

House Bill 413 (COMMITTEE SUBSTITUTE)

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 legislative intent; to provide that the Governor under
7 advisement of the Commissioner shall weigh and select such cooperative agreement,
8 compact, or reciprocal agreement that best meets all the financial needs of the state for the
9 purpose of collecting and disbursing to reciprocal states premium taxes; to provide for
10 penalties for failure to file certain affidavits or remit certain taxes; to revise licensing
11 provisions for resident and nonresident surplus line producers; to change applicability
12 provisions; to provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

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

17 "33-5-20.1.

18 As used in this article, the term:

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

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

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

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

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

43 (2) 'Home state' means:

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

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

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

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

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

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

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

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

102 **SECTION 2.**

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

105 "33-5-21.

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

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

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

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

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

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

122 (1) The broker procuring or placing the surplus line insurance has disclosed to the
 123 exempt commercial purchaser that such insurance may be available from the admitted
 124 market that may provide greater protection with more regulatory oversight; and

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

127 **SECTION 3.**

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

130 "33-5-25.

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

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

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

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

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

142 (ii) Fifteen million dollars;

143 The requirements of this subparagraph may be satisfied by an insurer that possesses less
 144 than the minimum capital and surplus upon an affirmative finding of acceptability by
 145 the Commissioner. The finding shall be based upon such factors as quality of
 146 management, capital and surplus of any parent company, company underwriting profit
 147 and investment income trends, market availability, and company record and reputation
 148 within the industry. In no event shall the Commissioner make an affirmative finding
 149 of acceptability when the unauthorized insurer's capital and surplus is less than
 150 \$4,500,000.00;

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

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

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

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

170 **SECTION 4.**

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

173 "33-5-31.

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

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

188 **SECTION 5.**

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

191 "33-5-32.

192 If any surplus line broker fails to file his or her quarterly affidavit or fails to remit the tax
193 as provided by law within 30 days after the tax is due, he or she shall be liable for a penalty
194 of either \$25.00 for each day of delinquency commencing after the expiration of the 30 day
195 period or an amount equal to 100 percent of the tax, whichever is less, except that for good
196 cause shown, the Commissioner may grant a reasonable extension of time within which the
197 affidavit may be filed and the tax may be paid. The tax may be recovered by distraint and
198 the penalty and tax may be recovered by an action instituted by the Commissioner in any
199 court of competent jurisdiction. The Commissioner shall pay to the Office of the State
200 Treasurer any penalty so collected."

201 **SECTION 6.**

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

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

216 **SECTION 7.**

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

219 "33-5-35.

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

- 223 (1) ~~Insurance on subjects located, resident, or to be performed wholly outside of this~~
 224 ~~state or on vehicles or aircraft owned and principally garaged outside this state;~~
 225 (2) Insurance on property or operation of railroads engaged in interstate commerce; or
 226 (3)(2) Insurance of aircraft owned or operated by manufacturers of aircraft or operated
 227 in scheduled interstate flight, or cargo of the aircraft, or against liability, other than
 228 workers' compensation and employer's liability, arising out of the ownership,
 229 maintenance, or use of the aircraft."

230 **SECTION 8.**

231 Said article is further amended by designating Code Sections 33-5-20 through 33-5-35 as
 232 Part 1 of said article and by adding a new part to read as follows:

233 "Part 2

234 33-5-40.

235 The General Assembly finds the federal Nonadmitted and Reinsurance Reform Act of
 236 2010, which was incorporated into the federal Dodd-Frank Wall Street Reform and
 237 Consumer Protection Act, P.L. 111-203, provides that only an insured's home state may

238 require premium tax payment for nonadmitted insurance and authorizes states to enter into
239 a compact or otherwise establish procedures to allocate among the states the nonadmitted
240 insurance premium taxes. The General Assembly further finds that as the states are still
241 in flux as to which proposed plan is best for them to enter, or if any agreement should be
242 entered into by the state, the Commissioner of Insurance is in a unique position to weigh
243 these options and to determine what is in the best interest of the state financially.
244 Therefore, the General Assembly acknowledges that some flexibility is necessary to
245 determine that the best financial interests of the state are met.

246 33-5-41.

247 The Governor, on behalf of the state, advised by and in consultation with the
248 Commissioner of Insurance, is authorized to enter into a cooperative agreement, compact,
249 or reciprocal agreement with another state or states for the purpose of the collection of
250 insurance premium taxes imposed by Code Section 33-5-31. In the event the Governor
251 enters into a cooperative agreement, compact, or reciprocal agreement with another state
252 or states as authorized under this part, notice of such action shall be communicated to the
253 chairperson of the House Committee on Insurance and the chairperson of the Senate
254 Insurance and Labor Committee.

255 33-5-42.

256 The cooperative agreement, compact, or reciprocal agreement for the purpose of the
257 collection of insurance premiums imposed by Code Section 33-5-31 shall substantially
258 follow the form of the model Surplus Lines Insurance Multi-State Compliance Compact,
259 also known as SLIMPACT-lite, created by the National Conference of Insurance
260 Legislators or the model Nonadmitted Insurance Multi-State Agreement, also known as
261 NIMA, created by the National Association of Insurance Commissioners, as such
262 documents exist on July 1, 2011.

263 33-5-43.

264 The Governor with the consultation and advice of the Commissioner shall select the
265 agreement, if any, that provides the best financial advantage to the state."

266 **SECTION 9.**

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