

SENATE SUBSTITUTE TO HB 413

AS PASSED SENATE

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 amend Code Section 33-23-10 of the Official Code of Georgia Annotated,
 13 relating to the examination of applicants, so as to provide that the Commissioner shall not
 14 exempt himself or herself from any written examinations set forth in the Code section; to
 15 amend Part 1 of Article 2 of Chapter 10 of Title 45 of the Official Code of Georgia
 16 Annotated, relating to general provisions for conflicts of interest, so as to prohibit public
 17 officials from granting themselves licenses by waiving certain requirements; to provide for
 18 penalties; to provide for renewal of such licenses; to amend Chapter 56 of Title 33 of the
 19 Official Code of Georgia Annotated, relating to risk-based capital levels, so as to require a
 20 trend test for property and casualty companies; to revise the definition of a company action
 21 level event; to change the definition of negative trend; to provide for related matters; to
 22 repeal conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

24 Article 2 of Chapter 5 of Title 33 of the Official Code of Georgia Annotated, relating to
 25 surplus line insurance, is amended by adding a new Code section to read as follows:
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27 "33-5-20.1.

28 As used in this article, the term:

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

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

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

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

37 (I) The person possesses a net worth in excess of \$20 million as such amount is
 38 adjusted pursuant to division (ii) of this subparagraph; or

39 (II) The person generates annual revenues in excess of \$50 million as such amount
 40 is adjusted pursuant to division (ii) of this subparagraph; or

41 (III) The person employs more than 500 full-time or full-time equivalent employees
 42 per individual insured or is a member of an affiliated group employing more than
 43 1,000 employees in the aggregate;

44 (IV) The person is a not for profit organization or public entity generating annual
 45 budgeted expenditures of at least \$30 million as such amount is adjusted pursuant
 46 to division (ii) of this subparagraph; or

47 (V) The person is a municipality with a population in excess of 50,000.

48 (ii) Effective on January 1, 2016, and every five years on January 1 thereafter, the
 49 amounts in subdivisions (I), (II), and (IV) of division (i) of this subparagraph shall be
 50 adjusted to reflect the percentage change for such five-year period in the Consumer
 51 Price Index for All Urban Consumers as reported by the Bureau of Labor Statistics
 52 of the United States Department of Labor.

53 (2) 'Home state' means:

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

56 (B) If 100 percent of the insured risk is located outside the state referred to in
 57 subparagraph (A) of this paragraph, the state to which the greatest percentage of the
 58 insured's taxable premium for that insurance contract is allocated.

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

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

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

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

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

74 (A) The person is an employee of, or third-party consultant retained by, the
75 commercial policyholder;

76 (B) The person provides skilled services in purchase of insurance and in loss
77 prevention, loss reduction, or risk and insurance coverage analysis;

78 (C) The person has a bachelor's degree or higher from an accredited college or
79 university in risk management, business administration, finance, economics, or any
80 other field determined by a state insurance commissioner or other state regulatory
81 official or entity to demonstrate minimum competence in risk management and:

82 (i) Has three years of experience in risk financing, claims administration, loss
83 prevention, risk and insurance analysis, or purchasing commercial lines of insurance;

84 (ii) Has a designation as a chartered property and casualty underwriter issued by the
85 American Institute for CPCU/Insurance Institute of America;

86 (iii) Has a designation as an associate in risk management issued by the American
87 Institute for CPCU/Insurance Institute of America;

88 (iv) Has a designation as certified risk manager issued by the National Alliance for
89 Insurance Education & Research;

90 (v) Has a designation as a RIMS Fellow issued by the Global Risk Management
91 Institute; or

92 (vi) Has any other designation, certification, or license determined by the
93 Commissioner to demonstrate minimum competency in risk management; and

94 (D) The person has:

95 (i) At least seven years of experience in risk financing, claims administration, loss
96 prevention, risk and insurance coverage analysis, or purchasing commercial lines of
97 insurance;

98 (ii) Any one of the designations specified in subparagraph (C) of this paragraph;

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

102 (iv) A graduate degree from an accredited college or university in risk management,
 103 business administration, finance, economics, or any other field determined by a state
 104 insurance commissioner or other state regulatory official or entity to demonstrate
 105 minimum competence in risk management.

106 (7) 'Surplus line insurance' means any property and casualty insurance permitted in a
 107 state to be placed through a surplus line broker with a nonadmitted insurer eligible to
 108 accept such insurance.

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

112 **SECTION 2.**

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

115 "33-5-21.

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

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

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

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

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

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

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

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

137 **SECTION 3.**

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

140 "33-5-25.

141 (a) The broker shall ascertain the financial condition of the unauthorized insurer before
 142 placing insurance with the unauthorized insurer and shall not place surplus line insurance
 143 with any insurer who does not meet, according to current available reliable financial
 144 information, the requirements provided in subsection (b) of this Code section.

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

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

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

152 (ii) Fifteen million dollars;

153 The requirements of this subparagraph may be satisfied by an insurer that possesses less
 154 than the minimum capital and surplus upon an affirmative finding of acceptability by
 155 the Commissioner. The finding shall be based upon such factors as quality of
 156 management, capital and surplus of any parent company, company underwriting profit
 157 and investment income trends, market availability, and company record and reputation
 158 within the industry. In no event shall the Commissioner make an affirmative finding
 159 of acceptability when the unauthorized insurer's capital and surplus is less than
 160 \$4,500,000.00;

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

169 (C) With ~~any~~ an alien insurer or group of ~~alien~~ underwriters domiciled outside of the
 170 United States, including, but not limited to, any Lloyd's group, ~~that is on an approved~~

171 ~~list maintained by the Commissioner that is listed in the Quarterly Listing of Alien~~
 172 ~~Insurers maintained by the International Insurers Department of the National~~
 173 ~~Association of Insurance Commissioners.~~

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

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

180 SECTION 4.

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

183 "33-5-31.

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

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

198 SECTION 5.

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

201 "33-5-32.

202 If any surplus line broker fails to file his or her quarterly affidavit or fails to remit the tax
 203 as provided by law within 30 days after the tax is due, he or she shall be liable for a penalty
 204 of either \$25.00 for each day of delinquency commencing after the expiration of the 30 day
 205 period or an amount equal to 100 percent of the tax, whichever is less, except that for good

206 cause shown, the Commissioner may grant a reasonable extension of time within which the
 207 affidavit may be filed and the tax may be paid. The tax may be recovered by distraint and
 208 the penalty and tax may be recovered by an action instituted by the Commissioner in any
 209 court of competent jurisdiction. The Commissioner shall pay to the Office of the State
 210 Treasurer any penalty so collected."

211 **SECTION 6.**

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

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

226 **SECTION 7.**

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

229 "33-5-35.

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

- 233 (1) ~~Insurance on subjects located, resident, or to be performed wholly outside of this~~
 234 ~~state or on vehicles or aircraft owned and principally garaged outside this state;~~
 235 (2) Insurance on property or operation of railroads engaged in interstate commerce; or
 236 (3)(2) Insurance of aircraft owned or operated by manufacturers of aircraft or operated
 237 in scheduled interstate flight, or cargo of the aircraft, or against liability, other than
 238 workers' compensation and employer's liability, arising out of the ownership,
 239 maintenance, or use of the aircraft."

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SECTION 8.

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Said article is further amended by designating Code Sections 33-5-20 through 33-5-35 as

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Part 1 of said article and by adding a new part to read as follows:

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"Part 2

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33-5-40.

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The General Assembly finds the federal Nonadmitted and Reinsurance Reform Act of

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2010, which was incorporated into the federal Dodd-Frank Wall Street Reform and

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Consumer Protection Act, P.L. 111-203, provides that only an insured's home state may

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require premium tax payment for nonadmitted insurance and authorizes states to enter into

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a compact or otherwise establish procedures to allocate among the states the nonadmitted

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insurance premium taxes. The General Assembly further finds that as the states are still

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in flux as to which proposed plan is best for them to enter, or if any agreement should be

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entered into by the state, the Commissioner of Insurance is in a unique position to weigh

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these options and to determine what is in the best interest of the state financially.

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Therefore, the General Assembly acknowledges that some flexibility is necessary to

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determine that the best financial interests of the state are met.

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33-5-41.

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The Governor, on behalf of the state, advised by and in consultation with the

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Commissioner of Insurance, is authorized to enter into a cooperative agreement, compact,

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or reciprocal agreement with another state or states for the purpose of the collection of

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insurance premium taxes imposed by Code Section 33-5-31.

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33-5-42.

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The cooperative agreement, compact, or reciprocal agreement for the purpose of the

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collection of insurance premiums imposed by Code Section 33-5-31 shall substantially

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follow the form of the model Surplus Lines Insurance Multi-State Compliance Compact,

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also known as SLIMPACT-lite, created by the National Conference of Insurance

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Legislators or the model Nonadmitted Insurance Multi-State Agreement, also known as

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NIMA, created by the National Association of Insurance Commissioners, as such

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documents exist on July 1, 2011.

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33-5-43.

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The Governor with the consultation and advice of the Commissioner shall select the

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agreement, if any, that provides the best financial advantage to the state. In determining

272 which agreement, if any, provides the best financial advantage to the state, the Governor
 273 with the consultation and advice of the Commissioner shall consider the impact on the
 274 state's gross receipt of premium tax, the potential additional administrative burden to the
 275 state and surplus line brokers procuring or placing surplus line insurance under this chapter,
 276 and such other criteria as determined by the Governor with the consultation and advice of
 277 the Commissioner.

278 33-5-44.

279 In the event the Governor enters into a cooperative agreement, compact, or reciprocal
 280 agreement with another state or states as authorized under this part, notice of such action
 281 shall be communicated to the chairperson of the House Committee on Insurance and the
 282 chairperson of the Senate Insurance and Labor Committee. The Commissioner shall
 283 thereafter annually issue a report to such committees that assesses whether, in his or her
 284 opinion, the agreement continues to be in the best financial interest of the state."

285 **SECTION 9.**

286 Code Section 33-23-10 of the Official Code of Georgia Annotated, relating to the
 287 examination of applicants, is revised as follows:

288 "33-23-10.

289 (a) Each individual applicant for a license as agent, limited subagent, counselor, adjuster,
 290 or surplus line broker shall submit to a personal examination in writing as to his or her
 291 competence to act in such capacity. The examination shall be prepared and given by the
 292 Commissioner or a designee of the Commissioner and shall be given and graded in a fair
 293 and impartial manner and without unfair discrimination as between individuals examined.
 294 Any required examination may be supplemented by an oral examination at the discretion
 295 of the Commissioner. The Commissioner shall provide by rule or regulation for a
 296 reasonable waiting period before giving a reexamination to an applicant who failed to pass
 297 a previous similar examination.

298 (b) The Commissioner shall by rule or regulation establish criteria and procedures for:

299 (1) The scope of any examination; and

300 (2) Exemptions, if any, to examinations; provided that the Commissioner shall not,
 301 under any circumstances, exempt himself or herself from any written examination
 302 requirements set forth in this Code section.

303 (c) An applicant for a license to act as an agent, limited subagent, surplus line broker,
 304 counselor, or adjuster who held a valid license to act as such which lapsed while the
 305 applicant was a member of any branch of the armed forces of the United States shall be
 306 granted a new license if application is made within a period of five years from the date of

307 the expiration of the old license and proof satisfactory to the Commissioner is furnished
308 that:

309 (1) The individual was a member of the armed forces of the United States at the time the
310 previous license lapsed; and

311 (2) The individual's service in the armed forces of the United States was not terminated
312 more than one year prior to the date of application for a new license."

313 **SECTION 10.**

314 Part 1 of Article 2 of Chapter 10 of Title 45 of the Official Code of Georgia Annotated,
315 relating to general provisions for conflicts of interest, is amended by revising subsection (a)
316 of Code Section 45-10-28, relating to penalties for violation of the part, as follows:

317 "(a)(1) Any appointed public official or employee who violates Code Section 45-10-22,
318 45-10-23, 45-10-24, ~~or 45-10-26,~~ or 45-10-29 shall be subject to:

319 (A) Removal from office or employment;

320 (B) A civil fine not to exceed \$10,000.00; and

321 (C) Restitution to the state of any pecuniary benefit received as a result of such
322 violation.

323 (2) Any elected public official who violates Code Section 45-10-22, 45-10-23, 45-10-24,
324 ~~or 45-10-26,~~ or 45-10-29 shall be subject to:

325 (A) A civil fine not to exceed \$10,000.00; and

326 (B) Restitution to the state of any pecuniary benefit received as a result of such
327 violation.

328 (3) Any business which violates Code Section 45-10-22, 45-10-23, 45-10-24, ~~or~~
329 45-10-26, or 45-10-29 shall be subject to:

330 (A) A civil fine not to exceed \$10,000.00; and

331 (B) Restitution to the state of any pecuniary benefit received as a result of such
332 violation."

333 **SECTION 11.**

334 Said part is further amended by adding a new Code section to read as follows:

335 "45-10-29.

336 (a) Notwithstanding any law, rule, or regulation to the contrary, a public official shall not
337 be authorized to waive any legal, educational, or testing requirement for himself or herself
338 relative to the issuance of any license to himself, herself, or to his or her business.

339 (b) Any license that has been issued by a public official by waiving any legal, educational,
340 or testing requirement for himself or herself relative to the issuance of any license to
341 himself, herself, or to his or her business shall not be renewed until and unless the license

342 holder has satisfied all of the requirements for securing a renewal license as well as any
 343 requirement that had been waived for the issuance of the original license.
 344 (c) Any person who knowingly violates subsection (a) or (b) of this Code section shall be
 345 subject to the penalties provided for in Code Section 45-10-28."

346 **SECTION 12.**

347 Chapter 56 of Title 33 of the Official Code of Georgia Annotated, relating to risk-based
 348 capital levels, is amended by revising paragraph (7) of Code Section 33-56-1, relating to
 349 definitions, as follows:

350 "(7) 'Negative trend' means, with respect to a life and health insurer, a negative trend over
 351 a period of time, as determined in accordance with the trend test calculation included in
 352 the life RBC instructions."

353 **SECTION 13.**

354 Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section
 355 33-56-3, relating to the definition of a company action level event, as follows:

356 "(1) The filing of an RBC report by an insurer which indicates that:

357 (A) The insurer's total adjusted capital is greater than or equal to its regulatory action
 358 level RBC but less than its company action level RBC; ~~or~~

359 (B) If a life and health insurer, the insurer has total adjusted capital which is greater
 360 than or equal to its company action level RBC but less than the product of its authorized
 361 control level RBC and 2.5 and has a negative trend; or

362 (C) If a property and casualty insurer, the insurer has total adjusted capital which is
 363 greater than or equal to its company action level RBC but less than the product of its
 364 authorized control level RBC and 3.0 and triggers the trend test determined in
 365 accordance with the trend test calculation included in the property and casualty RBC
 366 instructions;"

367 **SECTION 14.**

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