

House Bill 413

By: Representatives Golick of the 34th, Rogers of the 26th, Hembree of the 67th, Maxwell of the 17th, and Meadows of the 5th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 5 of Title 33 of the Official Code of Georgia Annotated,
2 relating to the regulation of surplus line insurance, so as to revise the surplus line insurance
3 law in Georgia; to provide for definitions; to change provisions of the authorization of
4 procurement of surplus line insurance; to change certain provisions related to the duties of
5 the broker prior to placing insurance; to change certain provisions related to payment of the
6 broker of privilege tax; to provide for the Commissioner to participate in an interstate
7 compact or agreement for the purpose of collecting and disbursing to reciprocal states
8 premium taxes; to provide for penalties for failure to file certain affidavits or remit certain
9 taxes; to revise licensing provisions for resident and nonresident surplus line producers; to
10 change applicability provisions; to provide for related matters; to repeal conflicting laws; and
11 for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Article 2 of Chapter 5 of Title 33 of the Official Code of Georgia Annotated, relating to
15 surplus line insurance, is amended by adding a new Code section to read as follows:

16 "33-5-20.1.

17 As used in this article, the term:

18 (1) 'Exempt commercial purchaser' means any person purchasing commercial insurance
19 that, at the time of placement, meets the following requirements:

20 (A) The person employs or retains a qualified risk manager to negotiate insurance
21 coverage;

22 (B) The person has paid aggregate nation-wide commercial property and casualty
23 insurance premiums in excess of \$100,000.00 in the immediately preceding 12 months;
24 and

25 (C)(i) The person meets at least one of the following criteria:

- 26 (I) The person possesses a net worth in excess of \$20 million as such amount is
 27 adjusted pursuant to division (ii) of this subparagraph; or
 28 (II) The person generates annual revenues in excess of \$50 million as such amount
 29 is adjusted pursuant to division (ii) of this subparagraph; or
 30 (III) The person employs more than 500 full-time or full-time equivalent employees
 31 per individual insured or is a member of an affiliated group employing more than
 32 1,000 employees in the aggregate;
 33 (IV) The person is a not for profit organization or public entity generating annual
 34 budgeted expenditures of at least \$30 million as such amount is adjusted pursuant
 35 to division (ii) of this subparagraph; or
 36 (V) The person is a municipality with a population in excess of 50,000.
 37 (ii) Effective on January 1, 2016, and every five years on January 1 thereafter, the
 38 amounts in subdivisions (I), (II), and (IV) of division (i) of this subparagraph shall be
 39 adjusted to reflect the percentage change for such five-year period in the Consumer
 40 Price Index for All Urban Consumers as reported by the Bureau of Labor Statistics
 41 of the United States Department of Labor.

42 (2) 'Home state' means:

- 43 (A) The state in which an insured maintains its principal place of business or, in the
 44 case of an individual, the individual's principal residence; or
 45 (B) If 100 percent of the insured risk is located outside the state referred to in
 46 subparagraph (A) of this paragraph, the state to which the greatest percentage of the
 47 insured's taxable premium for that insurance contract is allocated.

48 If more than one insured from an affiliated group are named insureds on a single
 49 nonadmitted insurance contract, the term 'home state' means the home state, as
 50 determined according to subparagraph (A) of this paragraph, of the member of the
 51 affiliated group that has the largest percentage of premium attributed to it under such
 52 insurance contract.

53 (3) 'Nonadmitted insurance' means any property and casualty insurance permitted in a
 54 state to be placed directly or through a surplus line broker with a nonadmitted insurer
 55 eligible to accept such insurance.

56 (4) 'Principal place of business' means the state where the insured maintains its
 57 headquarters and where the insured's high-level officers direct, control, and coordinate
 58 the business's activities.

59 (5) 'Principal residence' means the state where the individual resides for the greatest
 60 number of days during a calendar year.

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

- 63 (A) The person is an employee of, or third-party consultant retained by, the
 64 commercial policyholder;
- 65 (B) The person provides skilled services in purchase of insurance and in loss
 66 prevention, loss reduction, or risk and insurance coverage analysis;
- 67 (C) The person has a bachelor's degree or higher from an accredited college or
 68 university in risk management, business administration, finance, economics, or any
 69 other field determined by a state insurance commissioner or other state regulatory
 70 official or entity to demonstrate minimum competence in risk management and:
- 71 (i) Has three years of experience in risk financing, claims administration, loss
 72 prevention, risk and insurance analysis, or purchasing commercial lines of insurance;
- 73 (ii) Has a designation as a chartered property and casualty underwriter issued by the
 74 American Institute for CPCU/Insurance Institute of America;
- 75 (iii) Has a designation as an associate in risk management issued by the American
 76 Institute for CPCU/Insurance Institute of America;
- 77 (iv) Has a designation as certified risk manager issued by the National Alliance for
 78 Insurance Education & Research;
- 79 (v) Has a designation as a RIMS Fellow issued by the Global Risk Management
 80 Institute; or
- 81 (vi) Has any other designation, certification, or license determined by the
 82 Commissioner to demonstrate minimum competency in risk management; and
- 83 (D) The person has:
- 84 (i) At least seven years of experience in risk financing, claims administration, loss
 85 prevention, risk and insurance coverage analysis, or purchasing commercial lines of
 86 insurance;
- 87 (ii) Any one of the designations specified in subparagraph (C) of this paragraph;
- 88 (iii) At least ten years of experience in risk financing, claims administration, loss
 89 prevention, risk and insurance coverage analysis, or purchasing commercial lines of
 90 insurance; or
- 91 (iv) A graduate degree from an accredited college or university in risk management,
 92 business administration, finance, economics, or any other field determined by a state
 93 insurance commissioner or other state regulatory official or entity to demonstrate
 94 minimum competence in risk management.
- 95 (7) 'Surplus line insurance' means any property and casualty insurance permitted in a
 96 state to be placed through a surplus line broker with a nonadmitted insurer eligible to
 97 accept such insurance.

98 (8) 'Surplus line broker' or 'broker' means an individual who is licensed in this state to
 99 sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be
 100 performed in this state with nonadmitted insurers."

101 **SECTION 2.**

102 Said article is further amended by revising Code Section 33-5-21, relating to conditions of
 103 authorization of procurement of surplus line insurance, as follows:

104 "33-5-21.

105 (a) Surplus line insurance may be procured from unauthorized insurers subject to the
 106 following conditions:

107 (1) The insurance must be procured through a licensed surplus line broker;

108 (2) The insurance may only be procured from insurers which meet the financial condition
 109 requirements of Code Section 33-5-25;

110 (3) The insured or the insured's agent has made an effort to procure the desired insurance
 111 coverage or benefits from authorized insurers, but such effort has been unsuccessful in
 112 obtaining insurance coverage or benefits which are satisfactory to the insured except as
 113 provided under subsection (b) of this Code section; and

114 (4) The insurance shall not be procured under this chapter for personal passenger motor
 115 vehicle coverage or residential dwelling property coverage unless such insurance cannot
 116 be obtained from an authorized insurer.

117 (b) The broker shall not be required to make a due diligence search to determine whether
 118 the full amount or type of insurance can be obtained from authorized insurers when the
 119 surplus line broker is seeking to procure or place nonadmitted insurance for an exempt
 120 commercial purchaser, provided:

121 (1) The broker procuring or placing the surplus line insurance has disclosed to the
 122 exempt commercial purchaser that such insurance may not be available from the admitted
 123 market that may provide greater protection with more regulatory oversight; and

124 (2) The exempt commercial purchaser has subsequently requested in writing for the
 125 broker to procure or place such insurance from a nonadmitted insurer."

126 **SECTION 3.**

127 Said article is further amended by revising Code Section 33-5-25, relating to the broker
 128 requirements prior to the placement of insurance, as follows:

129 "33-5-25.

130 (a) The broker shall ascertain the financial condition of the unauthorized insurer before
 131 placing insurance with the unauthorized insurer and shall not place surplus line insurance

132 with any insurer who does not meet, according to current available reliable financial
 133 information, the requirements provided in subsection (b) of this Code section.

134 (b)(1) The broker shall so insure only:

135 (A) ~~With an insurance company licensed and domiciled in a state or United States~~
 136 ~~territory which at all times maintains capital and surplus amounting to at least \$3~~
 137 ~~million domiciled in a United States jurisdiction that is authorized to write the type of~~
 138 ~~insurance in its domiciliary jurisdiction and has a capital and surplus or its equivalent~~
 139 ~~under the laws of its domiciliary jurisdiction which equals the greater of:~~

140 (i) The minimum capital and surplus requirements of this title; or

141 (ii) Fifteen million dollars;

142 The requirements of this subparagraph may be satisfied by an insurer that possesses less
 143 than the minimum capital and surplus upon an affirmative finding of acceptability by
 144 the Commissioner. The finding shall be based upon such factors as quality of
 145 management, capital and surplus of any parent company, company underwriting profit
 146 and investment income trends, market availability, and company record and reputation
 147 within the industry. In no event shall the Commissioner make an affirmative finding
 148 of acceptability when the unauthorized insurer's capital and surplus is less than
 149 \$4,500,000.00;

150 (B) With any group of foreign individual underwriters licensed and domiciled in a state
 151 or United States territory if such group maintains a trust or security fund of at least \$10
 152 million as security to the full amount thereof for all policyholders and creditors in the
 153 United States of each member of the group. If the group includes incorporated and
 154 unincorporated underwriters, the incorporated members shall not be engaged in any
 155 business other than underwriting as a member of the group and shall be subject to the
 156 level of solvency regulation and control by the group's domiciliary regulatory as are the
 157 unincorporated members; or

158 (C) ~~With any an alien insurer or group of alien underwriters domiciled outside of the~~
 159 ~~United States, including, but not limited to, any Lloyd's group, that is on an approved~~
 160 ~~list maintained by the Commissioner that is listed in the Quarterly Listing of Alien~~
 161 ~~Insurers maintained by the International Insurers Department of the National~~
 162 ~~Association of Insurance Commissioners.~~

163 (2) An insurer or group of foreign individual underwriters described in subparagraph (A)
 164 or (B) of paragraph (1) of this subsection shall annually furnish to the broker a copy of
 165 its current annual financial statement and, in the case of a group of foreign individual
 166 underwriters, evidence of compliance with required trust or security fund deposits.

167 (c) For any violation of this Code section, a broker's license may be suspended or revoked
 168 as provided in Code Section 33-5-23."

169

SECTION 4.

170 Said article is further amended by revising subsection Code Section 33-5-31, relating to
 171 payment by a broker of tax for the privilege of doing business, as follows:

172 "33-5-31.

173 (a) The surplus line broker shall remit to the Commissioner, on or before the fifteenth day
 174 of April, July, October, and January, at the time his or her quarterly affidavit is submitted,
 175 as a tax imposed for the privilege of doing business as a surplus line broker in this state,
 176 a tax of 4 percent on all premiums paid to the surplus line broker during the preceding
 177 quarter, less return premiums and exclusive of sums collected to cover state or federal
 178 taxes, on surplus line insurance subject to tax transacted by him or her during the preceding
 179 quarter as shown by his or her affidavit filed with the Commissioner.

180 (b) If a surplus line policy covers risks or exposures ~~only partially in this state, the tax so~~
 181 ~~payable shall be computed on the proportion of the premium which is properly allocable~~
 182 ~~to the risks or exposures located in~~ located or to be performed both in and out of this state,
 183 the sum payable shall be computed based on an amount equal to 4 percent of that portion
 184 of the gross premiums allocated to this state plus an amount equal to the portion of
 185 premiums allocated to other states or territories on the basis of the tax rates and fees
 186 applicable to properties, risks, or exposures located or to be performed outside this state.

187 (c) The Commissioner shall participate in an interstate compact or agreement for the
 188 purpose of collecting and disbursing to reciprocal states any funds collected pursuant to
 189 subsection (b) of this Code section applicable to other properties, risks, or exposures
 190 located or to be performed outside this state. To the extent that other states where portions
 191 of the properties, risks, or exposures reside have failed to enter into such compact or
 192 reciprocal allocation procedure with this state, the net premium tax collected shall be
 193 retained by this state."

194

SECTION 5.

195 Said article is further amended by revising Code Section 33-5-32, relating to the penalty for
 196 failure to file a quarterly affidavit or remit the tax as prescribed, as follows:

197 "33-5-32.

198 If any surplus line broker fails to file his or her quarterly affidavit or fails to remit the tax
 199 as provided by law within 30 days after the tax is due, he or she shall be liable for a penalty
 200 of either \$25.00 for each day of delinquency commencing after the expiration of the 30 day
 201 period or an amount equal to 100 percent of the tax, whichever is less, except that for good
 202 cause shown, the Commissioner may grant a reasonable extension of time within which the
 203 affidavit may be filed and the tax may be paid. The tax may be recovered by distraint and
 204 the penalty and tax may be recovered by an action instituted by the Commissioner in any

205 court of competent jurisdiction. The Commissioner shall pay to the Office of the State
206 Treasurer any penalty so collected."

207 **SECTION 6.**

208 Said article is further amended by revising subsection (a) of Code Section 33-5-33, relating
209 to the filing of a report by persons procuring insurance with unauthorized insurers, as
210 follows:

211 "(a) Every insured who in this state procures or causes to be procured or continues or
212 renews insurance with an unauthorized insurer upon a subject of insurance resident,
213 located, or to be performed both within and outside this state, other than insurance procured
214 through a surplus line broker pursuant to this article or exempted from this article under
215 Code Section 33-5-35, shall within 30 days after the date such insurance was so procured,
216 continued, or renewed file a report of the same with the Commissioner in writing and upon
217 forms designated by the Commissioner and furnished to such an insured upon request. The
218 report shall state the name and address of the insured or insureds, name and address of the
219 insurer, the subject of the insurance, a general description of the coverage, the amount of
220 premium currently paid thereon, and such additional information as reasonably requested
221 by the Commissioner."

222 **SECTION 7.**

223 Said article is further amended by revising Code Section 33-5-35, relating to applicability of
224 the article, as follows:

225 "33-5-35.

226 This article controlling the placing of insurance with unauthorized insurers shall not apply
227 to reinsurance or to the following insurances when so placed by licensed agents or brokers
228 of this state:

229 (1) ~~Insurance on subjects located, resident, or to be performed wholly outside of this~~
230 ~~state or on vehicles or aircraft owned and principally garaged outside this state;~~
231 ~~(2)~~ Insurance on property or operation of railroads engaged in interstate commerce; or
232 ~~(3)~~(2) Insurance of aircraft owned or operated by manufacturers of aircraft or operated
233 in scheduled interstate flight, or cargo of the aircraft, or against liability, other than
234 workers' compensation and employer's liability, arising out of the ownership,
235 maintenance, or use of the aircraft."

236 **SECTION 8.**

237 All laws and parts of laws in conflict with this Act are repealed.