

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 321

Short Title: Surplus Lines/Premium Tax.-AB (Public)

Sponsors: Senator Apodaca.

Referred to: Insurance.

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, AND TO PREVENT ANY LOSS OF PREMIUM TAX REVENUE TO
6 THE STATE.

7 The General Assembly of North Carolina enacts:

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

10 **"§ 58-21-3. Cooperative or interstate agreements.**

11 The Commissioner is authorized to enter into a cooperative agreement or interstate
12 agreement or compact to establish additional and alternative nationwide uniform eligibility
13 requirements that shall be applicable to nonadmitted insurers domiciled in another state or
14 territory of the United States.

15 **"§ 58-21-4. Nonadmitted and Reinsurance Reform Act duties.**

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

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

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

27 **"§ 58-21-10. Definitions.**

28 As used in this Article:

29 (1) "Admitted insurer" means an insurer licensed to ~~do an insurance business~~
30 engage in the business of insurance in this State.

31 (1a) "Affiliate" means, with respect to an insured, any entity that controls, is
32 controlled by, or is under common control with the insured.

33 (1b) "Affiliated group" means any group of entities that are all affiliated.

34 (2) "Capital", as used in the financial requirements of G.S. 58-21-20, means
35 funds paid in for stock or other evidence of ownership.

36 (2a) "Control" means an entity that has "control" over another entity if either of
37 the following occurs:



- 1 a. The entity directly or indirectly or acting through one or more other
2 persons owns, controls, or has the power to vote twenty-five percent
3 (25%) or more of any class of voting securities of the other entity.
- 4 b. The entity controls in any manner the election of a majority of the
5 directors or trustees of the other entity.
- 6 (3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a
7 surplus lines licensee may place surplus lines insurance under
8 G.S. 58-21-20.
- 9 (4) "Export" means to place surplus lines insurance with a nonadmitted insurer.
- 10 (5) "Nonadmitted insurer" means an insurer not licensed to do an insurance
11 business in this State. ~~This definition~~ "Nonadmitted insurer" includes
12 insurance exchanges authorized under the laws of various states.
13 "Nonadmitted insurer" does not include a risk retention group, as defined in
14 G.S. 58-22-10(10).
- 15 (6) "Producing broker" means an agent or broker licensed under Article 33 of
16 this Chapter who deals directly with the party seeking insurance and who
17 may also be a surplus lines licensee.
- 18 (6a) "Reciprocal state" means a state that has enacted provisions substantially
19 similar to the following:
- 20 a. G.S. 58-21-85, 58-21-95(5), 58-21-75(10), 58-21-35(7b), and
21 58-28-5(b).
- 22 b. The allocation schedule and reporting form contained in
23 G.S. 58-21-85.
- 24 (7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means
25 funds over and above liabilities and capital of the company for the protection
26 of policyholders.
- 27 (8) "Surplus lines insurance" means any insurance in this State of risks resident,
28 located, or to be performed in this State, permitted to be placed through a
29 surplus lines licensee with a nonadmitted insurer eligible to accept such
30 insurance, other than reinsurance, commercial aircraft insurance, wet marine
31 and transportation insurance, insurance independently procured pursuant to
32 G.S. 58-28-5, life and accident or health insurance, and annuities.
- 33 (9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to
34 place insurance on risks resident, located, or to be performed in this State
35 with nonadmitted insurers eligible to accept such insurance.
- 36 (10) "Wet marine and transportation insurance" means:
37 a. Insurance upon vessels, crafts, hulls and of interests therein or with
38 relation thereto;
39 b. Insurance of marine builder's risks, marine war risks and contracts of
40 marine protection and indemnity insurance;
41 c. Insurance of freights and disbursements pertaining to a subject of
42 insurance coming within this subsection; and
43 d. Insurance of personal property and interests therein, in the course of
44 exportation from or importation into any country, or in the course of
45 transportation coastwise or on inland waters including transportation
46 by land, water, or air from point of origin to final destination, in
47 connection with any and all risks or perils of navigation, transit or
48 transportation, and while being prepared for and while awaiting
49 shipment, and during any delays, transshipment, or reshipment
50 incident thereto."

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

3 **"§ 58-21-11. Home state.**

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

6 (1) The state in which an insured maintains its principal place of business or, in
7 the case of an individual, the individual's principal residence.

8 (2) If one hundred percent (100%) of the insured risk is located out of the state
9 referred to in subdivision (1) of this subsection, the state to which the
10 greatest percentage of the insured's taxable premium for that insurance
11 contract is allocated.

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

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

17 **"§ 58-21-15. Placement of surplus lines insurance.**

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

20 (1) ~~Each insurer is an eligible surplus lines insurer;~~ insurer.

21 (1a) Each insurer is authorized to write the kind of insurance in its domiciliary
22 jurisdiction.

23 (2) The full amount or kind of insurance cannot be obtained from insurers who
24 are admitted to do business in this State. Such full amount or kind of
25 insurance may be procured from eligible surplus lines insurers, provided that
26 a diligent search is made among the insurers who are admitted to transact
27 and are actually writing the particular kind and class of insurance in this
28 State; and ~~State.~~

29 (3) All other requirements of this Article are met."

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

32 **"§ 58-21-16. Streamlined application for commercial purchasers.**

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

38 (1) The licensee procuring or placing the surplus lines insurance has disclosed to
39 the exempt commercial purchaser that such insurance may or may not be
40 available from the admitted market that may provide greater protection with
41 more regulatory oversight.

42 (2) The exempt commercial purchaser has subsequently requested in writing the
43 licensee to procure or place such insurance from a nonadmitted insurer.

44 (b) As used in this section, the following definitions apply:

45 (1) "Exempt commercial purchaser" means any person purchasing commercial
46 insurance that, at the time of placement, meets all of the following
47 requirements:

48 a. The person employs or retains a qualified risk manager to negotiate
49 insurance coverage.

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

- 1 demonstrate minimum competency in risk
- 2 management.
- 3 2. Seven years of experience in risk financing, claims
- 4 administration, loss prevention, risk and insurance coverage
- 5 analysis, or purchasing commercial lines of insurance; and
- 6 has any one of the designations specified in
- 7 sub-sub-sub-sub-subdivisions A. through E. of
- 8 sub-sub-sub-subdivision II. of this sub-subdivision.
- 9 3. Ten years of experience in risk financing, claims
- 10 administration, loss prevention, risk and insurance coverage
- 11 analysis, or purchasing commercial lines of insurance.
- 12 4. A graduate degree from an accredited college or university in
- 13 risk management, business administration, finance,
- 14 economics, or any other field determined by the
- 15 Commissioner to demonstrate minimum competence in risk
- 16 management.

17 (c) Effective on the fifth January 1 occurring after the date of the enactment of this
 18 section and each fifth January 1 occurring thereafter, the dollar amounts in
 19 sub-sub-subdivisions (b)(1)c.1. 2, 3, and 4 of this section shall be adjusted to reflect the
 20 percentage change for such five-year period in the Consumer Price Index for All Urban
 21 Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor.

22 **"§ 58-21-17. Placement with alien insurers.**

23 Nothing in this Article prohibits a surplus lines licensee from placing surplus lines
 24 insurance with, or procuring surplus lines insurance from, a nonadmitted insurer domiciled
 25 outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by
 26 the International Insurers Department of the NAIC."

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

28 ~~"(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer,~~
 29 ~~unless at the time of placement, such nonadmitted insurer:~~ A surplus lines licensee shall not
 30 place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines
 31 licensee has determined that the nonadmitted insurer satisfies the following:

- 32 (1) ~~Has established satisfactory evidence of good repute and financial integrity;~~
- 33 ~~and integrity.~~
- 34 (2) Qualifies under one of the following subdivisions:
 - 35 a. Has capital and surplus or its equivalent under the laws of its
 - 36 domiciliary jurisdiction, which equals the greater of either:
 - 37 1. This State's minimum capital and surplus requirements under
 - 38 G.S. 58-7-75, or G.S. 58-7-75.
 - 39 2. Fifteen million dollars ~~(\$15,000,000); (\$15,000,000).~~
 - 40 whichever is greater, except that nonadmitted insurers already
 - 41 qualified under this Article must have ten million dollars
 - 42 (\$10,000,000) by December 31, 1991, twelve million five hundred
 - 43 thousand dollars (\$12,500,000) by December 31, 1992, and fifteen
 - 44 million dollars (\$15,000,000) by December 31, 1993. The
 - 45 requirements of this sub-subdivision may be satisfied by an insurer
 - 46 possessing less than the commitment capital and surplus upon an
 - 47 affirmative finding of acceptability by the Commissioner. The
 - 48 finding shall be based upon such factors as quality of management,
 - 49 capital and surplus of any parent company, company underwriting
 - 50 profit and investment income trends, and the insurer's record and
 - 51 reputation within the industry. In no event shall the Commissioner

1 make an affirmative finding of acceptability when the insurer's
2 capital and surplus is less than four million five hundred thousand
3 dollars (\$4,500,000).

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

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

36 c. In the case of an "insurance exchange" created by the laws of
37 individual states, maintain capital and surplus, or the substantial
38 equivalent thereof, of not less than seventy-five million dollars
39 (\$75,000,000) in the aggregate. For insurance exchanges which
40 maintain funds in an amount of not less than fifteen million dollars
41 (\$15,000,000) for the protection of all insurance exchange
42 policyholders, each individual syndicate shall maintain minimum
43 capital and surplus, or the substantial equivalent thereof, of not less
44 than five million dollars (\$5,000,000). If the insurance exchange does
45 not maintain funds in an amount of not less than fifteen million
46 dollars (\$15,000,000) for the protection of all insurance exchange
47 policyholders, each individual syndicate shall meet the minimum
48 capital and surplus requirements of subdivision (2)a. of this section.

49 d. In the case of a group of incorporated insurers under common
50 administration, which has continuously transacted an insurance
51 business outside the United States for at least three years

1 immediately before this time, and which submits to this State's
2 authority to examine its books and records and bears the expense of
3 the examination, and maintains an aggregate policyholders' surplus
4 of not less than ten billion dollars (\$10,000,000,000), and maintains
5 in trust a surplus of not less than one hundred million dollars
6 (\$100,000,000) for the benefit of United States surplus lines
7 policyholders of any member of the group, and each insurer
8 maintains capital and surplus of not less than twenty-five million
9 dollars (\$25,000,000) per company.

- 10 (3) Has caused to be provided to the Commissioner a copy of its current annual
11 statement certified by such insurer; such statement to be provided no more
12 than two months, and for alien insurers six months, after the close of the
13 period reported upon and that is either:
14 a. Filed with and approved by the regulatory authority in the domicile
15 of the nonadmitted insurer; or
16 b. Certified by an accounting or auditing firm licensed in the
17 jurisdiction of the insurer's domicile; or
18 c. In the case of an insurance exchange, the statement may be an
19 aggregate combined statement of all underwriting syndicates
20 operating during the period reported."

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

22 **"§ 58-21-35. Duty to file and retain reports.**

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

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

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

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

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

48 **SECTION 9.** G.S. 58-21-85 reads as rewritten:

49 **"§ 58-21-85. Surplus lines tax.**

50 (a) ~~Gross premiums charged, less any return premiums, for surplus lines insurance are~~
51 ~~subject to a premium receipts tax of five percent (5%), which shall be collected by the surplus~~

1 ~~lines licensee as specified by the Commissioner, in addition to the full amount of the gross~~
2 ~~premium charged by the insurer for the insurance. The tax on any portion of the premium~~
3 ~~unearned at termination of insurance having been credited by the State to the licensee shall be~~
4 ~~returned to the policyholder directly by the surplus lines licensee or through the producing~~
5 ~~broker, if any. The surplus lines licensee is prohibited from absorbing such tax and from~~
6 ~~rebating for any reason, any part of such tax. In addition to the full amount of gross premiums~~
7 ~~charged by the insurer for the insurance, every person licensed under this Article shall collect~~
8 ~~and pay to the Commissioner a sum equal to five percent (5%) of the gross premiums charged,~~
9 ~~less any return premiums, for surplus lines insurance provided by the licensee pursuant to the~~
10 ~~license. Where the insurance covers properties, risks, or exposures located or to be performed~~
11 ~~both in and out of this State, the sum payable shall be computed based on (i) an amount equal~~
12 ~~to five percent (5%) on that portion of the gross premiums allocated to this State pursuant to~~
13 ~~subsection (f) of this section, plus (ii) an amount equal to the portion of the premiums allocated~~
14 ~~to other states or territories on the basis of the tax rates and fees applicable to properties, risks,~~
15 ~~or exposures located or to be performed outside of this State pursuant to subsection (f) of this~~
16 ~~section, less (iii) the amount of gross premiums allocated to this State and returned to the~~
17 ~~insured. The tax on any portion of the premium unearned at termination of insurance having~~
18 ~~been credited by the State to the licensee shall be returned to the policyholder directly by the~~
19 ~~surplus lines licensee or through the producing broker, if any. The surplus lines licensee is~~
20 ~~prohibited from rebating, for any reason, any part of the tax. The Commissioner is authorized to~~
21 ~~participate in the clearinghouse established through the NAIC Nonadmitted Insurance~~
22 ~~Multi-State Agreement, or any successor agreement, for the purpose of collecting and~~
23 ~~disbursing to reciprocal states any funds collected pursuant to clause (ii) above applicable to~~
24 ~~properties, risks, or exposures located or to be performed outside of this State. To the extent~~
25 ~~that other states where portions of the properties, risks, or exposures reside have failed to enter~~
26 ~~into a compact or reciprocal allocation procedure with this State, the net premium tax collected~~
27 ~~shall be retained by this State.~~

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

31 (c) This section does not apply to risks of State government agencies nor to risks of
32 local government risk pools created and operating under Article 23 of this Chapter.

33 (d) The surplus lines licensee placing the insurance and claiming the exemption in
34 subsection (c) of this section shall affirmatively show in writing to the Commissioner that the
35 risk qualifies for the exemption.

36 (e) If a surplus lines policy procured through a surplus lines licensee covers properties,
37 risks, or exposures only partially located or to be performed in this State, the tax due shall be
38 computed on the portions of the premiums that are attributable to the properties, risks, or
39 exposures located or to be performed in this State. In determining the amount of premiums
40 taxable in this State, all premiums written, procured, or received in this State shall be
41 considered written on properties, risks, or exposures located or to be performed in this State,
42 except premiums that are properly allocated or apportioned and reported as taxable premiums
43 of a reciprocal state. In no event shall the tax payable to this State be less than the tax due
44 pursuant to subsection (f) of this section; provided, however, if the amount of tax due under this
45 provision is less than fifty dollars (\$50.00) in any jurisdiction, it shall be payable in the
46 jurisdiction in which the statement required in G.S. 58-21-35(a)(7a) is filed.

47 The Commissioner shall, at least annually, furnish to the insurance regulator of a reciprocal
48 state a copy of all filings reporting an allocation of taxes as required by this subsection.

49 (f) In determining the amount of gross premiums taxable in this State for a placement
50 of surplus lines insurance covering properties, risks, or exposures only partially located or to be
51 performed in this State, the tax due shall be computed on the portions of the premiums that are

1 attributable to properties, risks, or exposures located or to be performed in this State and that
2 relates to the kinds of insurance being placed as determined by reference to an allocation
3 schedule, which shall be adopted by the Commissioner in a rule.

4 (g) If a policy covers more than one of the following classifications:

5 (1) For any portion of the coverage identified by a classification on the
6 allocation schedule, the tax shall be computed by using the allocation
7 schedule for the corresponding portion of the premium.

8 (2) For any portion of the coverage not identified by a classification on the
9 allocation schedule, the tax shall be computed by using an alternative
10 equitable method of allocation for the property or risk.

11 (3) For any portion of the coverage where the premium is indivisible, the tax
12 shall be computed by using the method of allocation that pertains to the
13 classification describing the predominant coverage.

14 (h) If the information provided by the surplus lines licensee is insufficient to
15 substantiate the method of allocation used by the surplus lines licensee, or if the Commissioner
16 determines that the licensee's method is incorrect, the Commissioner shall determine the
17 equitable and appropriate amount of tax due to this State as follows:

18 (1) By the use of the allocation schedule where the risk is appropriately
19 identified in the schedule.

20 (2) Where the allocation schedule does not identify a classification appropriate
21 to the coverage, the Commissioner may give significant weight to
22 documented evidence of the underwriting bases and other criteria used by
23 the insurer. The Commissioner may also consider other available
24 information to the extent sufficient and relevant, including the percentage of
25 the insured's physical assets in this State, the percentage of the insured's
26 sales in this State, the percentage of income or resources derived from this
27 State, and the amount of premium tax paid to another jurisdiction for the
28 policy.

29 (i) For the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of
30 2010, the Commissioner is authorized to enter the NAIC Nonadmitted Insurance Multi-State
31 Agreement in order to facilitate the collection, allocation, and disbursement of premium taxes
32 attributable to the placement of nonadmitted insurance; provide for uniform methods of
33 allocation and reporting among nonadmitted insurance risk classifications; and share
34 information among states relating to nonadmitted insurance premium taxes."

35 **SECTION 10.** G.S. 58-28-5(b) reads as rewritten:

36 "(b) Any person in this State may directly procure or directly renew insurance with an
37 eligible surplus lines insurer, as defined in G.S. 58-21-10(3), without the involvement of an
38 agent, broker, or surplus lines licensee, on a risk located or to be performed, in whole or in part,
39 in this State. The person shall, within 30 days after the date the insurance is procured or
40 renewed, file a written report with the Commissioner on forms prescribed by the
41 Commissioner. The report must contain the name and address of the insured; name and address
42 of the insurer; the subject of insurance; a general description of the coverage; the amount of
43 premium currently charged; and any additional information requested by the Commissioner.
44 The report must also contain an affidavit of the insured that states that the full amount or kind
45 of insurance cannot be obtained from insurers that are licensed to do business in this State; and
46 that the insured has made a diligent search among the insurers that are licensed to transact and
47 are actually writing the particular kind and class of insurance in this State. Gross premiums
48 charged for the insurance, less any return premiums, are subject to a tax at the rate of five
49 percent (5%). At the time of filing the report required by this subsection, the insured shall pay
50 the tax to the Commissioner. All of the provisions in Article 21 of this Chapter relating to
51 apportionment of premium taxes when there are multistate risks apply to the payment of the

1 premium tax in this subsection. The Commissioner has the powers specified in G.S. 58-21-90
2 with respect to the tax levied by this subsection."
3

SECTION 11. This act becomes effective June 1, 2011.