

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 688  
HOUSE BILL 536

AN ACT TO PROTECT CONSUMERS IN NORTH CAROLINA BY PROVIDING FOR PLACEMENT OF INSURANCE WITH FINANCIALLY SOUND NONADMITTED INSURERS AND FOR A SYSTEM OF REGULATION OF SURPLUS LINES INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. Subchapter IX of General Statutes Chapter 58 is amended by adding a new Article to read:

"Article 36.

"Surplus Lines Act.

"§ 58-420. **Short title.** – This Article shall be known and may be cited as the 'Surplus Lines Act'.

"§ 58-421. **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.

"§ 58-422. **Definitions.** – As used in this Article:

- (1) 'Admitted insurer' means an insurer licensed to do an insurance business in this State.
- (2) 'Capital', as used in the financial requirements of G.S. 58-424, means funds paid in for stock or other evidence of ownership.
- (3) 'Eligible surplus lines insurer' means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance under G.S. 58-424.
- (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. This definition includes insurance exchanges authorized under the laws of various states.

- (6) 'Producing broker' means an agent or broker licensed under Article 3 of this Chapter who deals directly with the party seeking insurance and who may also be a surplus lines licensee.
- (7) 'Surplus', as used in the financial requirements of G.S. 58-424, 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, other than reinsurance, wet marine and transportation insurance independently procured, life and accident or health insurance, and annuities.
- (9) 'Surplus lines licensee' means a person licensed under G.S. 58-433 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.

**"§ 58-423. Placement of surplus lines insurance.** – Insurance may be procured through a surplus lines licensee from nonadmitted insurers if:

- (1) Each insurer is an eligible surplus lines insurer;
- (2) The licensee has procured insurance from admitted insurers to the full amount that those companies are willing to write on the risk, and the licensee is unable to procure from admitted insurers the full amount or kind of insurance necessary to protect the risk; and
- (3) All other requirements of this Article are met.

**"§ 58-424. Eligible surplus lines insurers required.** – (a) No surplus lines licensee shall place any coverage with a nonadmitted insurer, unless at the time of placement, such nonadmitted insurer:

- (1) Has established satisfactory evidence of good repute and financial integrity; and
- (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 this State's minimum capital and surplus requirements under G.S. 58-77.

In addition, an alien insurer qualifies under this subdivision if it maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than \$4,500,000 for the protection of all of its policyholders in the United States and such trust fund consists of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. Such trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years; or

- b. In the case of any Lloyd's or other similar unincorporated group of alien individual insurers, maintains a trust fund of not less than \$50,000,000 as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers; and
  - 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 \$15,000,000 in the aggregate. For insurance exchanges which maintain funds 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 \$4,500,000. In the event the insurance exchange does not maintain funds 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.
- (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 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.

**"§ 58-425. 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. 58-424(b), but nonetheless meets the requirements set forth in G.S. 58-424(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.

**"§ 58-426. Withdrawal of eligibility from a surplus lines insurer.** – f at any time the Commissioner has reason to believe that an eligible surplus lines insurer:

- (1) Is in unsound financial condition,
- (2) Is no longer eligible under G.S. 58-424,
- (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.

**"§ 58-427. Duty to file evidence of insurance and affidavits.** – Within 30 days after the placing of any surplus lines insurance, the surplus lines licensee shall execute and file with the Commissioner:

- (1) A written report regarding the insurance and including the following information:
  - a. The name and address of the insured;
  - b. The identity of the insurer or insurers;
  - c. A description of the subject and location of the risk;
  - d. The amount of premium charged for the insurance; and
  - e. Such other pertinent information as the Commissioner may reasonably require; and

- (2) An affidavit as to the efforts to place the coverage with admitted insurers and the results thereof in accordance with G.S. 58-423. The report and affidavit required by this section shall be completed on a standardized form or forms furnished by the Commissioner.

**"§ 58-428. Surplus lines advisory organizations.** – (a) A surplus lines advisory organization of surplus lines licensees may be formed to:

- (1) Facilitate and encourage compliance by its members 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; and
  - (3) Receive and disseminate to its members information relative to surplus lines coverages.
- (b) Every such advisory 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) A current list of its members;
  - (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 advisory organization in accordance with the provisions of subsection (c) of this section.

(c) The Commissioner shall, at least once every three years, make or cause to be made an examination of each such advisory organization. The examination shall be governed by the provisions of G.S. 58-16, 58-16.2, 58-17, 58-18, 58-22, 58-25, 58-25.1, 58-26, and 58-27. If the advisory organization annually submits a certified financial statement to the Commissioner, the examination provided for in this subsection shall not be made more often than once every three years. If the Commissioner finds such advisory organization or any member thereof to be in violation of this Article, he may issue an order requiring the discontinuance of such violation.

(d) Each surplus lines licensee shall maintain active membership in an advisory organization as a condition of continued licensure under this Article.

**"§ 58-429. 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. 58-425, 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. 58-441.

(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 10 point type and in contrasting color:

"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."

**"§ 58-430. 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.

**"§ 58-431. Valid surplus lines insurance.** – Insurance contracts procured under this Article shall be valid and enforceable as to all parties.

**"§ 58-432. 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.

**"§ 58-433. Licensing of surplus lines licensee.** – (a) 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 fire and casualty broker's or general agent's license, but only when the broker or agent has:

- (1) Remitted the \$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 the effective date of this Article shall be deemed to have passed such an examination; and
- (4) Filed with the Commissioner, and maintains during the term of the license, in force and unimpaired a bond in favor of this State in the sum of \$50,000, aggregate liability, with corporate sureties approved by the Commissioner. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of this Article and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least 30 days prior written notice is given to the licensee and Commissioner.

(c) 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 shall transact surplus lines business.

(d) Each surplus lines license shall expire one year after issuance, and application for renewal shall be made 30 days before the expiration date. The license shall be renewed upon payment of the annual fee and compliance with other provisions of this section. Any surplus lines licensee who fails to apply for renewal of the license shall pay a penalty of one thousand dollars (\$1,000) and be subject to such other penalties as provided by law before his license will be renewed.

**"§ 58-434. Surplus lines licensees may accept business from other agents or brokers.** – 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.

**"§ 58-435. Records of surplus lines licensee.** – Each surplus lines licensee shall keep in his office in this State a full and true record of each surplus lines insurance contract placed by or through him, including a copy of the policy, certificate, cover note, or other evidence of insurance, which 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 thereof;
- (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 five years following termination of the contract.

**"§ 58-436. Quarterly reports; summary of exported business.** – On or before the end of March, June, September, and December of each year, each surplus lines licensee shall file with the Commissioner, on a form prescribed by the Commissioner, a verified report in duplicate 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.

**"§ 58-437. Surplus lines tax.** – (a) Gross premiums charged, less any return premiums, for surplus lines insurance 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.

(b) Within 20 days after filing his quarterly report as set forth in G.S. 58-436, each surplus lines licensee shall pay the premium receipts tax due for the period covered by the report.

(c) This section shall not apply to insurance of risks of the State government, its political subdivisions, or of any agency thereof.

**"§ 58-438. Collection of tax.** – If the tax collectible by a surplus lines licensee under this Article has been collected and is not paid within the time prescribed, the same shall



be recoverable in a suit brought by the Commissioner against the surplus lines licensee and the surety on the bond filed under G.S. 58-433, and the sum of one percent (1%) shall be added to the tax due on the first day of each month after the original due date.

**"§ 58-439. 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. 58-9.7 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- 435;
- (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.

**"§ 58-440. 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. 58-153.1. 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.

**"§ 58-441. 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 misdemeanor and subject to imprisonment or a fine , or both.

(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. 58-9.7."

Sec. 2. G.S. 58-54.21 is amended on lines 8, 9, and on the last line by substituting "Article 36 of this Chapter" for "G.S. 58-53.1".

Sec. 3. G.S. 58-53.1, 58-53.2, and 58-53.3 are repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 11th day of July, 1985.