



South Carolina Department of Insurance

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BULLETIN NUMBER 2012-08

TO: All Eligible Surplus Lines Insurers and Brokers Transacting Business in the State of South Carolina

FROM: Gwendolyn Fuller, McGuff
Acting Director *Gwendolyn Fuller McGuff*

SUBJECT: Nonadmitted and Reinsurance Reform Act (NRRA) Provisions of the Dodd-Frank Act

DATE: October 24, 2012

I. PURPOSE

The purpose of this Bulletin is to outline national regulatory changes that have affected the placement of nonadmitted insurance in the state of South Carolina. In 2010, the United States Congress enacted the Dodd-Frank Act which proposes reforms to the financial services industry and also included changes to the surplus lines market via the Nonadmitted and Reinsurance Reform Act. The Non-admitted and Reinsurance Reform Act of 2010 ("NRRA"), 15 U.S.C. § 8201 *et seq.*, provides that only an insured's "home state" may require the payment of premium tax for non-admitted insurance. Moreover, the NRRA subjects the placement of non-admitted insurance solely to the statutory and regulatory requirements of the insured's home state, and provides that only the insured's home state may require a surplus lines broker to be licensed to sell, solicit or negotiate nonadmitted insurance with respect to such insured. Accordingly, broker premium tax payments may only be made to the home state of the insured.

The NRRA became effective on July 21, 2011.

II. OVERVIEW of the NRRA

The NRRA has important ramifications for surplus lines broker premium tax payments and reporting and was enacted to promote uniformity in broker licensing, tax filing and reporting procedures. 2012 S.C. Act No. 283 (R.325, S. 1419) amends Chapter 45 of the South Carolina Insurance Laws to implement certain definitional, premium tax and reporting changes required by the provisions of NRRA. Other NRRA changes will be addressed via future South Carolina conforming legislation and bulletins. This bulletin only addresses broker premium tax and reporting issues.

A. SCOPE OF THE NRRA

The NRRA states that “the placement of nonadmitted insurance is subject to the statutory and regulatory requirements solely of the *insured’s home state*” and that the NRRA “may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers’ compensation insurance or excess insurance for self-funded workers’ compensation plans with a nonadmitted insurer.” 15 U.S.C. § 8202. The NRRA **does not expand** the scope of the kinds of insurance that an insurer may write in the nonadmitted insurance market and each state continues to determine which kinds of insurance an insurer may write in that state. Although the NRRA preempts certain state laws with respect to nonadmitted insurance, it does not have an effect on insurance offered by insurers licensed or authorized in this state (i.e., licensed or admitted insurers).

B. DEFINITION OF INSURED’S HOME STATE FOR PURPOSES OF A PARTICULAR PLACEMENT

South Carolina is the insured’s home state *if* the insured maintains its principal place of business in the state; or, in the case of an individual, the individual’s principal residence is in the state. If South Carolina is considered the insured’s home state, only South Carolina requirements regarding the placement of such business will apply. When South Carolina is the home state, 100% of the premium taxes for policies written by insurers not licensed in this state is due in accordance with the requirements §§ 38-45-20 and 38-45-30.

III. 2012 S.C. Act No. 283

The amendments to Title 38, Chapter 45 by 2012 S.C. Act 283 include, but are not limited to: 1) amending Chapter 45 to implement the definitions from the NRRA; 2) authorizing the director or his designee to enter into an agreement for the allocation of taxes; and 3) establishing a blended tax rate of 6% for the collection of broker premium taxes. A copy of the Act is attached and incorporated into this bulletin by reference. The Act has a January 1, 2012 retroactive effective date to simplify the process for calculating and reporting broker premium taxes.

The blended rate of 6% is not a new tax. Rather, it combines the current state broker tax rate of 4% with the existing municipal tax rate of 2% for a single 6% rate. The Act further states that a municipality may not impose any additional license fee or tax based upon a percentage of the premium.

Prior to the 2012 amendments to Chapter 45, brokers in South Carolina paid broker premium taxes based upon 4% of premiums collected to the State of South Carolina and a municipal license fee (based upon 2% of the premium taxes collected) to local municipalities. Surplus lines brokers reported policy information and paid premium taxes via the Online Surplus Lines Premium Tax Application to the South Carolina Department of Insurance. Separate reports were filed with the Municipal Association of South Carolina on behalf of the local municipalities. The amendments to Chapter 45 simplify the premium tax payment and reporting process for brokers transacting business in this state.

Brokers are required to pay the blended tax rate of 6% to the state via the online surplus lines tax application and file any required reports on the business transacted with the South Carolina

Department of Insurance. Brokers will not have to submit tax forms to the Municipal Association of South Carolina or file forms with multiple places or pay taxes to multiple locations. All forms and taxes must be submitted to the South Carolina Department of Insurance for processing.

IV. COLLECTION OF THE BLENDED TAX RATE

Brokers are required to pay the blended tax rate of 6% on premiums for all policies of insurers not licensed in this State. During the payment period for the fourth quarter of 2012, which is January 1, 2013 through January 31, 2013, brokers will pay the 4% portion of the blended tax rate for all business reported during the fourth quarter. Brokers will also pay the 2% portion of the blended tax rate for ALL business reported for calendar year 2012 to the Department of Insurance via the online surplus lines premium tax application. As 2012 S.C. Act No. 283 is effective retroactive to January 1, 2012, this separate procedure is required to collect the 2% portion of the blended tax rate which has not been reported to the Department of Insurance. Additional information pertaining to the fourth quarter reporting will be sent at a later date.

2012 S.C. Act No. 283 requires the South Carolina Department of Insurance to collect the 6% blended tax rate and deposit all revenue collected into a special fund, separate and distinct from the general fund. The municipal portion of funds in this special earmarked fund will be paid to the designated municipal agent with a full accounting provided by the Department of Insurance, including, but not limited to, the name and address of the broker, the amount of the broker's premium tax collected from each broker, and information as to the location of the risk covered by the insurance.

Beginning, January 1, 2013, and thereafter, brokers will pay the blended tax rate of 6% quarterly on all submissions and endorsements reported to the Department of Insurance via the online surplus lines premium tax application.

VI. QUESTIONS

Questions or concerns regarding this bulletin should be directed to the attention of:

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Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.

South Carolina General Assembly
119th Session, 2011-2012

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A283, R325, S1419

STATUS INFORMATION

General Bill

Sponsors: Senators Thomas, Ford and Hayes

Document Path: I:\council\bill\ncd\12317dg12.docx

Introduced in the Senate on April 10, 2012

Introduced in the House on April 24, 2012

Last Amended on May 31, 2012

Passed by the General Assembly on June 28, 2012

Governor's Action: June 29, 2012, Signed

Summary: Insurance brokers and surplus lines insurance

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
4/10/2012	Senate	Introduced and read first time (<u>Senate Journal-page 12</u>)
4/10/2012	Senate	Referred to Committee on Banking and Insurance (<u>Senate Journal-page 12</u>)
4/12/2012	Senate	Committee report: Favorable Banking and Insurance (<u>Senate Journal-page 7</u>)
4/17/2012		Scrivener's error corrected
4/18/2012	Senate	Read second time (<u>Senate Journal-page 35</u>)
4/18/2012	Senate	Roll call Ayes-42 Nays-0 (<u>Senate Journal-page 35</u>)
4/19/2012	Senate	Read third time and sent to House (<u>Senate Journal-page 20</u>)
4/24/2012	House	Introduced and read first time (<u>House Journal-page 20</u>)
4/24/2012	House	Referred to Committee on Labor, Commerce and Industry (<u>House Journal-page 20</u>)
5/17/2012	House	Committee report: Favorable with amendment Labor, Commerce and Industry (<u>House Journal-page 6</u>)
5/23/2012	House	Debate adjourned until Thur., 05-24-12 (<u>House Journal-page 30</u>)
5/24/2012	House	Requests for debate-Rep(s). Anderson, Sandifer, White, Agnew, JR Smith, Whitmire, Gambrell, RL Brown, Brantley, Forrester, Toole, Frye, Pitts, GR Smith (<u>House Journal-page 118</u>)
5/30/2012	House	Debate adjourned until Thur., 05-31-12 (<u>House Journal-page 197</u>)
5/31/2012	House	Amended (<u>House Journal-page 91</u>)
5/31/2012	House	Read second time (<u>House Journal-page 91</u>)
5/31/2012	House	Roll call Yeas-95 Nays-0 (<u>House Journal-page 92</u>)

6/5/2012	House	Read third time and returned to Senate with amendments (House Journal-page 113)
6/28/2012	Senate	Concurred in House amendment and enrolled (Senate Journal-page 27)
6/28/2012	Senate	Roll call Ayes-29 Nays-0 (Senate Journal-page 27)
6/28/2012		Ratified R 325
6/29/2012		Signed By Governor
7/17/2012		Effective date 01/01/12
7/17/2012		Act No. 283

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VERSIONS OF THIS BILL

[4/10/2012](#)

[4/12/2012](#)

[4/17/2012](#)

[5/17/2012](#)

[5/31/2012](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A283, R325, S1419)

AN ACT TO AMEND CHAPTER 45, TITLE 38, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INSURANCE BROKERS AND SURPLUS LINES INSURANCE, SO AS TO DEFINE TERMS, TO PROVIDE THAT THE REVENUE COLLECTED FROM THE BROKER'S PREMIUM TAX RATE MUST BE CREDITED TO A SPECIAL EARMARKED FUND, TO PROVIDE THE MANNER IN WHICH THE FUND MAY BE USED AND DISBURSED, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO CONDUCT EXAMINATIONS OF BROKER RECORDS, TO ALLOW THE DEPARTMENT OF INSURANCE TO PROMULGATE REGULATIONS NECESSARY TO IMPLEMENT THE CHAPTER, TO PROVIDE THE MANNER IN WHICH THE NONADMITTED AND REINSURANCE REFORM ACT OF 2010 MAY BE IMPLEMENTED; AND TO AMEND SECTION 38-7-160, RELATING TO MUNICIPAL LICENSE FEES AND TAXES, SO AS TO DISALLOW A MUNICIPALITY FROM CHARGING AN ADDITIONAL LICENSE FEE OR TAX BASED UPON A PERCENTAGE OF PREMIUMS FOR PURPOSES OF SURPLUS LINES INSURANCE.

Be it enacted by the General Assembly of the State of South Carolina:

Definitions, revenue from broker's premium tax credited to special earmarked fund, expenditure of such fund, examination of broker records, regulations, Implementation of Nonadmitted and Reinsurance Reform Act of 2010

SECTION 1. Chapter 45, Title 38 of the 1976 Code is amended to read:

"CHAPTER 45
Insurance Brokers and Surplus Lines Insurance

Section 38-45-10. As used in this chapter:

- (1) 'Admitted insurer' means an insurer licensed to engage in the business of insurance in this State.
- (2) 'Affiliate' means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.
- (3) 'Affiliated group' means any group of entities that are all affiliated.
- (4) 'Control' means:
 - (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 or more of any class of voting securities of the other entity; or
 - (b) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.
- (5) 'Exempt commercial purchaser' means any person purchasing commercial insurance that, at the time of placement, meets 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 in the immediately preceding twelve months; and
 - (c)(i) the person meets at least one of the following criteria:
 - (A) the person possesses a net worth in excess of twenty million dollars, as that amount is adjusted pursuant to sub-subitem (ii);
 - (B) the person generates annual revenues in excess of fifty million dollars, as that amount is adjusted pursuant to sub-subitem (ii);
 - (C) the person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;
 - (D) the person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars as that amount is adjusted pursuant to sub-subitem (ii); or

(E) the person is a municipality with a population in excess of fifty thousand persons.

(ii) Effective on the January 1, 2017, and each fifth January first thereafter, the amounts in sub-subitems (i)(A), (B), and (D) of subitem (c) shall be adjusted to reflect the percentage change for the five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6)(a) 'Home state', with respect to an insured, means:

(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if one hundred percent of the insured risk is located out of the state referred to in sub-subitem (i), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) Notwithstanding the provisions of subitem (a), if more than one insured from an affiliated group are named insureds on a single surplus lines insurance contract, the term 'home state' means the home state, as determined pursuant to subitem (a), of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(7) 'Independently procured insurance' means insurance procured directly by an insured from a surplus lines insurer.

(8)(a) 'Insurance broker' means a property and casualty insurance producer licensed by the director or his designee who:

(i) sells, solicits, or negotiates insurance on behalf of an insured;

(ii) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insured;

(iii) advertises or otherwise gives notice that he receives or transmits a surplus lines application or policies;

(iv) receives or delivers a policy of surplus lines insurance for an insured on behalf of a surplus lines insurer;

(v) receives, collects, or transmits a premium of surplus lines insurance; or

(vi) performs another act in the making of a surplus lines insurance contract for or with an insured.

(b) However, an insurance broker's license is not required of a broker's office employee acting within the confines of the broker's office, under the direction and supervision of the licensed

broker and within the scope of the broker's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties.

(c) An insurance broker may place that insurance either with an eligible surplus lines insurer or with a licensed insurance producer appointed by an insurance carrier licensed in this State.

(9) 'Municipal agent' means the Municipal Association of South Carolina or other designated agent of the municipality for the purpose set forth in this chapter.

(10) 'Surplus lines insurance' means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a surplus lines insurer eligible to accept the insurance as defined in Section 38-1-20(56).

(11) 'Surplus lines insurer' means an insurer not licensed to engage in the business of insurance in this State, but does not include a risk retention group, as that term is defined in Section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)).

(12) 'Premium tax' means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a governmental entity directly or indirectly based on any payment made as consideration for an insurance contract, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(13) 'Broker's premium tax rate' means a blended tax rate of six percent. The rate is comprised of a four percent state broker's premium tax and a two percent municipal broker's premium tax.

(14) 'Qualified risk manager' means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(a) the person is an employee of, or third-party consultant retained by, the commercial policyholder;

(b) the person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance; and

(c)(i)(A) the person has 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 director or other state regulatory official or entity to demonstrate minimum competence in risk management; and

(B) has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(aa) has a designation as a Chartered Property and Casualty Underwriter (CPCU) issued by the American Institute for CPCU/Insurance Institute of America;

(bb) has a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(cc) has a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(dd) has a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute;
or

(ee) any other designation, certification, or license determined by the director or other state insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(A) has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance;
and

(B) has any one of the designations specified in subitems (c)(i)(B)(aa) through (c)(i)(B)(ee);

(iii) has at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by the director or other state regulatory official or entity to demonstrate minimum competence in risk management.

(15) 'State' includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Section 38-45-20. A resident property and casualty-licensed insurance producer may be licensed as an insurance broker by the director or his designee if the following requirements are met:

(1) licensure of the resident as an insurance producer for the same lines of insurance for which he proposes to apply as a broker of this State;

(2) successfully passed the South Carolina broker licensing examination;

(3) payment of a biennial license fee of two hundred dollars which is earned fully when received, not refundable;

(4) filing of a bond with the department in a form approved by the Attorney General in favor of South Carolina of ten thousand dollars executed by a corporate surety licensed to transact surety insurance in this State and personally countersigned by a licensed resident agent of the surety. The bond must be conditioned to pay a person insured or seeking insurance through the broker who sustains loss as a result of:

(a) the broker's violation of or failure to comply with an insurance law or regulation of this State;

(b) the broker's failure to transmit properly a payment received by him, cash or credit, for transmission to an insurer or an insured; or

(c) an act of fraud committed by the broker in connection with an insurance transaction. Instead of a bond, the broker may file with the department certificates of deposit of ten thousand dollars of building and loan associations or federal savings and loan associations located within the State in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed the amount of insurance, or of banks located within the State in which deposits are guaranteed by the Federal Deposit Insurance Corporation, not to exceed the amount of insurance. An aggrieved person may institute an action in the county of his residence against the broker or his surety, or both, to recover on the bond or against the broker to recover from the certificates of deposit, and a copy of the summons and complaint in the action must be served on the director, who is not required to be made a party to the action;

(5) payment to the department, within thirty days after March thirty-first, June thirtieth, September thirtieth, and December thirty-first each year, of the broker's premium tax rate upon premiums for policies of insurers not licensed in this State. In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded. The credit must be refunded to the policyholder.

Section 38-45-30. A nonresident may be licensed as an insurance broker by the director or his designee if the following requirements are met:

(1) filing an application on a form prescribed by the director or his designee;

(2) filing an affidavit stating he will not during the period of the license place, directly or indirectly, insurance on a risk located in this State except through licensed producers of insurers licensed to do business in this State;

(3) filing an affidavit stating he is a licensed broker in another state;

(4) paying a biennial license fee of two hundred dollars fully earned when received, not refundable;

(5) an aggrieved person may institute an action in the county of his residence against the broker to recover damages. A copy of the summons and complaint in the action must be served on the director, who is not required to be made a party to the action;

(6) paying the department, within thirty days after March thirty-first, June thirtieth, September thirtieth, and December thirty-first each year, the broker's premium tax rate upon premiums for policies of insurers not licensed in this State. In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded. The credit must be refunded to the policyholder.

Section 38-45-35. When an individual applies for an insurance broker's license, he shall supply the department his business and residence address. The broker shall notify the department within thirty days of any change in these addresses.

Section 38-45-40. The director or his designee may enter into reciprocal agreements with the insurance commissioners of other states in regard to licensing of nonresident brokers if in his judgment the arrangements or agreements are in the best interest of the State and if the applicant for the license meets the minimum statutory requirements of this State for the issuance of a broker's license. However, the director or his designee may not enter into or continue any reciprocal agreement unless the other state is as liberal as this State in licensing nonresident brokers.

Section 38-45-50. Each license issued is for an indefinite term unless revoked or suspended. If the biennial license fee of a broker is not paid at the time and in the manner the department provides by regulation, the license must be canceled. If the license is to be reinstated, an original application must be filed and a reinstatement fee equal to the biennial license fee unpaid must be paid in addition to the regular biennial license fee.

Section 38-45-55. The revenue collected from the broker's premium tax rate imposed pursuant to the provisions of Sections 38-45-20(5), 38-45-30(6), and 38-45-190, must be credited to a special earmarked fund, distinct from the general fund, and expended only for the purposes provided in this chapter.

Section 38-45-60. (A) As soon after December thirty-first of each year as may be convenient, the director or his designee shall render an accounting to the State Treasurer of the state portion of the broker's premium tax rate payment collected showing the counties in which the risk covered by the insurance is located and shall furnish a duplicate of the accounting to the Comptroller General. The Comptroller General shall draw his warrant on the State Treasurer for one-fourth of the state's portion of the broker's premium tax rate payment collected by the department on property insurance, payable to the county treasurer of the county in which the property is located. The county treasurer shall distribute the broker's premium tax collected on property insurance in accordance with the requirements of Sections 23-9-360 and 23-9-470 and Sections 38-7-70 and 38-7-80.

(B) As soon as practical after December thirty-first, but no later than July first of each year, the department shall distribute from the special earmarked fund, distinct from the general fund, the municipal portion of the broker's premium tax rate payment collected for the prior tax year in accordance with the requirements of Sections 38-45-20(5) and 38-45-30(6). This amount must be paid to the municipal agent with a full accounting, provided by the department, including, but not limited to, the name and address of the broker, and amount of the broker's premium tax rate payment collected from each broker, and showing the counties in which the risk covered by the insurance is located. The municipal agent shall distribute the funds annually to each municipality with which it contracts based on the data submitted by the department.

Section 38-45-70. A broker's license entitles the holder to solicit insurance in any county of this State. However, municipalities may impose license fees in accordance with this title.

Section 38-45-80. All brokers doing any kind of insurance business in this State shall make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the person to whom issued of every policy or certificate of renewal. The information from these records must be furnished to the director or his designee on demand and the original books or records are open to the inspection of the director or his designee on demand. These records must be kept for a minimum of five years. The director or his designee also may conduct examinations of broker records. Examinations must be conducted in accordance with the requirements of Chapter 13 of this title. The broker is responsible for the costs of any examination.

Section 38-45-90. At the request of a licensed resident broker, the director or his designee may approve certain nonadmitted insurers as eligible surplus lines insurers to write business on risks located in this State that one or more insurers licensed in this State to write that line of business in this State have declined to write. The director or his designee may require the broker to submit, on behalf of the insurer, documents necessary to satisfy him that the insurer is licensed in his home state, that it is solvent, and that its operation is not hazardous to the policyholders. The director or his designee may require the broker or the insurer to file additional documents at any time to maintain the insurer's status as an eligible surplus lines insurer. The director or his designee may withdraw his approval at any time the insurer fails to meet any of the requirements. While the insurer maintains his status as an eligible surplus lines insurer, a duly licensed broker, under the terms of this chapter, may place business with the insurer. An insurance broker shall exercise due care in the placing of insurance. Each broker transacting business in the State during a calendar year shall file annually with the department within thirty days after December thirty-first a detailed report of this business. The report must be in the form the director or his designee prescribes. The broker's books, papers, and accounts must be open at all times to the inspection of the director or his designee.

Section 38-45-100. A licensed insurance broker may divide commissions with producers or brokers in other states or with a producer licensed in this State for an insurer doing the particular class of insurance desired to be placed through the broker.

Section 38-45-110. The broker shall write or stamp upon the face of each policy and application of an eligible surplus lines insurer the words, 'This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection'.

Section 38-45-120. Every insurance broker who sells an insurance policy written or issued by an insurer not licensed to do business in this State is personally liable for the limits of the coverage provided for in the policy if the broker fails to comply with the provisions of this title relating to policies issued by insurers not licensed to do business in this State.

Section 38-45-130. All losses occurring under policies placed through an insurance broker may be adjusted by a licensed producer or adjuster in this State. All inspections of property and endorsements on policies may be made by a licensed broker or any other licensed insurance producer in this State authorized to do so.

Section 38-45-140. When the director or his designee determines after investigation that a broker has violated this title, he may, upon ten days' notice, impose the penalties provided in Section 38-2-10.

Section 38-45-150. Any person violating this chapter is guilty of a misdemeanor. Each risk written in violation of this chapter is considered a separate offense.

Section 38-45-160. No policy fee may be charged by a broker unless it is a reasonable fee, it is made part of the contract, and the broker's premium tax rate is paid upon the policy fee. If for any reason the director or his designee disapproves the placement or the insurer ultimately refuses to write the risk, the broker shall immediately refund the full policy fee to the policyholder.

Section 38-45-170. Before the director or his designee approves a nonadmitted insurer as an eligible surplus lines insurer, the insurer shall appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer and that the authority continues in force so long as any liability remains outstanding in the State. Copies of the appointment, certified by the director, are sufficient evidence of the appointment and must be admitted in evidence with the same force and effect as the original might be admitted.

Section 38-45-180. The department may promulgate regulations and prescribe forms and procedures necessary to implement this chapter.

Section 38-45-190. (A) For the purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, the director or his designee may enter into an agreement with a single state to facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of surplus lines insurance, provide for uniform methods of allocation and reporting among surplus lines insurance risk classifications, and share information among states relating to surplus lines insurance premium taxes. The General Assembly may approve, modify, or rescind any such agreement.

(B) The director or his designee is authorized to participate in a clearing house established through a multistate agreement approved by the General Assembly for the purpose of collecting and disbursing to reciprocal states any funds collected pursuant to subsection (A) applicable to properties, risks, or exposures located or to be performed outside of this State. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into an agreement or reciprocal allocation procedure with this State, the net premium tax collected shall be retained by this State.

Section 38-45-195. Nothing in this chapter precludes the director or his designee from collecting one hundred percent of the taxes due under this chapter for all risks placed in the surplus lines market."

Prohibition of additional license fee for surplus lines insurance

SECTION 2. Section 38-7-160 of the 1976 Code is amended to read:

"Section 38-7-160. This title may not be construed as preventing any municipality from levying and collecting license fees or taxes in accordance with its ordinances. However, for surplus lines insurance no municipality may charge an additional license fee or tax based upon a percentage of premiums. A municipality may not charge a license fee to fire insurers or their agents licensed by the director or his designee in any other manner than on a percentage of the premiums collected in the municipality or realized from risks located within the limits of the municipality, or both, the license fee not to exceed two percent of the premiums collected in the municipality and realized from risks located in the municipality, except in cities of fifty thousand inhabitants or more, where not exceeding five percent may be charged. Preference must be given hereunder to the municipality wherein the insured property is located, and, if a license is levied against the insuring company on such basis, that company may not be subject to a similar license from a municipality wherein it may collect the premium for such transaction."

Severability clause

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 4. This act takes effect January 1, 2012.

Ratified the 28th day of June, 2012.

Approved the 29th day of June, 2012.

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