

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS95029-RG-6 (03/08)

Short Title: Surplus Lines/Premium Tax.-AB

(Public)

Sponsors: Senator Apodaca.

Referred to:

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.



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

shipment, and during any delays, transshipment, or reshipment incident thereto."

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

**"§ 58-21-11. Home state.**

(a) Except as provided in subsection (b) 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.

(b) 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 (a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under that insurance contract."

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

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

~~Insurance may be procured through a surplus lines licensee from nonadmitted insurers~~  
if: 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; 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; and State.

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

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

**"§ 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.

- 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.