

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH10111-MH-85 (03/11)

Short Title: Surplus Lines Amendments. (Public)

Sponsors: Representatives Pendleton, Tine, and Setzer (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE SURPLUS LINES ACT BY INCLUDING ALIEN INSURERS IN THE DEFINITION OF AN ELIGIBLE SURPLUS LINES INSURER, BY REPEALING COUNTERSIGNING REQUIREMENTS, AND BY PROVIDING GREATER FLEXIBILITY FOR THE MANNER OF COLLECTION AND REFUND OF THE SURPLUS LINES TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-21-10(3) reads as rewritten:

"(3) "Eligible surplus lines insurer" means an alien insurer as defined in G.S. 58-21-17 or a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-21-20."

SECTION 2. G.S. 58-21-40 reads as rewritten:

"§ 58-21-40. Surplus lines regulatory support organization.

(a) A surplus lines regulatory support organization of surplus lines licensees shall be formed to:

- (1) Facilitate and encourage compliance by resident and nonresident surplus lines licensees with the laws of this State and the rules and regulations of the Commissioner relative to surplus lines insurance;
- (2) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market;
- (3) Receive and disseminate to surplus lines licensees information about surplus lines insurance, including, without limitation, new electronic filing procedures approved by the Commissioner, changes in the list of eligible surplus lines insurers, and modifications in coverages, procedures, and requirements as may be requested by the Commissioner; and
- (4) ~~Countersign nonresident produced surplus lines coverages and remit premium taxes for those coverages under G.S. 58-21-70 by means satisfactory to the Commissioner; and charge the nonresident surplus lines licensee a fee for the certification and countersignature as approved by the Commissioner.~~ Establish a stamping office to process all surplus lines insurance and remit premium taxes for those coverages under G.S. 58-21-85 by means satisfactory to the Commissioner, and charge surplus lines licensees a fee for such processing.

(b) The regulatory support organization shall file with the Commissioner:

- (1) A copy of its constitution, articles of agreement or association, or certificate of incorporation;



- 1 (2) A copy of its bylaws and rules governing its activities;
2 (3) An annually updated list of resident and nonresident licensees;
3 (4) The name and address of a resident of this State upon whom notices or
4 orders of the Commissioner or processes issued at his direction may be
5 served; and
6 (5) An agreement that the Commissioner may examine the regulatory support
7 organization in accordance with subsection (c) of this section.

8 (c) The Commissioner may, at times deemed appropriate, make or cause to be made an
9 examination of each regulatory support organization; in which case the provisions of
10 G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-180, 58-2-185,
11 58-2-190, 58-2-195, and 58-2-200 shall apply. If the Commissioner finds the regulatory support
12 organization or any surplus lines licensee, whether resident or nonresident, to be in violation of
13 this Article, the Commissioner may issue an order requiring the discontinuance of the violation.

14 (d) Each resident surplus lines licensee shall maintain active membership in a
15 regulatory support organization as a condition of continued licensure under this Article."

16 **SECTION 3.** G.S. 58-21-70 reads as rewritten:

17 "**§ 58-21-70. Surplus lines licensees may accept business from other agents or brokers;
18 countersignatures required; remittance of premium tax.**

19 (a) A surplus lines licensee may originate surplus lines insurance or accept such
20 insurance from any other duly licensed agent or broker, and the surplus lines licensee may
21 compensate such agent or broker therefor.

22 ~~(b) Every report filed by a nonresident licensee under G.S. 58-21-35(a) shall, before
23 being filed with the Commissioner, be countersigned by a resident licensee or by a regulatory
24 support organization. The resident licensee or regulatory support organization may charge the
25 nonresident licensee a countersignature fee.~~

26 ~~(c) Every resident licensee and regulatory support organization that countersigns a
27 report under subsection (b) of this section is responsible for remitting the premium tax for the
28 coverage, as specified in G.S. 58-21-85, to the Commissioner."~~

29 **SECTION 4.** G.S. 58-21-85 reads as rewritten:

30 "**§ 58-21-85. Surplus lines tax.**

31 (a) Gross premiums charged, less any return premiums, for surplus lines insurance on
32 insureds for whom North Carolina is the home state are subject to a premium receipts tax of
33 five percent (5%), which shall be collected ~~by the surplus lines licensee as specified in a~~
34 manner approved by the Commissioner, in addition to the full amount of the gross premium
35 charged by the insurer for the insurance. The tax on any portion of the premium unearned at
36 termination of insurance having been credited by the State to the licensee shall be returned to
37 the policyholder ~~directly by the surplus lines licensee or through the producing broker, if~~
38 any directly. The surplus lines licensee is prohibited from absorbing such tax and from rebating
39 for any reason, any part of such tax. To the extent that other states in which portions of the
40 properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation
41 procedure with this State, the premium tax collected shall be retained by this State.

42 ~~(b) At the same time that he files his quarterly report as set forth in G.S. 58-21-80, each
43 surplus lines licensee shall pay the premium receipts tax due for the period covered by the
44 report.~~

45 "...."

46 **SECTION 5.** This act is effective when it becomes law.