located, or to be performed in this State, permitted to be placed through a
39 surplus lines licensee with a nonadmitted insurer eligible to accept such
40 insurance, other than reinsurance, commercial aircraft insurance, wet marine
41 and transportation insurance, insurance independently procured pursuant to
42 G.S. 58-28-5, life and accident or health insurance, and annuities.
- 43 (9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to
44 place insurance on risks resident, located, or to be performed in this State
45 with nonadmitted insurers eligible to accept such insurance.
- 46 (10) "Wet marine and transportation insurance" means:
- 47 a. Insurance upon vessels, crafts, hulls and of interests therein or with
48 relation thereto;
- 49 b. Insurance of marine builder's risks, marine war risks and contracts of
50 marine protection and indemnity insurance;

- 1 c. Insurance of freights and disbursements pertaining to a subject of
2 insurance coming within this subsection; and
3 d. Insurance of personal property and interests therein, in the course of
4 exportation from or importation into any country, or in the course of
5 transportation coastwise or on inland waters including transportation
6 by land, water, or air from point of origin to final destination, in
7 connection with any and all risks or perils of navigation, transit or
8 transportation, and while being prepared for and while awaiting
9 shipment, and during any delays, transshipment, or reshipment
10 incident thereto."

11 **SECTION 3.** Article 21 of Chapter 58 of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 58-21-11. Home state.**

14 (a) Except as provided in subsection (b) of this section, the term "home state" means,
15 with respect to an insured, either of the following:

- 16 (1) The state in which an insured maintains its principal place of business or, in
17 the case of an individual, the individual's principal residence.
18 (2) If one hundred percent (100%) of the insured risk is located out of the state
19 referred to in subdivision (1) of this subsection, the state to which the
20 greatest percentage of the insured's taxable premium for that insurance
21 contract is allocated.

22 (b) Affiliated Groups. – If two or more insureds from an affiliated group are named
23 insureds on a single nonadmitted insurance contract, the term "home state" means the home
24 state, as determined pursuant to subsection (a) of this section, of the member of the affiliated
25 group that has the largest percentage of premium attributed to it under that insurance contract."

26 **SECTION 4.** G.S. 58-21-15 reads as rewritten:

27 **"§ 58-21-15. Placement of surplus lines insurance.**

28 ~~Insurance may be procured through a surplus lines licensee from nonadmitted insurers~~
29 ~~if:~~ Surplus lines may be placed by a surplus lines licensee if all of the following apply:

- 30 (1) ~~Each insurer is an eligible surplus lines insurer; insurer.~~
31 (1a) Each insurer is authorized to write the kind of insurance in its domiciliary
32 jurisdiction.
33 (2) The full amount or kind of insurance cannot be obtained from insurers who
34 are admitted to do business in this State. Such full amount or kind of
35 insurance may be procured from eligible surplus lines insurers, provided that
36 a diligent search is made among the insurers who are admitted to transact
37 and are actually writing the particular kind and class of insurance in this
38 State; and State.
39 (3) All other requirements of this Article are met."

40 **SECTION 5.** Article 21 of Chapter 58 of the General Statutes is amended by
41 adding the following new sections to read:

42 **"§ 58-21-16. Streamlined application for commercial purchasers.**

43 (a) A surplus lines licensee seeking to procure or place nonadmitted insurance in this
44 State for an exempt commercial purchaser shall not be required to satisfy any requirement
45 under G.S. 58-21-15 to make a due diligence search to determine whether the full amount or
46 type of insurance sought by such exempt commercial purchaser can be obtained from admitted
47 insurers if all of the following apply:

- 48 (1) The licensee procuring or placing the surplus lines insurance has disclosed to
49 the exempt commercial purchaser that such insurance may or may not be
50 available from the admitted market that may provide greater protection with
51 more regulatory oversight.

- 1 (2) The exempt commercial purchaser has subsequently requested in writing the
2 licensee to procure or place such insurance from a nonadmitted insurer.
- 3 (b) As used in this section, the following definitions apply:
- 4 (1) "Exempt commercial purchaser" means any person purchasing commercial
5 insurance that, at the time of placement, meets all of the following
6 requirements:
- 7 a. The person employs or retains a qualified risk manager to negotiate
8 insurance coverage.
- 9 b. The person has paid aggregate nationwide commercial property and
10 casualty insurance premiums in excess of one hundred thousand
11 dollars (\$100,000) in the immediately preceding 12 months.
- 12 c. The person meets at least one of the following criteria:
- 13 1. The person possesses a net worth in excess of twenty million
14 dollars (\$20,000,000), as such amount is adjusted pursuant to
15 subsection (c) of this section.
- 16 2. The person generates annual revenues in excess of fifty
17 million dollars (\$50,000,000), as such amount is adjusted
18 pursuant to subsection (c) of this section.
- 19 3. The person employs more than 500 full-time or full-time
20 equivalent employees per individual insured or is a member
21 of an affiliated group employing more than 1,000 employees
22 in the aggregate.
- 23 4. The person is a not-for-profit organization or public entity
24 generating annual budgeted expenditures of at least thirty
25 million dollars (\$30,000,000), as such amount is adjusted
26 pursuant to subsection (c) of this section.
- 27 5. The person is a municipality with a population in excess of
28 50,000 persons.
- 29 (2) "Qualified risk manager" means, with respect to a policyholder of
30 commercial insurance, a person who meets all of the following
31 requirements:
- 32 a. Is an employee of, or third-party consultant retained by, the
33 commercial policyholder.
- 34 b. Provides skilled services in loss prevention, loss reduction, or risk
35 and insurance coverage analysis, and purchase of insurance.
- 36 c. Has one of the following:
- 37 1. A bachelor's degree or higher from an accredited college or
38 university in risk management, business administration,
39 finance, economics, or any other field determined by the
40 Commissioner to demonstrate minimum competence in risk
41 management and one of the following:
- 42 I. Three years of experience in risk financing, claims,
43 administration, loss prevention, risk and insurance
44 analysis, or purchasing commercial lines of insurance.
- 45 II. One of the following designations:
- 46 A. Chartered Property and Casualty Underwriter
47 (CPCU) issued by the American Institute for
48 CPCU/Insurance Institute of America.
- 49 B. Associate in Risk Management (ARM) issued
50 by the American Institute for CPCU/Insurance
51 Institute of America.

- 1 C. Certified Risk Manager (CRM) issued by the
- 2 National Alliance for Insurance Education &
- 3 Research.
- 4 D. RIMS Fellow (RF) issued by the Global Risk
- 5 Management Institute.
- 6 E. A designation, certification, or license
- 7 determined by the Commissioner to
- 8 demonstrate minimum competency in risk
- 9 management.
- 10 2. Seven years of experience in risk financing, claims
- 11 administration, loss prevention, risk and insurance coverage
- 12 analysis, or purchasing commercial lines of insurance; and
- 13 has any one of the designations specified in
- 14 sub-sub-sub-sub-subdivisions A. through E. of
- 15 sub-sub-sub-subdivision II. of this sub-subdivision.
- 16 3. Ten years of experience in risk financing, claims
- 17 administration, loss prevention, risk and insurance coverage
- 18 analysis, or purchasing commercial lines of insurance.
- 19 4. A graduate degree from an accredited college or university in
- 20 risk management, business administration, finance,
- 21 economics, or any other field determined by the
- 22 Commissioner to demonstrate minimum competence in risk
- 23 management.

24 (c) Effective on the fifth January 1 occurring after the date of the enactment of this

25 section and each fifth January 1 occurring thereafter, the dollar amounts in

26 sub-sub-subdivisions (b)(1)c.1. 2., 3., and 4. of this section shall be adjusted to reflect the

27 percentage change for such five-year period in the Consumer Price Index for All Urban

28 Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor.

29 **"§ 58-21-17. Placement with alien insurers.**

30 Nothing in this Article prohibits a surplus lines licensee from placing surplus lines

31 insurance with, or procuring surplus lines insurance from, a nonadmitted insurer domiciled

32 outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by

33 the International Insurers Department of the NAIC."

34 **SECTION 6.** G.S. 58-21-20(a) reads as rewritten:

35 ~~"(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer,~~

36 ~~unless at the time of placement, such nonadmitted insurer;~~ A surplus lines licensee shall not

37 place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines

38 licensee has determined that the nonadmitted insurer satisfies the following:

- 39 (1) ~~Has established satisfactory evidence of good repute and financial integrity;~~
- 40 ~~and integrity.~~
- 41 (2) Qualifies under one of the following subdivisions:
 - 42 a. Has capital and surplus or its equivalent under the laws of its
 - 43 domiciliary jurisdiction, which equals the greater of either:
 - 44 1. This State's minimum capital and surplus requirements under
 - 45 G.S. 58-7-75, or G.S. 58-7-75.
 - 46 2. Fifteen million dollars ~~(\$15,000,000); (\$15,000,000).~~
 - 47 whichever is greater, except that nonadmitted insurers already
 - 48 qualified under this Article must have ten million dollars
 - 49 (\$10,000,000) by December 31, 1991, twelve million five hundred
 - 50 thousand dollars (\$12,500,000) by December 31, 1992, and fifteen
 - 51 million dollars (\$15,000,000) by December 31, 1993. The

1 requirements of this sub-subdivision may be satisfied by an insurer
2 possessing less than the commitment capital and surplus upon an
3 affirmative finding of acceptability by the Commissioner. The
4 finding shall be based upon such factors as quality of management,
5 capital and surplus of any parent company, company underwriting
6 profit and investment income trends, and the insurer's record and
7 reputation within the industry. In no event shall the Commissioner
8 make an affirmative finding of acceptability when the insurer's
9 capital and surplus is less than four million five hundred thousand
10 dollars (\$4,500,000).

11 In addition, an alien insurer qualifies under this subdivision if it
12 complies with the capital and surplus requirements of this
13 subdivision and maintains in the United States an irrevocable trust
14 fund in either a national bank or a member of the Federal Reserve
15 System, in an amount not less than five million four hundred
16 thousand dollars (\$5,400,000) for the protection of all of its
17 policyholders in the United States, and the trust fund consists of cash,
18 securities, letters of credit, or of investment of substantially the same
19 character and quality as those which are eligible investments for the
20 capital and statutory reserves of admitted insurers authorized to write
21 like kinds of insurance in this State. The trust fund, which shall be
22 included in any calculation of capital and surplus or its equivalent,
23 shall have an expiration date which at no time shall be less than five
24 years; or The requirements of this sub-subdivision may be satisfied by
25 an insurer's possessing less than the minimum capital and surplus
26 upon an affirmative finding of acceptability by the Commissioner.
27 The finding shall be based upon such factors as quality of
28 management, capital and surplus of any parent company, company
29 underwriting profit and investment income trends, market
30 availability, and company record and reputation within the industry.
31 In no event shall the Commissioner make an affirmative finding of
32 acceptability when the nonadmitted insurer's capital and surplus is
33 less than four million five hundred thousand dollars (\$4,500,000).

34 b. In the case of any Lloyd's plans or other similar group of insurers,
35 which consists of unincorporated individual insurers, or a
36 combination of both unincorporated and incorporated insurers,
37 maintains a trust fund in an amount of not less than one hundred
38 million dollars (\$100,000,000) as security to the full amount thereof
39 for all policyholders and creditors in the United States of each
40 member of the group, and the trust shall likewise comply with the
41 terms and conditions established in subdivision (2)a. of this section
42 for alien insurers; and insurers.

43 c. In the case of an "insurance exchange" created by the laws of
44 individual states, maintain capital and surplus, or the substantial
45 equivalent thereof, of not less than seventy-five million dollars
46 (\$75,000,000) in the aggregate. For insurance exchanges which
47 maintain funds in an amount of not less than fifteen million dollars
48 (\$15,000,000) for the protection of all insurance exchange
49 policyholders, each individual syndicate shall maintain minimum
50 capital and surplus, or the substantial equivalent thereof, of not less
51 than five million dollars (\$5,000,000). If the insurance exchange does

1 not maintain funds in an amount of not less than fifteen million
 2 dollars (\$15,000,000) for the protection of all insurance exchange
 3 policyholders, each individual syndicate shall meet the minimum
 4 capital and surplus requirements of subdivision (2)a. of this section.

5 d. In the case of a group of incorporated insurers under common
 6 administration, which has continuously transacted an insurance
 7 business outside the United States for at least three years
 8 immediately before this time, and which submits to this State's
 9 authority to examine its books and records and bears the expense of
 10 the examination, and maintains an aggregate policyholders' surplus
 11 of not less than ten billion dollars (\$10,000,000,000), and maintains
 12 in trust a surplus of not less than one hundred million dollars
 13 (\$100,000,000) for the benefit of United States surplus lines
 14 policyholders of any member of the group, and each insurer
 15 maintains capital and surplus of not less than twenty-five million
 16 dollars (\$25,000,000) per company.

17 (3) Has caused to be provided to the Commissioner a copy of its current annual
 18 statement certified by such insurer; such statement to be provided no more
 19 than two months, and for alien insurers six months, after the close of the
 20 period reported upon and that is either:

- 21 a. Filed with and approved by the regulatory authority in the domicile
 22 of the nonadmitted insurer; or
 23 b. Certified by an accounting or auditing firm licensed in the
 24 jurisdiction of the insurer's domicile; or
 25 c. In the case of an insurance exchange, the statement may be an
 26 aggregate combined statement of all underwriting syndicates
 27 operating during the period reported."

28 **SECTION 7.** G.S. 58-21-35(a) reads as rewritten:

29 **"§ 58-21-35. Duty to file and retain reports.**

30 (a) Within 30 days after the placing of any surplus lines insurance, the surplus lines
 31 licensee shall file with the Commissioner a report in a format prescribed by the Commissioner
 32 regarding the insurance and including the following information:

- 33 (1) The name of the insured.
 34 (2) The identity of the insurer or insurers.
 35 (3) A description of the subject and location of the risk.
 36 (4) The amount of premium charged for the insurance.
 37 (5) The amount of premium tax for the insurance.
 38 (6) The policy period.
 39 (7) The policy number.
 40 (7a) An acknowledged statement that the surplus lines licensee has complied with
 41 ~~G.S. 58-21-15~~ G.S. 58-21-15 or G.S. 58-21-16, whichever is applicable.
 42 (8) The name, address, telephone number, facsimile telephone number, and
 43 electronic mail address of the licensee, as applicable.
 44 (9) Any other relevant information the Commissioner may reasonably require.

45 (b) The licensee shall complete and retain a copy of the report in paper or electronic
 46 form as required by the Commissioner. The report required by this section and the quarterly
 47 report required by G.S. 58-21-80 shall be completed on a standardized form or forms
 48 prescribed by the Commissioner and are not public records under G.S. 132-1 or
 49 G.S. 58-2-100."

50 **SECTION 8.** G.S. 58-21-65(a) reads as rewritten:

1 "(a) ~~No~~ For insureds whose home state is this State, no agent or broker licensed by the
2 Commissioner shall procure any contract of surplus lines insurance with any nonadmitted
3 insurer, unless he possesses a current surplus lines insurance license issued by the
4 Commissioner."

5 **SECTION 9.** G.S. 58-22-10(10) reads as rewritten:

6 "(10) "Risk retention group" means any corporation or other limited liability
7 association:

- 8 a. Whose primary activity consists of assuming and spreading all or any
9 portion of the liability exposure of its group members;
- 10 b. That is organized for the primary purpose of conducting the activity
11 described under sub-subdivision a. of this subdivision;
- 12 c. That
- 13 (i) Is chartered and licensed as a liability insurance company and
14 authorized to engage in the business of insurance under the
15 laws of any state; or
- 16 (ii) Before January 1, 1985, was chartered or licensed and
17 authorized to engage in the business of insurance under the
18 laws of Bermuda or the Cayman Islands and, before that date,
19 had certified to the insurance regulator of at least one state
20 that it satisfied the capitalization requirements of such state;
21 except that any such group shall be considered to be a risk
22 retention group only if it has been engaged in business
23 continuously since that date and only for the purpose of
24 continuing to provide insurance to cover product liability or
25 completed operations liability, as such terms were defined in
26 the Product Liability Risk Retention Act of 1981 before the
27 effective date of the Risk Retention Act of 1986;
- 28 d. That does not exclude any person from membership in the group
29 solely to provide for members of such a group a competitive
30 advantage over such person;
- 31 e. That
- 32 (i) ~~Has as its members only persons who have an ownership~~
33 ~~interest in the group and that has as its owners only persons~~
34 ~~who are members who are provided insurance by the risk~~
35 ~~retention group; or~~
- 36 (ii) ~~Has as its sole member and sole owner an organization that is~~
37 ~~owned by persons who are provided insurance by the risk~~
38 ~~retention group;~~
- 39 (i) Has as its owners only persons who comprise the membership
40 of the risk retention group and who are provided insurance by
41 such group; or
- 42 (ii) Has as its sole owner an organization that meets all of the
43 following:
- 44 (I) Its members are only persons who comprise the
45 membership of the risk retention group; and
- 46 (II) Its owners are only persons who comprise the
47 membership of the risk retention group and who are
48 provided insurance by such group;
- 49 f. Whose members are engaged in businesses or activities similar or
50 related with respect to the liability of which such members are

- 1 exposed by virtue of any related, similar, or common business trade,
- 2 product, services, premises, or operations;
- 3 g. Whose activities do not include the provision of insurance other than:
- 4 (i) Liability insurance for assuming and spreading all or any
- 5 portion of the similar or related liability exposure of its group
- 6 members; and
- 7 (ii) Reinsurance with respect to the similar or related liability
- 8 exposure of any other risk retention group, or any ~~members~~
- 9 member of such other group, that is engaged in businesses or
- 10 activities so that such group or member meets the
- 11 requirement described in sub-subdivision f. of this
- 12 subdivision from membership in the risk retention group that
- 13 provides such reinsurance; and
- 14 h. The name of which includes the phrase "Risk Retention Group".
- 15 **SECTION 10.** This act becomes effective June 1, 2011.