

House Bill 883 (COMMITTEE SUBSTITUTE)

By: Representatives Taylor of the 173rd, Smith of the 134th, Atwood of the 179th, Meadows of the 5th, Brockway of the 102nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 37 of Title 33 of the Official Code of Georgia Annotated, relating to
2 insurers rehabilitation and liquidation, so as to change certain provisions relating to insurers
3 rehabilitation and liquidation; to change provisions related to reciprocal states and
4 domiciliary liquidators; to provide for the Commissioner to transfer title under his or her
5 control to a domiciliary liquidator; to modify certain provisions relating to the rights of
6 nonresident claimants in proceedings against domiciliary insurers; to change certain
7 provisions relating to the rights of resident claimants in proceedings in other states against
8 nondomiciliary insurers; to remove the use of reciprocal in superiority of order of distribution
9 in liquidation proceedings; to provide for related matters; to repeal conflicting laws; and for
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Chapter 37 of Title 33 of the Official Code of Georgia Annotated, relating to insurers
14 rehabilitation and liquidation, is amended by revising Code Section 33-37-3, relating to
15 definitions, as follows:

16 "33-37-3.

17 As used in this chapter, the term:

18 (1) 'Ancillary state' means any state other than a domiciliary state.

19 (2) 'Commissioner' means the Commissioner of Insurance.

20 (3) 'Creditor' means a person having any claim, whether matured or unmatured,
21 liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

22 (4) 'Delinquency proceeding' means any proceeding instituted against an insurer for the
23 purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any
24 summary proceeding under Code Section 33-37-9. 'Formal delinquency proceeding'
25 means any liquidation or rehabilitation proceeding.

- 26 (5) 'Doing business' includes any of the following acts, whether effected by mail or
27 otherwise:
- 28 (A) The issuance or delivery of contracts of insurance to persons resident in this state;
29 (B) The solicitation of applications for such contracts or other negotiations preliminary
30 to the execution of such contracts;
31 (C) The collection of premiums, membership fees, assessments, or other consideration
32 for such contracts;
33 (D) The transaction of matters subsequent to execution of such contracts and arising
34 out of them; or
35 (E) Operating under a license or certificate of authority, as an insurer, issued by the
36 Insurance Department.
- 37 (6) 'Domiciliary state' means the state in which an insurer is incorporated or organized;
38 or, in the case of an alien insurer, its state of entry.
- 39 (7) 'Fair consideration' means:
- 40 (A) When in exchange for property or obligation as a fair equivalent therefor and in
41 good faith, property is conveyed, services are rendered, an obligation is incurred, or an
42 antecedent debt is satisfied; or
43 (B) When property or obligation is received in good faith to secure a present advance
44 or antecedent, debt in amount not disproportionately small as compared to the value of
45 the property or obligation obtained.
- 46 (7.1) 'Federal home loan bank' means a federal home loan bank established under the
47 federal Home Loan Bank Act, 12 U.S.C. Section 1421, et seq.
- 48 (8) 'Foreign country' means any other jurisdiction not in any state.
- 49 (9) 'General assets' means all property, real, personal, or otherwise, not specifically
50 mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of
51 specified persons or classes of persons. As to specifically encumbered property, 'general
52 assets' includes all such property or its proceeds in excess of the amount necessary to
53 discharge the sum or sums secured thereby. Assets held in trust and on deposit for the
54 security or benefit of all policyholders or all policyholders and creditors in more than a
55 single state shall be treated as general assets.
- 56 (10) 'Guaranty association' means the Georgia Insurers Insolvency Pool created by
57 Chapter 36 of this title, the Georgia Life and Health Insurance Guaranty Association
58 created by Chapter 38 of this title, and any other similar entity now or hereafter created
59 by the General Assembly for the payment of claims of insolvent insurers. 'Foreign
60 guaranty association' means any similar entities now in existence in or hereafter created
61 by the legislature of any other state.
- 62 (11) 'Insolvency' or 'insolvent' means:

- 63 (A) For an insurer issuing only assessable fire insurance policies:
- 64 (i) The inability to pay any obligation within 30 days after it becomes payable; or
- 65 (ii) If an assessment is made within 30 days after an obligation becomes payable, the
- 66 inability to pay such obligation 30 days following the date specified in the first
- 67 assessment notice issued after the date of loss;
- 68 (B) For any other insurer, the inability to pay its obligations when they are due, or
- 69 when its admitted assets do not exceed its liabilities plus the greater of:
- 70 (i) Any capital and surplus required by law for its organization; or
- 71 (ii) The total par or stated value of its authorized and issued capital stock; and
- 72 (C) As to any insurer licensed to do business in this state as of July 1, 1991, which does
- 73 not meet the standard established under subparagraph (B) of this paragraph, for a period
- 74 not to exceed three years from July 1, 1991, the inability to pay its obligations when
- 75 they are due or that its admitted assets do not exceed its liabilities plus any required
- 76 capital contribution ordered by the Commissioner under provisions of this title.
- 77 For purposes of this paragraph, 'liabilities' shall include, but not be limited to, reserves
- 78 required by statute or by regulations or specific requirements imposed by the
- 79 Commissioner upon a subject company at the time of admission or subsequent thereto.
- 80 (12) 'Insurer' means any person who has done, purports to do, is doing, or is licensed to
- 81 do an insurance business and is or has been subject to liquidation, rehabilitation,
- 82 reorganization, supervision, the authority of, or conservation by any state insurance
- 83 regulatory official. For purposes of this chapter, any other persons included under Code
- 84 Section 33-37-2 shall be deemed to be insurers.
- 85 (12.1) 'Insurer-member' means an insurer who is a member of a federal home loan bank.
- 86 (13) 'Preferred claim' means any claim with respect to which the terms of this chapter
- 87 accord priority of payment from the general assets of the insurer.
- 88 (14) 'Receiver' means receiver, liquidator, rehabilitator, or conservator as the context
- 89 requires.
- 90 ~~(15) 'Reciprocal state' means any state other than this state in which in substance and~~
- 91 ~~effect Code Sections 33-37-17, 33-37-51, 33-37-52, and 33-37-54 through 33-37-56 are~~
- 92 ~~in force, and in which provisions are in force requiring that the Commissioner or~~
- 93 ~~equivalent official be the receiver of a delinquent insurer, and in which some provision~~
- 94 ~~exists for the avoidance of fraudulent conveyances and preferential transfers:~~
- 95 ~~(16)~~(15) 'Secured claim' means any claim secured by mortgage, trust deed, pledge,
- 96 deposit as security, escrow, or otherwise, but not including special deposit claims or
- 97 claims against general assets. The term also includes claims which have become liens
- 98 upon specific assets by reason of judicial process.

99 ~~(17)~~(16) 'Special deposit claim' means any claim secured by a deposit made pursuant to
 100 statute for the security or benefit of a limited class or classes of persons, but not including
 101 any claim secured by general assets.

102 ~~(18)~~(17) 'State' means any state, district, or territory of the United States.

103 ~~(19)~~(18) 'Transfer' shall include the sale and every other and different mode, direct or
 104 indirect, of disposing of or of parting with property, an interest therein, the possession
 105 thereof or of fixing a lien upon property or upon an interest therein, whether absolutely
 106 or conditionally, voluntarily, or by or without judicial proceedings. The retention of a
 107 security title to property delivered to a debtor shall be deemed a transfer suffered by the
 108 debtor."

109 SECTION 2.

110 Said chapter is further amended in Code Section 33-37-50, relating to commissioner
 111 appointed as liquidator of foreign or alien insurer's assets and grounds, by revising
 112 subsection (d) as follows:

113 "(d) If a domiciliary liquidator is appointed in a ~~reciprocal~~ another state while a liquidation
 114 is proceeding under this Code section, the liquidator under this Code section shall
 115 thereafter act as ancillary receiver under Code Section 33-37-52. ~~If a domiciliary liquidator~~
 116 ~~is appointed in a nonreciprocal state while a liquidation is proceeding under this Code~~
 117 ~~section, the liquidator under this Code section may petition the court for permission to act~~
 118 ~~as ancillary receiver under Code Section 33-37-52."~~

119 SECTION 3.

120 Said chapter is further amended by revising Code Section 33-37-51, relating to title to
 121 property of insurer domiciled in reciprocal or nonreciprocal state, date of vesting in
 122 domiciliary liquidator or Commissioner, rights of resident claimants, as follows:

123 "33-37-51.

124 (a) The domiciliary liquidator of an insurer domiciled in a ~~reciprocal~~ another state shall,
 125 except as to special deposits and security on secured claims under subsection (c) of Code
 126 Section 33-37-52, be vested by operation of law with the title to all of the assets, property,
 127 contracts and rights of action, agents' balances, and all of the books, accounts, and other
 128 records of the insurer located in this state. The date of vesting shall be the date of the filing
 129 of the petition, if that date is specified by the domiciliary law for the vesting of property
 130 in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order
 131 directing possession to be taken. The domiciliary liquidator shall have the immediate right
 132 to recover balances due from agents and to obtain possession of the books, accounts, and
 133 other records of the insurer located in this state. He or she also shall have the right to

134 recover all other assets of the insurer located in this state, subject to the provisions of Code
135 Section 33-37-52.

136 ~~(b) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal
137 state, the Commissioner of this state shall be vested by operation of law with the title to all
138 of the property, contracts, and right of action and all of the books, accounts, and other
139 records of the insurer located in this state at the same time that the domiciliary liquidator
140 is vested with title in the domicile. The Commissioner may petition for a conservation or
141 liquidation order under Code Section 33-37-49 or 33-37-50 or for an ancillary receivership
142 under Code Section 33-37-52 or after approval by the superior court may transfer title to
143 the domiciliary liquidator as the interests of justice and the equitable distribution of the
144 assets require.~~

145 ~~(c)~~(b) Claimants residing in this state may file claims with the liquidator or ancillary
146 receiver, if any, in this state or with the domiciliary liquidator if the domiciliary law
147 permits. The claims must be filed on or before the last date fixed for the filing of claims in
148 the domiciliary liquidation proceedings."

149 **SECTION 4.**

150 Said chapter is further amended by revising Code Section 33-37-52, relating to commissioner
151 as ancillary receiver for insurer not domiciled in this state, as follows:

152 "33-37-52.

153 (a) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state,
154 the Commissioner may file a petition with the superior court requesting appointment as
155 ancillary receiver in this state:

156 (1) If he or she finds that there are sufficient assets of the insurer located in this state to
157 justify the appointment of an ancillary receiver; or

158 (2) If the protection of creditors or policyholders in this state so requires.

159 (b) The court may issue an order appointing an ancillary receiver in whatever terms it shall
160 deem appropriate. The filing or recording of the order with the appropriate clerk of the
161 superior court in this state imparts the same notice as a deed, bill of sale, or other evidence
162 of title duly filed or recorded with the clerk.

163 (c) When a domiciliary liquidator has been appointed in a ~~reciprocal~~ another state, then the
164 ancillary receiver appointed in this state may, whenever necessary, aid and assist the
165 domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary
166 receiver shall, as soon as practicable, liquidate from their respective securities those special
167 deposit claims and secured claims which are proved and allowed in the ancillary
168 proceedings in this state and shall pay the necessary expenses of the proceedings. He or she
169 shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary

170 liquidator or his or her designee, at the direction of the domiciliary liquidator. Subject to
 171 this Code section, the ancillary receiver and his or her deputies shall have the same powers
 172 and be subject to the same duties with respect to the administration of assets as a liquidator
 173 of an insurer domiciled in this state.

174 (d) When a domiciliary liquidator has been appointed in this state, ancillary receivers
 175 appointed in ~~reciprocal~~ other states shall have, as to assets and books, accounts, and other
 176 records in their respective states, corresponding rights, duties, and powers to those provided
 177 in subsection (c) of this Code section for ancillary receivers appointed in this state.

178 (e) If the Commissioner elects not to file a petition with the superior court requesting
 179 appointment as ancillary receiver in this state pursuant to subsection (a) of this Code
 180 section, the Commissioner may, notwithstanding the provisions of Code Sections 33-3-8
 181 through 33-3-10 and Code Sections 33-12-8 and 33-12-9, transfer title and possession of
 182 all special deposits under his or her control to the domiciliary liquidator or his or her
 183 designee, at the direction of the domiciliary liquidator. Prior to transferring title and
 184 possession of such special deposits, the Commissioner may require the domiciliary
 185 liquidator to agree, in writing, to handle such deposits and special deposit claims in
 186 accordance with the statutes pursuant to which the special deposits were required and to
 187 any other requirements deemed necessary by the Commissioner."

188 SECTION 5.

189 Said chapter is further amended by revising Code Section 33-37-54, relating to rights of
 190 nonresident claimants in proceeding against domiciliary insurer, as follows:

191 "33-37-54.

192 (a) In a liquidation proceeding begun in this state against an insurer domiciled in this state,
 193 claimants residing in foreign countries or in other states ~~not reciprocal states~~ where an
 194 ancillary receiver has not been appointed must file claims in this state, and claimants
 195 residing in ~~reciprocal~~ other states where an ancillary receiver has been appointed may file
 196 claims either with the ancillary receivers, ~~if any,~~ in their respective states or with the
 197 domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing
 198 of claims in the domiciliary liquidation proceeding.

199 (b) Claims belonging to claimants residing in ~~reciprocal~~ other states where an ancillary
 200 receiver has been appointed may be proved either in the liquidation proceeding in this state
 201 as provided in this chapter or in ancillary proceedings, ~~if any,~~ in the ~~reciprocal~~ other states.
 202 If notice of the claims and opportunity to appear and be heard is afforded the domiciliary
 203 liquidator of this state as provided in subsection (b) of Code Section 33-37-55 with respect
 204 to ancillary proceedings, the final allowance of claims by the courts in ancillary
 205 proceedings in ~~reciprocal~~ other states shall be conclusive as to amount and as to priority

206 against special deposits or other security located in such ancillary states, but shall not be
207 conclusive with respect to priorities against general assets under Code Section 33-37-41."

208 **SECTION 6.**

209 Said chapter is further amended by revising Code Section 33-37-55, relating to rights of
210 resident claimants in proceeding in reciprocal state against nondomiciliary insurer, as
211 follows:

212 "33-37-55.

213 (a) In a liquidation proceeding in a ~~reciprocal~~ another state against an insurer domiciled
214 in that state, claimants against the insurer who reside within this state may file claims either
215 with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims
216 must be filed on or before the last dates fixed for the filing of claims in the domiciliary
217 liquidation proceeding.

218 (b) Claims belonging to claimants residing in this state may be proved either in the
219 domiciliary state under the law of that state or in ancillary proceedings, if any, in this state.
220 If a claimant elects to prove his or her claim in this state, he or she shall file ~~his~~ such claim
221 with the ~~liquidator~~ ancillary receiver in the manner provided in Code Sections 33-37-34
222 and 33-37-35. The ancillary receiver shall make his or her recommendation to the court as
223 under Code Section 33-37-42. He or she shall also arrange a date for hearing if necessary
224 under Code Section 33-37-38 and shall give notice to the liquidator in the domiciliary state,
225 either by certified mail or statutory overnight delivery or by personal service at least 40
226 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the
227 giving of such notice, gives notice in writing to the ancillary receiver and to the claimant,
228 either by certified mail or statutory overnight delivery or by personal service, of his or her
229 intention to contest the claim, he or she shall be entitled to appear or to be represented in
230 any proceeding in this state involving the adjudication of the claim.

231 ~~The~~ If a claimant files a claim in this state with the ancillary receiver, the final
232 allowance of the claim by the courts of this state shall be accepted as conclusive as to
233 amount and as to priority against special deposits or other security located in this state."

234 **SECTION 7.**

235 Said chapter is further amended in Code Section 33-37-57, relating to superiority of order
236 of distribution issued by domiciliary state, priority of payment and claims, and rights of
237 secured creditors, by revising subsection (a) as follows:

238 "(a) In a liquidation proceeding in this state involving one or more ~~reciprocal~~ other states,
239 the order of distribution of the domiciliary state shall control as to all claims of residents
240 of this and ~~reciprocal~~ other states. All claims of residents of ~~reciprocal~~ other states shall

241 be given equal priority of payment from general assets regardless of where such assets are
242 located."

243 **SECTION 8.**

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