

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 321
Insurance Committee Substitute Adopted 4/14/11
Finance Committee Substitute Adopted 5/3/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S321-PCS15158-RG-13

Short Title: Surplus Lines/Premium Tax.-AB

(Public)

Sponsors:

Referred to:

March 14, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO CONFORM PROVISIONS OF NORTH CAROLINA SURPLUS LINES
3 INSURANCE LAWS TO THE FEDERAL NONADMITTED AND REINSURANCE
4 REFORM ACT OF 2010, TO STREAMLINE APPLICATIONS FOR COMMERCIAL
5 PURCHASERS, TO PREVENT ANY LOSS OF PREMIUM TAX REVENUE TO THE
6 STATE, AND TO CONFORM THE DEFINITION OF RISK RETENTION GROUP TO
7 FEDERAL LAW.

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.1.** Article 21 of Chapter 58 of the General Statutes is amended by
10 adding a new section to read:

11 "**§ 58-21-4. Nonadmitted and Reinsurance Reform Act duties.**

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

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

24 **SECTION 1.2.** The Revenue Laws Study Committee shall, in cooperation with the
25 Commissioner of Insurance, study the potential impact that would result from the State's
26 entrance into a nonadmitted insurance multistate agreement or other compact or interstate
27 agreement for the purpose of carrying out the Nonadmitted and Reinsurance Reform Act of
28 2010 in order to prevent the State from losing revenue after July 21, 2011, the effective date of
29 the Nonadmitted and Reinsurance Reform Act. The Committee shall determine if entering into
30 a compact or agreement would result in retention of surplus lines tax revenue for the State and,
31 if so, which compact or agreement would result in the most retention of surplus lines tax
32 revenue for the State and the most cost-efficient method of administering the collection and



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1 distribution of tax revenues. The Committee shall report its findings and recommendations,
2 including any proposed legislation, to the 2012 Regular Session of the 2011 General Assembly.

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

4 **"§ 58-21-10. Definitions.**

5 As used in this Article:

- 6 (1) "Admitted insurer" means an insurer licensed to ~~do an insurance business~~
7 engage in the business of insurance in this State.
- 8 (1a) "Affiliate" means, with respect to an insured, any entity that controls, is
9 controlled by, or is under common control with the insured.
- 10 (1b) "Affiliated group" means any group of entities that are all affiliated.
- 11 (2) "Capital", as used in the financial requirements of G.S. 58-21-20, means
12 funds paid in for stock or other evidence of ownership.
- 13 (2a) "Control" means an entity that has "control" over another entity if either of
14 the following occurs:
- 15 a. The entity directly or indirectly or acting through one or more other
16 persons owns, controls, or has the power to vote twenty-five percent
17 (25%) or more of any class of voting securities of the other entity.
- 18 b. The entity controls in any manner the election of a majority of the
19 directors or trustees of the other entity.
- 20 (3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a
21 surplus lines licensee may place surplus lines insurance under
22 G.S. 58-21-20.
- 23 (4) "Export" means to place surplus lines insurance with a nonadmitted insurer.
- 24 (5) "Nonadmitted insurer" means an insurer not licensed to do an insurance
25 business in this State. ~~This definition~~ "Nonadmitted insurer" includes
26 insurance exchanges authorized under the laws of various states.
27 "Nonadmitted insurer" does not include a risk retention group, as defined in
28 G.S. 58-22-10(10).
- 29 (6) "Producing broker" means an agent or broker licensed under Article 33 of
30 this Chapter who deals directly with the party seeking insurance and who
31 may also be a surplus lines licensee.
- 32 (7) "Surplus", as used in the financial requirements of G.S. 58-21-20, means
33 funds over and above liabilities and capital of the company for the protection
34 of policyholders.
- 35 (8) "Surplus lines insurance" means any insurance in this State of risks resident,
36 located, or to be performed in this State, permitted to be placed through a
37 surplus lines licensee with a nonadmitted insurer eligible to accept such
38 insurance, other than reinsurance, commercial aircraft insurance, wet marine
39 and transportation insurance, insurance independently procured pursuant to
40 G.S. 58-28-5, life and accident or health insurance, and annuities.
- 41 (9) "Surplus lines licensee" means a person licensed under G.S. 58-21-65 to
42 place insurance on risks resident, located, or to be performed in this State
43 with nonadmitted insurers eligible to accept such insurance.
- 44 (10) "Wet marine and transportation insurance" means:
- 45 a. Insurance upon vessels, crafts, hulls and of interests therein or with
46 relation thereto;
- 47 b. Insurance of marine builder's risks, marine war risks and contracts of
48 marine protection and indemnity insurance;
- 49 c. Insurance of freights and disbursements pertaining to a subject of
50 insurance coming within this subsection; and

- 1 d. Insurance of personal property and interests therein, in the course of
2 exportation from or importation into any country, or in the course of
3 transportation coastwise or on inland waters including transportation
4 by land, water, or air from point of origin to final destination, in
5 connection with any and all risks or perils of navigation, transit or
6 transportation, and while being prepared for and while awaiting
7 shipment, and during any delays, transshipment, or reshipment
8 incident thereto."

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

11 **"§ 58-21-11. Home state.**

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

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

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

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

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

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

27 **"§ 58-21-15. Placement of surplus lines insurance.**

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

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

31 (1a) Each insurer is authorized to write the kind of insurance in its domiciliary
32 jurisdiction.

33 (2) The full amount or kind of insurance cannot be obtained from insurers who
34 are admitted to do business in this State. Such full amount or kind of
35 insurance may be procured from eligible surplus lines insurers, provided that
36 a diligent search is made among the insurers who are admitted to transact
37 and are actually writing the particular kind and class of insurance in this
38 State; and State.

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

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

42 **"§ 58-21-16. Streamlined application for commercial purchasers.**

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

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

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

- 1 C. Certified Risk Manager (CRM) issued by the
- 2 National Alliance for Insurance Education &
- 3 Research.
- 4 D. RIMS Fellow (RF) issued by the Global Risk
- 5 Management Institute.
- 6 E. A designation, certification, or license
- 7 determined by the Commissioner to
- 8 demonstrate minimum competency in risk
- 9 management.
- 10 2. Seven years of experience in risk financing, claims
- 11 administration, loss prevention, risk and insurance coverage
- 12 analysis, or purchasing commercial lines of insurance; and
- 13 has any one of the designations specified in
- 14 sub-sub-sub-sub-subdivisions A. through E. of
- 15 sub-sub-sub-subdivision II. of this sub-subdivision.
- 16 3. Ten years of experience in risk financing, claims
- 17 administration, loss prevention, risk and insurance coverage
- 18 analysis, or purchasing commercial lines of insurance.
- 19 4. A graduate degree from an accredited college or university in
- 20 risk management, business administration, finance,
- 21 economics, or any other field determined by the
- 22 Commissioner to demonstrate minimum competence in risk
- 23 management.

24 (c) Effective on the fifth January 1 occurring after the date of the enactment of this

25 section and each fifth January 1 occurring thereafter, the dollar amounts in

26 sub-sub-subdivisions (b)(1)c.1., 2., 3., and 4. of this section shall be adjusted to reflect the

27 percentage change for such five-year period in the Consumer Price Index for All Urban

28 Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor.

29 **"§ 58-21-17. Placement with alien insurers.**

30 Nothing in this Article prohibits a surplus lines licensee from placing surplus lines

31 insurance with, or procuring surplus lines insurance from, a nonadmitted insurer domiciled

32 outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by

33 the International Insurers Department of the NAIC."

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

35 ~~"(a) No surplus lines licensee shall place any coverage with a nonadmitted insurer,~~

36 ~~unless at the time of placement, such nonadmitted insurer:~~A surplus lines licensee shall not

37 place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines

38 licensee has determined that the nonadmitted insurer satisfies the following:

- 39 (1) ~~Has established satisfactory evidence of good repute and financial integrity;~~
- 40 ~~and~~
- 41 (2) Qualifies under one of the following subdivisions:
 - 42 a. Has capital and surplus or its equivalent under the laws of its
 - 43 domiciliary jurisdiction, which equals the greater of either:
 - 44 1. This State's minimum capital and surplus requirements under
 - 45 G.S. 58-7-75, or G.S. 58-7-75.
 - 46 2. Fifteen million dollars ~~(\$15,000,000), (\$15,000,000).~~
 - 47 whichever is greater, except that nonadmitted insurers already
 - 48 qualified under this Article must have ten million dollars
 - 49 (\$10,000,000) by December 31, 1991, twelve million five hundred
 - 50 thousand dollars (\$12,500,000) by December 31, 1992, and fifteen
 - 51 million dollars (\$15,000,000) by December 31, 1993. The

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

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

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

43 c. In the case of an "insurance exchange" created by the laws of
44 individual states, maintain capital and surplus, or the substantial
45 equivalent thereof, of not less than seventy-five million dollars
46 (\$75,000,000) in the aggregate. For insurance exchanges which
47 maintain funds in an amount of not less than fifteen million dollars
48 (\$15,000,000) for the protection of all insurance exchange
49 policyholders, each individual syndicate shall maintain minimum
50 capital and surplus, or the substantial equivalent thereof, of not less
51 than five million dollars (\$5,000,000). If the insurance exchange does

1 not maintain funds in an amount of not less than fifteen million
 2 dollars (\$15,000,000) for the protection of all insurance exchange
 3 policyholders, each individual syndicate shall meet the minimum
 4 capital and surplus requirements of subdivision (2)a. of this section.

5 d. In the case of a group of incorporated insurers under common
 6 administration, which has continuously transacted an insurance
 7 business outside the United States for at least three years
 8 immediately before this time, and which submits to this State's
 9 authority to examine its books and records and bears the expense of
 10 the examination, and maintains an aggregate policyholders' surplus
 11 of not less than ten billion dollars (\$10,000,000,000), and maintains
 12 in trust a surplus of not less than one hundred million dollars
 13 (\$100,000,000) for the benefit of United States surplus lines
 14 policyholders of any member of the group, and each insurer
 15 maintains capital and surplus of not less than twenty-five million
 16 dollars (\$25,000,000) per company.

17 (3) Has caused to be provided to the Commissioner a copy of its current annual
 18 statement certified by such insurer; such statement to be provided no more
 19 than two months, and for alien insurers six months, after the close of the
 20 period reported upon and that is either:

- 21 a. Filed with and approved by the regulatory authority in the domicile
 22 of the nonadmitted insurer; or
- 23 b. Certified by an accounting or auditing firm licensed in the
 24 jurisdiction of the insurer's domicile; or
- 25 c. In the case of an insurance exchange, the statement may be an
 26 aggregate combined statement of all underwriting syndicates
 27 operating during the period reported."

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

29 **"§ 58-21-35. Duty to file and retain reports.**

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

- 33 (1) The name of the insured.
- 34 (2) The identity of the insurer or insurers.
- 35 (3) A description of the subject and location of the risk.
- 36 (4) The amount of premium charged for the insurance.
- 37 (5) The amount of premium tax for the insurance.
- 38 (6) The policy period.
- 39 (7) The policy number.
- 40 (7a) An acknowledged statement that the surplus lines licensee has complied with
 41 ~~G.S. 58-21-15~~ G.S. 58-21-15 or G.S. 58-21-16, whichever is applicable.
- 42 (8) The name, address, telephone number, facsimile telephone number, and
 43 electronic mail address of the licensee, as applicable.
- 44 (9) Any other relevant information the Commissioner may reasonably require.

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

50 **SECTION 8.** G.S. 58-21-65 reads as rewritten:

51 **"§ 58-21-65. Licensing of surplus lines licensee.**

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

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

7 (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;

8 (2) Submitted a completed license application on a form supplied by the
9 Commissioner, and the application has been approved by the Commissioner;

10 (3) Passed a qualifying examination approved by the Commissioner; except that
11 all holders of a license prior to July 11, 1985 shall be deemed to have passed
12 such an examination; and

13 (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17, 2004.

14 (c) Corporations shall be eligible to be resident surplus lines licensees, upon the
15 following conditions:

16 (1) The corporate licensee shall list individuals within the corporation who have
17 satisfied all requirements of this Article to become surplus lines licensees;
18 and

19 (2) Only those individuals listed on the corporate license and who are surplus
20 lines licensees shall transact surplus lines business.

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

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

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

33 ~~(f) A person licensed as a surplus lines licensee under the laws of a state bordering this
34 State may be licensed as a surplus lines licensee under this Article, if: (i) the laws of the
35 bordering state are substantially similar to the provisions of this Article and (ii) the bordering
36 state has a law or regulation substantially similar to this subsection that permits surplus lines
37 licensees licensed under this Article to be licensed by the bordering state and (iii) the person
38 eomplies with all requirements of this Article and submits himself or herself to the
39 Commissioner's jurisdiction. Nonresident surplus lines licensees shall be licensed in accordance
40 with Article 33 of this Chapter."~~

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

42 "**§ 58-21-85. Surplus lines tax.**

43 (a) Gross premiums charged, less any return premiums, for surplus lines insurance on
44 insureds for whom North Carolina is the home state are subject to a premium receipts tax of
45 five percent (5%), which shall be collected by the surplus lines licensee as specified by the
46 Commissioner, in addition to the full amount of the gross premium charged by the insurer for
47 the insurance. The tax on any portion of the premium unearned at termination of insurance
48 having been credited by the State to the licensee shall be returned to the policyholder directly
49 by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee
50 is prohibited from absorbing such tax and from rebating for any reason, any part of such tax. To
51 the extent that other states in which portions of the properties, risks, or exposures reside have

1 failed to enter into a compact or reciprocal allocation procedure with this State, the premium
2 tax collected shall be retained by this State.

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

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

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

11 **SECTION 10.** G.S. 58-22-10(10) reads as rewritten:

12 "(10) "Risk retention group" means any corporation or other limited liability
13 association:

14 a. Whose primary activity consists of assuming and spreading all or any
15 portion of the liability exposure of its group members;

16 b. That is organized for the primary purpose of conducting the activity
17 described under sub-subdivision a. of this subdivision;

18 c. That

19 (i) Is chartered and licensed as a liability insurance company and
20 authorized to engage in the business of insurance under the
21 laws of any state; or

22 (ii) Before January 1, 1985, was chartered or licensed and
23 authorized to engage in the business of insurance under the
24 laws of Bermuda or the Cayman Islands and, before that date,
25 had certified to the insurance regulator of at least one state
26 that it satisfied the capitalization requirements of such state;
27 except that any such group shall be considered to be a risk
28 retention group only if it has been engaged in business
29 continuously since that date and only for the purpose of
30 continuing to provide insurance to cover product liability or
31 completed operations liability, as such terms were defined in
32 the Product Liability Risk Retention Act of 1981 before the
33 effective date of the Risk Retention Act of 1986;

34 d. That does not exclude any person from membership in the group
35 solely to provide for members of such a group a competitive
36 advantage over such person;

37 e. That

38 (i) ~~Has as its members only persons who have an ownership~~
39 ~~interest in the group and that has as its owners only persons~~
40 ~~who are members who are provided insurance by the risk~~
41 ~~retention group; or~~

42 (ii) ~~Has as its sole member and sole owner an organization that is~~
43 ~~owned by persons who are provided insurance by the risk~~
44 ~~retention group;~~

45 (i) Has as its owners only persons who comprise the membership
46 of the risk retention group and who are provided insurance by
47 such group; or

48 (ii) Has as its sole owner an organization that meets all of the
49 following:

50 I. Its members are only persons who comprise the
51 membership of the risk retention group; and

- 1 II. Its owners are only persons who comprise the
2 membership of the risk retention group and who are
3 provided insurance by such group;
4 f. Whose members are engaged in businesses or activities similar or
5 related with respect to the liability of which such members are
6 exposed by virtue of any related, similar, or common business trade,
7 product, services, premises, or operations;
8 g. Whose activities do not include the provision of insurance other than:
9 (i) Liability insurance for assuming and spreading all or any
10 portion of the similar or related liability exposure of its group
11 members; and
12 (ii) Reinsurance with respect to the similar or related liability
13 exposure of any other risk retention group, or any ~~members~~
14 member of such other group, that is engaged in businesses or
15 activities so that such group or member meets the
16 requirement described in sub-subdivision f. of this
17 subdivision from membership in the risk retention group that
18 provides such reinsurance; and
19 h. The name of which includes the phrase "Risk Retention Group"."

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