

Article 21.

Surplus Lines Act.

§ 58-21-1. Short title.

This Article shall be known and may be cited as the "Surplus Lines Act". (1985, c. 688, s. 1.)

§ 58-21-2. Relationship to other insurance laws.

Unless surplus lines insurance, surplus lines licensees, or nonadmitted insurers are specifically referenced in a particular section of this Chapter, no sections contained in Articles of this Chapter other than this Article apply to surplus lines insurance, surplus lines licensees, or nonadmitted insurers. (1999-219, s. 6.2.)

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

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

(b) In order to assist in the performance of the Commissioner's duties, under the Nonadmitted and Reinsurance Reform Act of 2010, the Commissioner may contract with nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions that the Commissioner and the nongovernmental entity may deem to be appropriate, including (i) the collection of fees related to producer licensing and (ii) the collection of the premium tax under G.S. 58-21-85. The NAIC or other entity with whom the Commissioner contracts may charge a reasonable fee to the insurer, insured, or other appropriate person for the functions performed. (2011-120, s. 1.1.)

§ 58-21-5. Purposes; necessity for regulation.

This Article shall be liberally construed and applied to promote its underlying purposes, which include:

- (1) Protecting persons in this State seeking insurance;
- (2) Permitting surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers and exported from this State pursuant to this Article;
- (3) Establishing a system of regulation that will permit orderly access to surplus lines insurance in this State and encourage admitted insurers to provide new and innovative types of insurance available to consumers in this State; and
- (4) Protecting revenues of this State. (1985, c. 688, s. 1.)

§ 58-21-10. Definitions.

As used in this Article:

- (1) "Admitted insurer" means an insurer licensed to engage in the business of insurance in this State.
- (1a) "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
- (1b) "Affiliated group" means any group of entities that are all affiliated.
- (2) "Capital", as used in the financial requirements of G.S. 58-21-20, means funds paid in for stock or other evidence of ownership.
- (2a) "Control" means an entity that has "control" over another entity if either of the following occurs:
 - a. The entity directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote twenty-five percent (25%) or more of any class of voting securities of the other entity.
 - b. The entity controls in any manner the election of a majority of the directors or trustees of the other entity.
- (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.
- (4) "Export" means to place surplus lines insurance with a nonadmitted insurer.
- (5) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this State. "Nonadmitted insurer" includes insurance exchanges authorized under the laws of various states. "Nonadmitted insurer" does not include a risk retention group, as defined in G.S. 58-22-10(10).
- (6) "Producing broker" means an agent or broker licensed under Article 33 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.
- (6a) "Salary protection insurance" means insurance against financial loss caused by the cessation of earned income because of disability from sickness, ailment, or bodily injury.
- (7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means funds over and above liabilities and capital of the company for the protection of policyholders.
- (8) "Surplus lines insurance" means any insurance in this State of risks resident, located, or to be performed in this State, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, including salary protection insurance. The term does not include reinsurance, commercial aircraft insurance, wet marine and transportation insurance, insurance independently procured pursuant to G.S. 58-28-5, life and accident or health insurance, and annuities.
- (9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to place insurance on risks resident, located, or to be performed in this State with nonadmitted insurers eligible to accept such insurance.

- (10) "Wet marine and transportation insurance" means:
- a. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto;
 - b. Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;
 - c. Insurance of freights and disbursements pertaining to a subject of insurance coming within this subsection; and
 - d. Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters including transportation by land, water, or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment incident thereto. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 1027, s. 45; 1987, c. 629, s. 19; c. 727, s. 6; c. 864, s. 73; 1998-211, s. 3; 1999-219, s. 5.3; 2011-120, s. 2; 2011-370, s. 1; 2015-101, s. 1.)

§ 58-21-11. Home state.

(a) The provisions of this Article shall apply to those transactions in which North Carolina is the home state of the insured.

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

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

(c) **Affiliated Groups.** – If two or more insureds from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to subsection (b) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under that insurance contract. (2011-120, s. 3.)

§ 58-21-15. Placement of surplus lines insurance.

Surplus lines may be placed by a surplus lines licensee if all of the following apply:

- (1) Each insurer is an eligible surplus lines insurer.
 - (1a) Each insurer is authorized to write the kind of insurance in its domiciliary jurisdiction.

- (2) The full amount or kind of insurance cannot be obtained from insurers who are admitted to do business in this State. Such full amount or kind of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made among the insurers who are admitted to transact and are actually writing the particular kind and class of insurance in this State.
- (3) All other requirements of this Article are met. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 1013, s. 5; 2011-120, s. 4.)

§ 58-21-16. Streamlined application for commercial purchasers.

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

- (1) The licensee procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight.
 - (2) The exempt commercial purchaser has subsequently requested in writing the licensee to procure or place such insurance from a nonadmitted insurer.
- (b) As used in this section, the following definitions apply:
- (1) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets all of the following requirements:
 - a. The person employs or retains a qualified risk manager to negotiate insurance coverage.
 - b. The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding 12 months.
 - c. The person meets at least one of the following criteria:
 1. The person possesses a net worth in excess of twenty million dollars (\$20,000,000), as such amount is adjusted pursuant to subsection (c) of this section.
 2. The person generates annual revenues in excess of fifty million dollars (\$50,000,000), as such amount is adjusted pursuant to subsection (c) of this section.
 3. The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.
 4. The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty

million dollars (\$30,000,000), as such amount is adjusted pursuant to subsection (c) of this section.

5. The person is a municipality with a population in excess of 50,000 persons.
- (2) "Qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:
- a. Is an employee of, or third-party consultant retained by, the commercial policyholder.
 - b. Provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.
 - c. Has one of the following:
 1. A bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the Commissioner to demonstrate minimum competence in risk management and one of the following:
 - I. Three years of experience in risk financing, claims, administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance.
 - II. One of the following designations:
 - A. Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU/Insurance Institute of America.
 - B. Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America.
 - C. Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research.
 - D. RIMS Fellow (RF) issued by the Global Risk Management Institute.
 - E. A designation, certification, or license determined by the Commissioner to demonstrate minimum competency in risk management.
 2. Seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and has any one of the designations specified in sub-sub-sub-sub-subdivisions A. through E. of sub-sub-sub-subdivision II. of this sub-subdivision.
 3. Ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance.
 4. A graduate degree from an accredited college or university in risk management, business administration, finance, economics,

or any other field determined by the Commissioner to demonstrate minimum competence in risk management.

(c) Effective on the fifth January 1 occurring after the date of the enactment of this section [July 21, 2011] and each fifth January 1 occurring thereafter, the dollar amounts in sub-sub-subdivisions (b)(1)c.1., 2., 3., and 4. of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor. (2011-120, s. 5.)

§ 58-21-17. Placement with alien insurers.

Nothing in this Article prohibits a surplus lines licensee from placing surplus lines insurance with, or procuring surplus lines insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC. (2011-120, s. 5.)

§ 58-21-20. Eligible surplus lines insurers required.

(a) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer satisfies the following:

(1) Repealed by Session Laws 2011-120, s. 6, effective July 21, 2011.

(2) Qualifies under one of the following subdivisions:

a. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals the greater of either:

1. This State's minimum capital and surplus requirements under G.S. 58-7-75.

2. Fifteen million dollars (\$15,000,000).

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

b. In the case of any Lloyd's plans or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers, maintains a trust fund in an amount of not less than one hundred million dollars (\$100,000,000) as security to the full amount thereof for all

policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers.

- c. In the case of an "insurance exchange" created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than seventy-five million dollars (\$75,000,000) in the aggregate. For insurance exchanges which maintain funds in an amount of not less than fifteen million dollars (\$15,000,000) for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than five million dollars (\$5,000,000). If the insurance exchange does not maintain funds in an amount of not less than fifteen million dollars (\$15,000,000) for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision (2)a. of this section.
 - d. In the case of a group of incorporated insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three years immediately before this time, and which submits to this State's authority to examine its books and records and bears the expense of the examination, and maintains an aggregate policyholders' surplus of not less than ten billion dollars (\$10,000,000,000), and maintains in trust a surplus of not less than one hundred million dollars (\$100,000,000) for the benefit of United States surplus lines policyholders of any member of the group, and each insurer maintains capital and surplus of not less than twenty-five million dollars (\$25,000,000) per company.
- (3) Has caused to be provided to the Commissioner a copy of its current annual statement certified by such insurer; such statement to be provided no more than two months, and for alien insurers six months, after the close of the period reported upon and that is either:
- a. Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or
 - b. Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or
 - c. In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(b) In addition to meeting the requirements in subdivisions (a)(1) through (a)(3) of this section, an insurer shall be an eligible surplus lines insurer if it appears on the most recent list of eligible surplus lines insurers published by the Commissioner. Nothing in this subsection shall require the Commissioner to place or maintain the name of any nonadmitted insurer on the list of eligible surplus lines insurers. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the

Commissioner or his employees or representatives for any action taken or not taken by them in the performance of their powers and duties under this subsection.

(c) Every surplus lines insurer that applies for eligibility under this section shall pay a nonrefundable fee of five hundred dollars (\$500.00). In order to renew eligibility, such insurer shall pay a nonrefundable renewal fee of one thousand dollars (\$1,000) on or before January 1 of each year thereafter. Such fees shall not be prorated. (1985, c. 688, s. 1; c. 793; 1985 (Reg. Sess., 1986), c. 1027, s. 46; 1989 (Reg. Sess., 1990), c. 1069, s. 13; 1991, c. 681, s. 39; 1993 (Reg. Sess., 1994), c. 678, s. 15; 1995, c. 507, s. 11A(c); 2001-223, s. 17.1; 2009-451, s. 21.14(a); 2011-120, s. 6.)

§ 58-21-22. Limitation on amount of salary protection insurance.

When salary protection insurance benefits are payable to an individual or an individual's beneficiary, the amount of salary protection insurance plus the amount of any in-force disability income insurance, if the individual can obtain disability insurance from an admitted insurer, shall not exceed seventy-five percent (75%) of the individual's annual earned income. As used in this section, "disability income insurance" has the same meaning as "accident and health insurance" in G.S. 58-7-15(3). (2011-370, s. 2.)

§ 58-21-25. Other nonadmitted insurers.

Only that portion of any risk eligible for export for which the full amount of coverage is not procurable from eligible surplus lines insurers may be placed with any other nonadmitted insurer that does not appear on the list of eligible surplus lines insurers published by the Commissioner pursuant to G.S. 58-21-20(b), but nonetheless meets the requirements set forth in G.S. 58-21-20(a)(1) through (a)(3) and any regulations of the Commissioner. The surplus lines licensee seeking to provide coverage through an unlisted nonadmitted insurer shall make a filing specifying the amount and percentage of each risk to be placed, and naming the nonadmitted insurer with which placement is intended. Within 30 days after the coverage has been placed, the producing broker or surplus lines licensee shall send written notice to the insured that the insurance, or a portion thereof, has been placed with such nonadmitted insurer. (1985, c. 688, s. 1.)

§ 58-21-30. Withdrawal of eligibility from a surplus lines insurer.

If at any time the Commissioner has reason to believe that an eligible surplus lines insurer:

- (1) Is in unsound financial condition or has acted in an untrustworthy manner,
- (2) Is no longer eligible under G.S. 58-21-20,
- (3) Has willfully violated the laws of this State, or
- (4) Does not make reasonably prompt payment of just losses and claims in this State or elsewhere, the Commissioner may declare it ineligible. The Commissioner shall promptly mail notice of all such declarations to each surplus lines licensee. (1985, c. 688, s. 1; 2001-223, s. 17.2.)

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

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

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

(b) The licensee shall complete and retain a copy of the report in paper or electronic form as required by the Commissioner. The report required by this section and the quarterly report required by G.S. 58-21-80 shall be completed on a standardized form or forms prescribed by the Commissioner and are not public records under G.S. 132-1 or G.S. 58-2-100. (1985, c. 688, s. 1; 1987, c. 864, s. 35; 1993 (Reg. Sess., 1994), c. 678, s. 16; 1999-219, s. 6.1; 2006-105, s. 2.6; 2011-120, s. 7; 2015-101, s. 2.)

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

(a) A surplus lines regulatory support organization of surplus lines licensees shall be formed to carry out the following functions:

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

(c) The Commissioner may, at times deemed appropriate, make or cause to be made an examination of each regulatory support organization; in which case the provisions of 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, 58-2-190, 58-2-195, and 58-2-200 shall apply. If the Commissioner finds the regulatory support organization or any surplus lines licensee, whether resident or nonresident, to be in violation of this Article, the Commissioner may issue an order requiring the discontinuance of the violation.

(d) Each surplus lines licensee shall maintain active membership in a regulatory support organization as a condition of continued licensure under this Article. (1985, c. 688, s. 1; 1987 (Reg. Sess., 1988), c. 975, s. 13; 1995, c. 193, s. 28; 1999-132, s. 11.3; 2001-203, s. 28; 2001-451, ss. 2.1, 2.2; 2001-487, s. 63; 2015-101, s. 3.)

§ 58-21-45. Evidence of the insurance; changes; penalty.

(a) As soon as surplus lines insurance has been placed, the producing broker or surplus lines licensee shall promptly deliver the policy to the insured. If the policy is not then available, the broker or licensee shall promptly deliver to the insured a certificate described in subsection (d) of this section, cover note, binder, or other evidence of insurance. The certificate described in subsection (d), cover note, binder, or other evidence of insurance shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including any material limitations other than those in standard forms, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee's license number.

(b) No producing broker or surplus lines licensee shall issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer, or a nonadmitted insurer pursuant to G.S. 58-21-25, unless he has authority from the insurer to cause the risk to be insured, or has received information from the insurer in the regular course of business that such insurance has been granted.

(c) If, after delivery of any such evidence of insurance there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the producing broker's or surplus lines licensee's original evidence of insurance, or in any other material as to the insurance coverage so evidenced, the producing broker or surplus lines licensee shall promptly issue and deliver to the insured an appropriate

substitute for or endorsement of the original document, accurately showing the current status of the coverage and the insurers responsible thereunder.

(d) As soon as reasonably possible after the placement of any such insurance the producing broker or surplus lines licensee shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured to replace any evidence of insurance previously issued. Each certificate or policy of insurance shall contain or have attached thereto a complete record of all policy insuring agreements, conditions, exclusions, clauses, endorsements, or any other material facts that would regularly be included in the policy.

(e) Any surplus lines licensee or producing broker who fails to comply with the requirements of this section shall be subject to the penalties provided in G.S. 58-21-105.

(f) Every evidence of insurance negotiated, placed, or procured under the provisions of this Article issued by the surplus lines licensee shall bear the name of the licensee and the following legend in 12 point type and in contrasting color or in 12 point type and underlined and in bold print: "The insurance company with which this coverage has been placed is not licensed by the State of North Carolina and is not subject to its supervision. In the event of the insolvency of the insurance company, losses under this policy will not be paid by any State insurance guaranty or solvency fund." (1985, c. 688, s. 1; 2006-105, s. 2.7.)

§ 58-21-50. Duty to notify insured.

No contract of insurance placed by a surplus lines licensee under this Article shall be binding upon the insured and no premium charged therefor shall be due and payable until the producing broker or surplus lines licensee notifies the insured in writing, a copy of which shall be maintained by the broker or licensee with the records of the contract and available for possible examination, that:

- (1) The insurer with which the coverage has been placed is not licensed by this State and is not subject to its supervision; and
- (2) In the event of the insolvency of the surplus lines insurer, losses will not be paid by any State insurance guaranty or solvency fund.

Nothing in this section shall nullify any agreement by any insurer to provide insurance. (1985, c. 688, s. 1.)

§ 58-21-55. Valid surplus lines insurance.

Insurance contracts procured under this Article shall be valid and enforceable as to all parties. (1985, c. 688, s. 1.)

§ 58-21-60. Effect of payment to surplus lines licensee.

A payment of premium to a surplus lines licensee acting for a person other than himself in negotiating, continuing, or reviewing any policy of insurance under this Article shall be deemed to be payment to the insurer, notwithstanding any conditions or stipulations inserted in the policy or contract. (1985, c. 688, s. 1.)

§ 58-21-65. Licensing of surplus lines licensee.

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

(b) The Commissioner shall issue a surplus lines license to any qualified holder of a current property broker's or agent's license, but only when the broker or agent has:

- (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;
- (2) Submitted a completed license application on a form supplied by the Commissioner, and the application has been approved by the Commissioner;
- (3) Passed a qualifying examination approved by the Commissioner; except that all holders of a license prior to July 11, 1985 shall be deemed to have passed such an examination; and
- (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17, 2004.

(c) **(Effective until January 1, 2017)** Corporations shall be eligible to be resident surplus lines licensees, upon the following conditions:

- (1) The corporate licensee shall list individuals within the corporation who have satisfied all requirements of this Article to become surplus lines licensees; and
- (2) Only those individuals listed on the corporate license and who are surplus lines licensees shall transact surplus lines business.

(c) **(Effective January 1, 2017)** Corporations shall be eligible to be surplus lines licensees, upon the following conditions:

- (1) The corporate licensee shall list individuals within the corporation who have satisfied all requirements of this Article to become surplus lines licensees; and
- (2) Only those individuals listed on the corporate license and who are surplus lines licensees shall transact surplus lines business.

(d) Each surplus lines license shall be issued on September 1 of each year and expire August 31 of the following year unless renewed. Application for renewal shall be made 30 days before the expiration date. The license shall be renewed upon payment of the annual license fee and compliance with the other applicable provisions of this section. Any person who places surplus lines insurance without a valid surplus lines license in effect shall pay a penalty of one thousand dollars (\$1,000) and be subject to such other penalties as provided by law.

The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e) **(Effective until January 1, 2017)** Any person who does not renew a surplus lines license and applies for another surplus lines license more than two years after the expiration date of the previous license shall be required to satisfy every condition in this section, including the written exam, before the Commissioner issues another surplus lines

license to that person. Nonresident surplus lines licensees shall be licensed in accordance with Article 33 of this Chapter.

(e) **(Effective January 1, 2017)** Any person who does not renew a surplus lines license and applies for another surplus lines license more than two years after the expiration date of the previous license shall be required to satisfy every condition in this section, including the written exam, before the Commissioner issues another surplus lines license to that person.

(f) Repealed by Session Laws 2011-120, s. 8, effective July 21, 2011. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 928, s. 6; c. 1013, ss. 4, 16; 1987, c. 629, s. 18; c. 752, s. 6; 1987 (Reg. Sess., 1988), c. 975, s. 14; 1991, c. 212, s. 1; c. 644, s. 41; 1998-215, s. 85; 2004-199, s. 20(c); 2008-124, s. 10.2; 2009-566, s. 11; 2011-120, s. 8; 2015-101, s. 4; 2015-281, s. 14.)

§ 58-21-70. Surplus lines licensees may accept business from other agents or brokers.

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

(b) **(Repealed effective January 1, 2017)** Every report filed by a nonresident licensee under G.S. 58-21-35(a) shall, before being filed with the Commissioner, be countersigned by a resident licensee or by a regulatory support organization. The resident licensee or regulatory support organization may charge the nonresident licensee a countersignature fee.

(c) **(Repealed effective January 1, 2017)** Every resident licensee and regulatory support organization that countersigns a report under subsection (b) of this section is responsible for remitting the premium tax for the coverage, as specified in G.S. 58-21-85, to the Commissioner. (1985, c. 688, s. 1; 2001-451, s. 2; 2015-101, s. 5; 2015-281, s. 14.)

§ 58-21-75. Records of surplus lines licensee.

Each surplus lines licensee shall keep in his or her office in this State a full and true record of each surplus lines insurance contract placed by or through the licensee, including a copy of the policy, certificate, cover note, or other evidence of insurance. The record shall include the following items:

- (1) Amount of the insurance and perils insured;
- (2) Brief description of the property insured and its location;
- (3) Gross premium charged;
- (4) Any return premium paid;
- (5) Rate of premium charged upon the several items of property;
- (6) Effective date of the contract, and the terms of the contract;
- (7) Name and address of the insured;
- (8) Name and address of the insurer;
- (9) Amount of tax and other sums to be collected from the insured; and

- (10) Identity of the producing broker, any confirming correspondence from the insurer or its representative, and the application.

The record of each contract shall be kept open at all reasonable times to examination by the Commissioner without notice for a period not less than three years following termination of the contract. (1985, c. 688, s. 1; 1991, c. 644, s. 42.)

§ 58-21-80. Quarterly reports; summary of exported business.

On or before the end of January, April, July, and October of each year, each surplus lines licensee shall file with the Commissioner, on a form prescribed by the Commissioner, a verified report of all surplus lines insurance transacted during the preceding three months showing:

- (1) Aggregate gross premiums written;
- (2) Aggregate return premiums; and
- (3) Amount of aggregate tax to be remitted. (1985, c. 688, s. 1; 1987, c. 864, s. 36.)

§ 58-21-85. Surplus lines tax.

(a) **(Effective until January 1, 2017)** Gross premiums charged, less any return premiums, for surplus lines insurance on insureds for whom North Carolina is the home state are subject to a premium receipts tax of five percent (5%), which shall be collected by the surplus lines licensee as specified by the Commissioner, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the State to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason, any part of such tax. To the extent that other states in which portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with this State, the premium tax collected shall be retained by this State.

(a) **(Effective January 1, 2017)** Gross premiums charged, less any return premiums, for surplus lines insurance on insureds for whom North Carolina is the home state are subject to a premium receipts tax of five percent (5%), which shall be collected in a manner approved by the Commissioner, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the State to the licensee shall be returned to the policyholder directly. The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason, any part of such tax. To the extent that other states in which portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with this State, the premium tax collected shall be retained by this State.

(b) **(Effective until January 1, 2017)** At the same time that he files his quarterly report as set forth in G.S. 58-21-80, each surplus lines licensee shall pay the premium receipts tax due for the period covered by the report.

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

(d) The surplus lines licensee placing the insurance and claiming the exemption in subsection (c) of this section shall affirmatively show in writing to the Commissioner that the risk qualifies for the exemption. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 928, s. 11; 1987, c. 727, ss. 2, 3; c. 864, s. 37; 2011-120, s. 9; 2015-101, s. 6; 2015-281, s. 14.)

§ 58-21-90. Collection of tax.

All provisions of Chapter 105 of the General Statutes, not inconsistent with this Article, relating to administration, auditing and making returns, the imposition and collection of tax and the lien thereon, assessments, refunds, and penalties, shall be applicable to the tax imposed by this Article; and with respect thereto, the Commissioner has the same power and authority as is given to the Secretary of Revenue under the provisions of Chapter 105 of the General Statutes. (1985, c. 688, s. 1; 1985 (Reg. Sess., 1986), c. 928, s. 7.)

§ 58-21-95. Suspension, revocation or nonrenewal of surplus lines licensee's license.

The Commissioner may suspend, revoke, or refuse to renew the license of a surplus lines licensee after notice and hearing as provided under G.S. 58-2-70 upon any one or more of the following grounds:

- (1) Removal of the surplus lines licensee's office from this State;
- (2) Removal of the surplus lines licensee's office accounts and records from this State during the period during which such accounts and records are required to be maintained under G.S. 58-21-75;
- (3) Closing of the surplus lines licensee's office for a period of more than 30 business days, unless permission is granted by the Commissioner;
- (4) Failure to make and file required reports;
- (5) Failure to transmit the required tax on surplus lines premiums;
- (6) Failure to maintain the required bond;
- (7) Violation of any provision of this Article; or
- (8) For any other cause for which an insurance license could be denied, revoked, suspended, or renewal refused under the Insurance Law. (1985, c. 688, s. 1.)

§ 58-21-100. Actions against surplus lines insurer; service of process.

(a) A surplus lines insurer may be sued upon any cause of action arising in this State, under any surplus lines insurance contract made by it or evidence of insurance issued or delivered by the surplus lines licensee, pursuant to the procedure provided in G.S. 58-16-30. Any such policy issued by the surplus lines licensee shall contain a provision stating the substance of this section and designating the person to whom the Commissioner shall mail process.

(b) Each surplus lines insurer engaging in surplus lines insurance shall be deemed thereby to have subjected itself to this Article.

(c) The remedies and procedures provided in this section are in addition to any other methods provided by law for service of process upon insurers. (1985, c. 688, s. 1; 1991, c. 720, s. 43.)

§ 58-21-105. Penalties.

(a) Any surplus lines licensee who in this State represents or aids a nonadmitted insurer in violation of this Article shall be guilty of a Class 1 misdemeanor.

(b) In addition to any other penalty provided for in this section or otherwise provided by law, including any suspension, revocation, or refusal to renew a license, any person violating any provision of this Article shall be subject to a civil penalty, payment of restitution, or both, in accordance with G.S. 58-2-70. (1985, c. 688, s. 1; 1993, c. 539, s. 450; 1994, Ex. Sess., c. 24, s. 14(c).)