SENATE SUBSTITUTE TO HB 407

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to authorize the Commissioner to place administrators on probation and to provide penalties against administrators for certain violations; to permit insurers to provide food or refreshments under certain circumstances to current or prospective clients during sales presentations and seminars provided that no insurance or annuity applications or contracts are offered or accepted at such presentations or seminars; to provide for certain additional regulations of nonresident representatives who represent life insurers in certain military installations; to provide certain definitions; to provide for certain disclosures by counselors; to provide for certain exceptions; to provide for certain licensing for third party administrators; to provide certain procedures and standards for approval or rejection of such licenses; to provide for probationary licenses; to provide for certain bonds and insurance for administrators; to require administrators to be subject to certain examinations; to revise the provisions of law concerning the Georgia Insurers Insolvency Pool; to provide for certain definitions; to provide for the selection of members of the Insurers Solvency Board; to revise the provisions of law regarding meetings, reports, and recommendations of the board; to authorize the pool to intervene in certain legal actions; to provide for the adoption of a plan for ensuring that all insurers are pool members; to provide for the contents of such plan; to provide for certain causes of action by the pool; to provide for venue; to remove assessments as a rate factor; to provide for recoupment of assessments; to provide for disposition of surplus funds; to provide for certain powers of the pool in the case of liquidations; to provide for certain presumptions when insureds do not provide certain information; to provide for the handling of covered claims; to provide for certain rights of recovery by the pool; to make certain reports and recommendations to aid in the detection and prevention of insolvencies; to provide for certain immunity; to provide for applicability; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by striking subsection (g) of Code Section 33-2-24, relating to enforcement of title and rules, regulations, and orders, and inserting in lieu thereof a new subsection (g) to read as follows:

"(g) In addition to all other penalties provided for under this title, the Commissioner shall have the authority to place any insurer, agent, broker, counselor, solicitor, administrator, or adjuster on probation for a period of time not to exceed one year for each and every act in violation of this title or of the rules and regulations or orders of the Commissioner and may subject such insurer, agent, broker, counselor, solicitor, administrator, or adjuster to a monetary penalty of up to $1,000.00 for each and every act in violation of this title or of the rules, regulations, or orders of the Commissioner, unless the insurer, agent, broker, counselor, solicitor, administrator, or adjuster knew or reasonably should have known he was in violation of this title or of the rules and regulations or orders of the Commissioner, in which case the monetary penalty provided for in this subsection may be increased to an amount up to $5,000.00 for each and every act in violation."

SECTION 2.

Said title is further amended by striking subparagraph (b)(8)(C) of Code Section 33-6-4, relating to unfair methods of competition and unfair or deceptive acts or practices, and inserting in lieu thereof a new subparagraph (b)(8)(C) to read as follows:

"(C) Nothing in subparagraphs (A) and (B) of this paragraph shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interest of the company and its policyholders;

(ii) In the case of life or accident and sickness insurance policies issued on the industrial debit or weekly premium plan, making allowance in an amount which fairly represents the saving in collection expense to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer;

(iii) Making a readjustment of the rate of premium for a policy based on the loss or expense experienced at the end of the first or any subsequent policy year of insurance thereunder, which adjustment may be made retroactive only for the policy year;

(iv) Issuing life or accident and sickness insurance policies covering bona fide employees of the insurer at a rate less than the rate charged other persons in the same class;

(v) Issuing life or accident and sickness policies on a salary-saving, payroll deduction, preauthorized, postdated, automatic check, or draft plan at a reduced rate commensurate with the savings made by the use of such plan;

(vi) Paying commissions or other compensation to duly licensed agents or brokers or allowing or returning dividends, savings, or unabsorbed premium deposits to participating policyholders, members, or subscribers;

(vii) Paying by an insurance agent of part or all of the commissions on public insurance to a nonprofit association of insurance agents which is affiliated with a recognized state or national insurance agents´ association, which commissions are to be used in whole or in part for one or more civic enterprises; or

(viii) Paying for food or refreshments by an insurer or an agent, broker, or employee of an insurer for current or prospective clients during sales presentations and seminars provided that no insurance or annuity applications or contracts are offered or accepted at such presentations or seminars;".

SECTION 3.

Said title is further amended by adding a new subsection (e) to Code Section 33-9-36, relating to unauthorized premiums and unauthorized inducements, to read as follows:

"(e) Nothing in this Code section shall be construed as prohibiting the payment for food or refreshments by an insurer or an agent, broker, or employee of an insurer for current or prospective clients during sales presentations and seminars provided that no insurance or annuity applications or contracts are offered or accepted at such presentations or seminars."

SECTION 4.

Said title is further amended by striking Code Section 33-23-17, relating to registration of nonresident representatives to represent life insurers in military installations in foreign countries, and inserting in lieu thereof a new Code Section 33-23-17 to read as follows:

″33-23-17.

An individual who is not a resident of this state may be registered to represent an authorized life insurer domiciled in this state, provided such individual only represents the insurer exclusively at a United States military installation located in a foreign country. The Commissioner may, upon request of the insurer on application forms prescribed by the department and upon payment of an annual registration fee of $25.00, issue a certificate of

registration to the individual. An official of the insurer shall certify to the Commissioner that the applicant has the necessary training to hold himself or herself out as a foreign life or accident and sickness insurance representative; and the official of the insurer shall further certify on behalf of his or her insurer that it is willing to be bound by the acts of such applicant within the scope of his or her employment and that such applicant has not had his or her privileges to solicit on or enter any United States military installation revoked, suspended, or restricted in any manner. Such certificate shall expire as of December 31 succeeding the date of its issuance unless it is terminated at an earlier time in accordance with this chapter and Chapter 2 of this title."

SECTION 5.

Said title is further amended by striking paragraphs (1), (14), (20), and (21) of Code Section 33-23-21, relating to grounds for refusal, suspension, or revocation of license, and inserting in lieu thereof new paragraphs (1), (14), (20), (21), (22), and (23) to read as follows:

"(1) Has violated any provision of this title, ~~or~~ of any other law or regulation of this state relating to insurance, or the law or regulation of any jurisdiction, including those of a military installation, relating to the transaction of insurance;"

"(14) Has failed ~~to comply~~ to provide documentation or records, or refused to appear:

(A) In compliance with Code Section 33-2-12 or 33-2-13; ~~or has refused to appear or to produce records in~~

(B) In response to a written demand by the Commissioner sent by registered or certified mail or statutory overnight delivery to the last known address of the licensee as shown in the records of the Commissioner; or

(C) In support of an application for license or renewal of license upon request by the department or as otherwise required by the application or renewal;"

"(20) Is not in compliance with an order for child support as defined by Code Section 19-6-28.1 or 19-11-9.3; for violations of this paragraph only, any hearing and appeal procedures conducted pursuant to such Code sections shall be the only such procedures required to suspend, deny, or revoke any license under this title; ~~or~~

(21) Is a borrower in default who is not in satisfactory repayment status as defined by Code Section 20-3-295; for violations of this paragraph only, any hearing and appeal procedures conducted pursuant to Code Section 20-3-295 shall be the only such procedures required to suspend, deny, or revoke any license under this title;

(22) In relation to the licensee´s ability to transact the business of insurance, has had a license, permit, authorization, registration, or privilege refused, revoked, suspended, limited, or restricted by any federal, state, county, municipality, territory, military, or other legal authority authorized to issue licenses, permits, authorizations, registrations,

or privileges to conduct business within its respective jurisdiction; otherwise has failed to comply with the legal requirements related to the license, permit, authorization, registration, or privilege; or has had other disciplinary action taken against him or her by any such lawful authority; or

(23) Has failed to report to the department within 60 days of the action taken, any refusal, revocation, suspension, limitation, or restriction of any license, permit, authorization, registration, or privilege of any lawful authority referenced in subsections (18) or (22) of this Code section.″

SECTION 6.

Said title is further amended by adding a new Code Section 33-23-46 to read as follows:

″33-23-46.

(a) For purposes of this Code section, the term:

(1) 'Affiliate' means a person that controls, is controlled by, or is under common control with the producer.

(2) 'Compensation from an insurer or other third party' means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration, whether or not payable pursuant to a written agreement, but shall not mean de minimis gifts of less than $45.00 in value.

(3) 'Compensation from the customer' shall not include:

(A) Any fee or similar expense provided in subparagraph (C) of paragraph (6) of Code Section 33-6-5;

(B) Any amount or fee paid by or to the producer that does not exceed an amount established by the Commissioner; or

(C) A premium or fee billed by the producer solely on behalf of an insurer.

(4) 'Documented acknowledgment' means the customer´s written consent obtained prior to the customer´s initial purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot reasonably be obtained, consent documented by the producer shall be acceptable.

(b)(1) Where any insurance producer licensed as counselor, as defined by this chapter, or any affiliate of such producer receives any compensation from or charges any other fee to the customer, neither that producer nor the affiliate shall accept or receive any compensation from an insurer or other third party for placement of insurance for that customer unless the producer has, prior to the customer´s purchase of insurance:

(A) Obtained the customer´s documented acknowledgment that such compensation will be received by the producer or affiliate; and

(B) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the producer shall disclose in readable language the method for calculating such compensation and, if possible, a reasonable estimate of the amount.

(2) Notwithstanding paragraph (1) of this subsection, an insurance producer who is not licensed as a counselor, as defined in this chapter, may not accept or receive any compensation from the customer for placement of insurance.

(c) A person shall not be considered a 'customer' for purposes of this Code section if the person is merely:

(1) A participant or beneficiary of an employee benefit plan; or

(2) Covered by a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by the insurance producer or affiliate.

(d) This Code section shall not apply to:

(1) A person licensed as an insurance producer who acts only as an intermediary between an insurer and the producer, such as a managing general agent, a sales manager, or wholesale broker;

(2) A reinsurance intermediary;

(3) The renewal or any other continuation of the policy; or

(4) A producer whose sole compensation for the placement is derived from commissions, salaries, and other remuneration from the insurer.

(e) The Commissioner may promulgate rules and regulations as necessary to implement the provisions of this chapter.″

SECTION 7.

Said title is further amended by striking Code Section 33-23-100, relating to definition of administrator, and inserting in lieu thereof a new Code Section 33-23-100 to read as follows:

″33-23-100.

(a) As used in this article, the term: ~~'administrator'~~

(1) 'Administrator' means any ~~person who~~ business entity that, directly or indirectly, collects charges, fees, or premiums from~~,~~; ~~or who~~ adjusts or settles claims ~~on~~, including investigating or examining claims or receiving, disbursing, handling, or otherwise being responsible for claim funds; and provides underwriting or precertification and preauthorization of hospitalizations or medical treatments for residents of this state for or on behalf of any insurer, including business entities that act on behalf of multiple employer self-insurance health plans, and self-insured municipalities or other political subdivisions. ~~in connection with life or accident and sickness insurance coverage or annuities; self-insured plans providing health, dental, or short-term disability benefits;~~

~~and~~ Licensure is also required for administrators who act on behalf of self-insured plans providing workers´ compensation benefits pursuant to Chapter 9 of Title 34 ~~other than any of the following entities~~. For purposes of this article, each activity undertaken by the administrator on behalf of an insurer or the client of the administrator is considered a transaction and is subject to the provisions of this title.

(2) 'Business entity' means a corporation, association, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity.

(b) Notwithstanding the provisions of subsection (a) of this Code section, the following are exempt from licensure as long as such entities are acting directly through their officers and employees:

(1) An employer on behalf of its employees or the employees of one or more subsidiary or affiliated corporations of such employer;

(2) A union on behalf of its members;

(3) An insurance company licensed in this state or its affiliate unless the affiliate administrator is placing business with a nonaffiliate insurer not licensed in this state;

(4) An insurer which is not authorized to transact insurance in this state if such insurer is administering a policy lawfully issued by it in and pursuant to the laws of a state in which it is authorized to transact insurance;

(5) A life or accident and sickness insurance agent or broker licensed in this state whose activities are limited exclusively to the sale of insurance;

(6) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(7) A trust established in conformity with 29 U.S.C. Section 186 and its trustees, agents, and employees acting thereunder;

(8) A trust exempt from taxation under Section 501(a) of the Internal Revenue Code and its trustees and employees acting thereunder or a custodian and its agents and employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code;

(9) A bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities;

(10) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims; ~~or~~

(11) A person who adjusts or settles claims in the normal course of his or her practice or employment as an attorney and who does not collect charges or premiums in connection with life or accident and sickness insurance coverage or annuities;

(12) A business entity that acts solely as an administrator of one or more bona fide employee benefit plans established by an employer or an employee organization, or both, for whom the insurance laws of this state are preempted pursuant to the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, et seq.; or

(13) An association that administers workers´ compensation claims solely on behalf of its members.

(c) A business entity claiming an exemption shall submit an exemption notice on a form provided by the Commissioner. This form must be signed by an officer of the company and submitted to the department by December 31 of the year prior to the year for which an exemption is to be claimed. Such exemption notice shall be updated in writing within 30 days if the basis for such exemption changes.

(d) Obtaining a license as an administrator does not exempt the applicant from other licensing requirements under this title.″

SECTION 8.

Said title is further amended by striking Code Section 33-23-101, relating to licensing of administrators, and inserting in lieu thereof a new Code Section 33-23-101 to read as follows:

″33-23-101.

(a) No ~~person~~ business entity shall act as or hold ~~himself~~ itself out to be an administrator in this state, other than an adjuster licensed in this state for the kinds of business for which ~~he~~ it is acting as an administrator, unless such ~~person~~ business entity holds a license as an administrator issued by the Commissioner. The license shall be ~~renewable for such term~~ renewed on an annual basis and in such manner as the Commissioner may prescribe by rule or regulation. Failure to hold such license shall subject the administrator to the fines and other appropriate penalties as provided in Chapter 2 of this title.

(b) An application for an administrator´s license or an application for renewal of such license shall be accompanied by a filing fee to be prescribed by rule or regulation of the Commissioner.

(c) A license may be refused or a license duly issued may be suspended or revoked or the renewal of such license refused by the Commissioner if~~, after notice and hearing as provided in subsection (d) of this Code section, he~~ the Commissioner finds that the applicant for or holder of the license:

(1) Has violated any provision of this title or of any other law of this state relating to insurance as defined in this chapter or relating to another type of insurance;

(2) Has intentionally misrepresented or concealed any material fact in the application for the license;

(3) Has obtained or attempted to obtain the license by misrepresentation, concealment, or other fraud;

(4) Has misappropriated, converted to his or her own use, or illegally withheld money belonging to an insurer or an insured or beneficiary;

(5) Has committed fraudulent or dishonest practices;

(6) Has materially misrepresented the terms and conditions of insurance policies or contracts;

(7) Has failed to comply with or has violated any proper order, rule, or regulation issued by the Commissioner;

(8) Is not in good faith carrying on business as an administrator; ~~or~~

(9) Has failed to obtain for initial licensure or retain for annual renewal an adequate net worth as prescribed by order, rule, or regulation of the Commissioner; or

(10) Has shown lack of trustworthiness or lack of competence to act as an administrator.

(d) ~~Before any administrator´s license shall be suspended or revoked or the renewal of the license refused as prescribed under this Code section, the Commissioner shall give notice of his intention to do so, by registered or certified mail or statutory overnight delivery to the applicant for or holder of the license; and the Commissioner shall set a date not less than 20 days from the date of mailing the notice when the applicant or licensee may appear to be heard and produce evidence. In the conduct of the hearing, the Commissioner or any deputy commissioner specially designated by him for that purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon request of the applicant or licensee. Upon the conclusion of the hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered or certified mail or statutory overnight delivery to the applicant or licensee~~ If the Commissioner moves to suspend, revoke, or nonrenew a license for an administrator, the Commissioner shall provide notice of that action to the administrator and the administrator may invoke the right to an administrative hearing in accordance with Chapter 2 of this title.

(e) No licensee whose license has been revoked as prescribed under this Code section shall be entitled to file another application for a license within ~~two~~ five years from the effective date of the revocation or, if judicial review of such revocation is sought, within ~~two~~ five years from the date of final court order or decree affirming the revocation. The application when filed may be refused by the Commissioner unless the applicant shows good cause why the revocation of ~~his~~ its license shall not be deemed a bar to the issuance of a new license.

~~(f) Any applicant whose application for an administrator´s license has been rejected for any reason enumerated in paragraphs (1) through (9) of subsection (a) of this Code section, upon request therefor in writing within ten days after notice of such rejection, shall be entitled to a hearing as provided for by this Code section; and the procedure set forth by this Code section shall apply to the same.~~

~~(g)~~(f) Appeal from any order or decision of the Commissioner made pursuant to this article shall be taken as provided in Chapter 2 of this title.

(g)(1) The Commissioner shall have the authority to issue a probationary license to any applicant under this chapter.

(2) A probationary license may be issued for a period of not less than three months and not longer than 12 months and shall be subject to immediate revocation for cause at any time without a hearing.

(3) The Commissioner, at his or her discretion, shall prescribe the terms of probation, may extend the probationary period, or refuse to grant a license at the end of any probationary period.

(h) The Commissioner may impose, by rule or regulation, additional reasonable qualifications necessary to obtain a license as an administrator.

(i) An administrator´s license may not be sold or transferred to a nonaffiliated or otherwise unrelated party. An administrator may not contract or subcontract any of its negotiated services to any unlicensed business entity unless a special authorization is approved by the Commissioner prior to entering into a contracted or subcontracted arrangement.

(j) The Commissioner may, at his or her discretion, assess a penalty or a fine against any business entity acting as an administrator without a license for each transaction in violation of this chapter.

(k) A licensed administrator is not permitted to market or administer any insurance product not approved in Georgia or that is issued by a nonadmitted insurer or unauthorized multiple employer self-insured health plan.″

SECTION 9.

Said title is further amended by striking Code Section 33-23-102, relating to fidelity bond and surety of applicant, and inserting in lieu thereof a new Code Section 33-23-102 to read as follows:

″33-23-102.

(a) Every applicant for an administrator´s license shall file with the application and shall thereafter maintain in force ~~while so licensed~~ a ~~fidelity~~ bond in favor of the Commissioner executed by a corporate surety insurer authorized to transact insurance in this state. The

terms and type of the bond, including, but not limited to, total aggregate liability on the bond shall be established by the rule or regulation of the Commissioner.

(b) The bond shall remain in force until the surety is released from liability by the Commissioner or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel the bond upon 30 days´ advance notice, in writing, filed with the Commissioner.

(c) Every applicant for an administrator´s license shall obtain and shall thereafter maintain in force errors and omissions coverage or other appropriate liability insurance, written by an insurer authorized to transact insurance in this state, in an amount of at least $100,000.00.

(d) The coverage required in subsection (c) of this Code section shall remain in force for a term of at least one year and shall contain language that includes that the insurer may cancel the insurance upon 60 days´ advance notice filed with the Commissioner. Other terms and conditions relating to the errors and omissions policy may be imposed on the applicant as the Commissioner deems appropriate by rule or regulation.

(e) In the event a licensed administrator fails to renew, surrenders, or otherwise terminates its license, it must retain both the bond and the errors and omissions coverage for a period of not less than one year after the licensee has failed to renew, surrendered, or the license has been terminated.″

SECTION 10.

Said title is further amended by striking Code Section 33-23-103, relating to examination of administrators by Commissioner, and inserting in lieu thereof a new Code Section 33-23-103 to read as follows:

″33-23-103.

Administrators shall be subject to ~~examination~~ market conduct and financial examinations by the Commissioner ~~in the same manner as insurance agents and adjusters in accordance with Chapter 2 of this title~~. Any cost involved with the examinations shall be borne by the administrator.″

SECTION 11.

Said title is further amended by striking Code Section 33-36-2, relating to creation of Georgia Insurers Insolvency Pool, and inserting in lieu thereof a new Code Section 33-36-2 to read as follows:

″33-36-2.

~~The purpose of this chapter is to provide a remedy for covered claims under property and casualty insurance policies when the insurer has become insolvent and is unable to perform~~

~~its contractual obligations. To this end~~ There is created a Georgia Insurers Insolvency Pool which shall consist of three accounts: (1) workers´ compensation account; (2) automobile account; and (3) all other covered insurance account. The pool shall be responsible for the investigation, adjustment, compromise, settlement, and payment of covered claims; for the investigation, handling, and denial of noncovered claims; and for the management and investment of funds administered by the pool. The members of the pool shall be responsible for the payment of assessments levied pursuant to subsection (b) of Code Section 33-36-7; for adherence to the rules of the plan approved pursuant to Code Section 33-36-6; and for other obligations imposed by this chapter. The pool shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this state.″

SECTION 12.

Said title is further amended by striking Code Section 33-36-3, relating to definitions, and inserting in lieu thereof a new Code Section 33-36-3 to read as follows:

″33-36-3.

As used in this chapter, the term:

(1) 'Affiliate' ~~or 'affiliates'~~ means ~~any enterprise related directly or indirectly to the insurance activities of the insurer~~ a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(2) 'Affiliate of the insolvent insurer' means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next proceeding the date the insurer becomes an insolvent insurer.

(3) 'Control' means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact and any person disputing his or her status as an affiliate of an insurer authorized to do business in Georgia or an insolvent insurer may file a disclaimer in accordance with subsection (i) of Code Section 33-13-4.

~~(2)~~(4)(A) 'Covered ~~claims~~ claim' means ~~a~~ an unpaid claim which:

(i) Arises out of a property or casualty insurance policy issued by an insurer which becomes an insolvent insurer which was authorized to do an insurance business in this state either at the time the policy was issued or when the insured event occurred; and

(ii) Is within any of the classes of claims under subparagraph (B) of this paragraph.

(B) A claim shall not be paid unless it arises out of an insurable event under a property or casualty insurance policy and it is:

(i) An unearned premium claim of a policyholder who at the time of the insolvency was a resident of this state;

(ii) An unearned premium claim of a policyholder under a policy affording coverage for property permanently situated in this state;

(iii) The claim of a policyholder or insured who at the time of the insured event was a resident of this state;

(iv) The claim of a person having an insurable interest in or related to property which was permanently situated in this state; or

(v) A claim under a liability or workers´ compensation insurance policy when either the insured or third-party claimant was a resident of this state at the time of the insured event.

(C) A covered claim shall not include any claim in an amount of less than ~~$25.00~~ $50.00; provided, however, that any claim of ~~$25.00~~ $50.00 or more shall be paid in full.

(D) A covered claim shall not include that portion of any first-party claim which is in excess of the applicable limits provided in the policy or ~~$100,000.00~~ $300,000.00, whichever is less.

(E) A covered claim shall not include that portion of any third-party claim, other than a workers´ compensation claim, which is in excess of the applicable limits provided in the policy or ~~$100,000.00~~ $300,000.00, whichever is less.

(F) A covered claim shall not include any obligation to insurers, reinsurers, insurance pools, underwriting associations, ~~or any person which has a net worth greater than $3 million at the time of the insured event~~ health maintenance organizations, hospital plan corporations, or professional health service corporations as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise. No such claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, or professional health service corporation may be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent such claim exceeds the pool obligation limitations set forth in this Code section.

(G) A covered claim shall not include any first party claim by an insured whose net worth exceeds $10 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer; provided, however, that an insured´s net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; or any third party claim relating to a policy of an insured whose net worth exceeds $25 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer; provided, however, that an insured´s net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; and further provided that this exclusion shall not apply to third party claims against the insured where the insured has applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of its assets, filed a voluntary petition in bankruptcy, filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law or, if an order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition seeking reorganization of the insured or of all or substantial part of its assets.

(H) A covered claim shall not include any first party claims by an insured which is an affiliate of the insolvent insurer.

~~(G)~~(I) A covered claim shall not include any claim or judgment for punitive damages and attorney´s fees associated therewith against any insolvent insurer, its insured, or the insurers insolvency pool.

~~(H)~~(J) A covered claim shall not include any workers´ compensation benefits payable under subsection (e) or (f) of Code Section 34-9-221 or paragraph (2), (3), or (4) of subsection (b) of Code Section 34-9-108 after the effective date of the court order of rehabilitation or liquidation.

~~(I)~~(K) A covered claim shall include a claim for unearned premium only if such claim derives from the payment of a stated premium and shall not include those which derive from an unstated premium such as calculated from audit, dividend, deposit, or retrospect plans. ~~A covered claim shall not include a claim for unearned premium resulting from a policy which was not in force on the date of the final order of liquidation.~~ Further, a covered claim shall not include:

(i) That portion of a claim for unearned premium which is in excess of $20,000.00; or

(ii) A claim for unearned premium resulting from a policy which was not in force on the date of the final order of liquidation.

(L) A covered claim shall not include any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent.

(M) A covered claim shall not include any fee or other amount sought by or on behalf of an attorney or other provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the pool. However, in such a case, the pool shall not offset amounts from any recovery paid to a claimant in such an action which the claimant has agreed are to be paid to the attorney in a contingency fee arrangement.

(N) A covered claim shall not include any claims for interest.

~~(3)~~(5) 'Insolvent insurer' means an insurer which was licensed to issue property or casualty insurance policies in this state at any time subsequent to July 1, 1970, and against whom a final order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction in the insurer´s state of domicile or of this state and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

~~(4)~~(6) 'Insolvency pool' or 'pool' means the Georgia Insurers Insolvency Pool established pursuant to Code Section 33-36-2.

(7) 'Insured' means any named insured, any additional insured, any vendor, lessor, or any other party identified as an insured under the policy as long as insurable interests remain relevant.

~~(5)~~(8) 'Insurer' or 'company' means any corporation or organization that has held or currently holds a license to engage in the writing of property or casualty insurance policies in this state since July 1, 1970, including the exchanging of reciprocal or interinsurance contracts among individuals, partnerships, and corporations, except farmer assessment mutual insurers, county assessment mutual insurers, and municipal assessment mutual insurers.

~~(6)~~(9) 'Net direct written premiums' means direct gross premiums written on property or casualty insurance policies, less return premiums on the policies and dividends paid or credited to policyholders on such direct business. Premiums written by any authorized insurer on policies issued to self-insurers, whether or not designated as reinsurance contracts, shall be deemed net direct written premiums.

(10) 'Person' means any individual or legal entity, including governmental entities.

~~(7)~~(11) 'Property and casualty insurance policies' or 'policy' means any contract, including endorsements to such contract and without regard to the nature or form of the

contract or endorsement, which provides coverages as enumerated in Code Sections 33-7-3 and 33-7-6, except:

(A) Life insurance and annuities (being that class of insurance referred to in Code Section 33-7-4);

(B) Accident, health, and disability insurance except where written as part of an automobile insurance contract (being that class of insurance referred to in Code Section 33-7-2);

(C) Title insurance (being that class of insurance referred to in Code Section 33-7-8);

(D) Credit life insurance (being that class of insurance referred to in paragraph (2) of Code Section 33-31-1);

(E) Credit insurance, vendors´ single interest insurance, or collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction ~~(being that class of insurance referred to in Code Section 33-7-3.1)~~;

(F) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;

(G) Fidelity or surety bonds or any other bonding obligations;

(H) Insurance of warranties or service contracts including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits;

(I) Ocean marine insurance; ~~or~~

(J) Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk; or

(K) Any insurance provided by or guaranteed by government.″

SECTION 13.

Said title is further amended by striking Code Section 33-36-4, relating to the Insurers Solvency Board, and inserting in lieu thereof a new Code Section 33-36-4 to read as follows:

″33-36-4.

(a) There shall be a board of trustees of the Georgia Insurers Insolvency Pool which shall be known as the Insurers Solvency Board and which shall consist of seven members. At all times, the board shall contain at least one member from a domestic insurer. The

members of the board shall not be considered employees of the department. ~~The remaining members of the board shall be appointed as follows:~~

~~(1) The Commissioner shall compile a list of the three stock insurers most likely to incur the largest assessment, per insurer, for each of the accounts prescribed in Code Section 33-36-7; and he shall also compile a list of the three nonstock insurers most likely to incur the largest assessment, per insurer, for each of the accounts prescribed in Code Section 33-36-7. The Commissioner shall solicit from these 18 insurers the names of 18 individuals as nominees for members to the board. Persons who are nominated for the board shall reside in this state. The Commissioner shall certify the nominations in writing, separately for stock and nonstock insurers and separately for each account;~~

~~(2) From the nominations so certified for each account, the Commissioner shall appoint one stock member and one nonstock member to the board of directors until six directors are appointed. Then the Commissioner shall appoint the chairman of the board, who shall also be its chief executive officer; and~~

~~(3) In approving selections or in appointing members to the board, the Commissioner shall consider, among other things, whether all member insurers are fairly represented~~ The members of the board shall be selected by the Commissioner. Each board member so selected shall represent a company licensed to do business in Georgia. Any member may be removed from office by the Commissioner when, in his or her judgment, the public interest may so require. Each member appointed shall serve for a term of three years and until his or her successor has been appointed and qualified and, in case of a vacancy for any reason in the office of any such member, the Commissioner shall appoint a member to fill the unexpired term of such vacant office.

(b) ~~Any member may be removed from office by the Commissioner when, in his judgment, the public interest may so require~~ In approving selections to the board, the Commissioner shall consider among other things whether all member insurers are fairly represented.

(c) ~~Each member appointed shall serve for a term of three years and until his successor has been appointed and qualified and, in case of a vacancy for any reason in the office of any such member, the Commissioner shall appoint a member to fill the unexpired term of the vacant office from the nominations provided for in paragraph (1) of subsection (a) of this Code section.~~

~~(d)~~ The actual expenses of the members of the board incurred in attending meetings shall be paid out of the assets of the insolvency pool, but members of the board shall not otherwise be compensated by the ~~association~~ pool for their services. ~~The board shall hold its regular meetings at such time and places as shall be fixed by the board. The board shall meet at any time on call of the Commissioner or the chairman of the board. The chairman~~

~~of the board shall call a meeting, upon not less than two days´ notice, upon the written request of any two members of the board. The board may by resolution provide for a shorter notice of a meeting by telegraph, telephone, or otherwise. The board shall keep a record of all its proceedings and shall appoint a secretary and such other officers as it deems necessary, who need not be members of the board.~~ For the purpose of considering questions before it, the board shall have access to all the books, records, reports, and papers in the department, including all confidential communications; and the members of the board shall treat such communications as confidential.

~~(e) The board shall have power, by affirmative vote of four of its members, to recommend that the Commissioner examine, without previous advance notice, the assets, conditions, and affairs of any insurer when the board believes that the insurer´s further transaction of business may be hazardous to its policyholders, to its creditors, or to the public. The expenses of such examination shall be borne by the insolvency pool. The examination may extend to general agencies, management entities, or affiliates of insurance companies with respect to matters affecting such companies. The report of examination shall be treated as confidential until a hearing shall have been held or waived pursuant to Code Section 33-2-14. A refusal by an insurance company, a general agent, a management entity, or an affiliate of an insurance company to submit its books, papers, accounts, records, or affairs to examination shall be reported to the Commissioner and shall constitute grounds for suspension, rehabilitation, liquidation, or conservation of the insurer within the purview of the applicable laws of this state for the license revocation of the agent, as the case may be.~~

~~(f) The board may also so examine the affairs of an insurer after formal adjudication of insolvency to assist in the conservation of assets; and, if it does so, the board shall furnish its report to the Commissioner and the insolvency pool.~~

~~(g) The board shall have power by an affirmative vote of four of its members to make recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of companies or persons engaged in the business of writing property or casualty insurance policies in this state.~~

~~(h) Reports and recommendations under this Code section shall not be considered public documents. There shall be no liability on the part of, and no cause of action shall arise against, member insurers, the pool or their agents or employees, the Governor, or the Commissioner or his authorized representatives for any statements made by them in any reports or recommendations made under this Code section.~~″

SECTION 14.

Said title is further amended by striking Code Section 33-36-6, relating to plan to govern members, rules, assignment of claims or judgments against insolvent insurers, and claimants

of assets of insolvent insurers, and inserting in lieu thereof a new Code Section 33-36-6 to read as follows:

"33-36-6.

(a) The Georgia Insurers Insolvency Pool is a nonprofit legal entity with the right to bring and defend actions and such right to bring and defend actions includes the power and right to intervene as a party before any court in this state that has jurisdiction over an insolvent insurer as defined in this chapter. The pool shall adopt, and the Commissioner shall approve, a reasonable plan which is not inconsistent with this chapter and which is fair to insurers and equitable to their policyholders, pursuant to which all admitted insurers shall become members of the pool. All members of the pool shall adhere to the rules of the plan. The plan may be amended by an affirmative vote of a majority of the Insurers Solvency Board.

(b) If, for any reason, the pool fails to adopt a suitable plan within six months following July 1, 1970, or if at any time after July 1, 1970, the pool fails to adopt necessary amendments to the plan, the Commissioner shall adopt and promulgate, after a hearing, such reasonable rules as are necessary to effectuate this chapter. The rules shall continue in force until modified by the Commissioner or superseded by a plan of operation adopted by the pool and approved by the Commissioner.

(c) The plan as provided for in subsection (a) of this Code section shall:

(1) Establish the procedures whereby all the powers and duties of the pool under this chapter will be performed;

(2) Establish procedures for handling assets of the pool;

(3) Mandate that procedures be established for the disposition of liquidating dividends or other moneys received from the estate of the insolvent insurer;

(4) Mandate that procedures be established to designate the amount and method of reimbursing members of the board of trustees under Code Section 33-36-4;

(5) Establish procedures by which claims may be filed with the pool and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the pool or its agent and a list of claims shall be periodically submitted to the pool or insolvency fund or its equivalent in another state by the receiver or liquidator;

(6) Establish regular places and times for meetings of the board of trustees;

(7) Mandate that procedures be established for records to be kept of all financial transactions of the pool, its agents, and the board of trustees;

(8) Establish the procedures whereby selections for the board of trustees will be submitted to the Commissioner; and

(9) Contain additional provisions necessary or proper for the execution of the powers and duties of the pool.

(d) In accordance with the plan, the pool may designate insurers to act on behalf of the pool to carry out the purposes of this chapter, but a member may decline such designation. The Commissioner may disapprove such designation. The plan may provide a procedure under which pending claims or judgments against the insolvent insurer or its insureds are assigned to the member companies designated to act for the pool. The assignee-insurer is authorized to appear and defend a claim in a court of competent jurisdiction or otherwise and to investigate, adjust, compromise, and settle a covered claim or to investigate, handle, and deny a noncovered claim, and to do so on behalf of and in the name of the pool. If an assignee-insurer pays the covered claim, it shall be reimbursed by the pool or be entitled to set off said payment against future assessments. The unreimbursed claim of such an insurer against the pool shall be an admitted asset of the insurer. Insureds entitled to protection of this chapter shall cooperate with the pool and the assignee-insurer.

~~(d)~~(e) The pool as a legal entity and any of its individual members shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer and except as otherwise provided in this chapter. The pool shall be subrogated to the rights of any insured or claimant, to the extent of a covered claim, to participate in the distribution of assets of the insolvent insurer to the extent that the pool has made payment. Any claimant or insured entitled to the benefits of this chapter shall be deemed to have assigned to the pool, to the extent of any payment received, his or her rights against the estate of the insolvent insurer. ~~The pool shall receive the benefit of any reinsurance contracts or treaties entered into by the insolvent insurer which cover any of the liabilities insured by the insolvent insurer with respect to covered claims.~~ After determination of insolvency of any insurer, the pool shall be a party in interest in all proceedings involving policies insured or assumed by the pool with the same rights to receive notice and defend, appeal, and review as the insolvent insurer would have had if solvent. All moneys recovered under this Code section or any other Code section shall be added to the assessments collected under Code Section 33-36-7.

(f) Except for actions by member insurers aggrieved by final actions or decisions of the pool pursuant to Code Section 33-36-18, all actions relating to or arising out of this chapter against the pool must be brought in the courts in this state. Such courts shall have exclusive jurisdiction over all actions relating to or arising out of this chapter against the pool.

(g) Exclusive venue in any action by or against the pool is in the Superior Court of DeKalb County. The pool may, at the option of the pool, waive such venue as to specific actions."

SECTION 15.

Said title is further amended by striking subsection (b) of Code Section 33-36-7, relating to levy of assessments against insurers, and inserting in lieu thereof a new subsection (b) to read as follows:

″(b) To the extent necessary to secure the funds for the respective accounts of the pool for the payment of covered claims and also to pay the reasonable costs to administer the pool, the Commissioner, upon certification of the pool, shall levy assessments in the proportion that each insurer´s net direct written premiums in this state in the classes protected by the account bear to the total of the net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the pool in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days´ written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer´s net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments. If sufficient funds from the assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers designated to act for the pool, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. ~~Assessments shall be included as an appropriate factor in the making of rates.~~″

SECTION 16.

Said title is further amended by inserting a new Code Section 33-36-7.1 to read as follows:

″33-36-7.1.

(a) The plan adopted pursuant to Code Section 33-36-6 shall contain provisions whereby each member insurer is required to recoup over the year following the year of the assessment a sum calculated to recoup the assessments paid by the member insurer under this chapter by way of a surcharge on premiums charged for insurance policies to which this article applies. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agents´ commission.

(b) The amount of any surcharge shall be separately stated on either a billing or policy declaration sent to an insured. Member insurers who collect surcharges in excess of assessments paid pursuant to Code Section 33-36-7 for an insolvent insurer shall remit the excess to the pool as an additional assessment within 30 days after the pool has determined

the amount of the excess recoupment and given notice to the member of that amount. The excess shall be applied to reduce future assessment charges in the appropriate category.

(c) The plan of operation may permit a member insurer to omit collection of the surcharge from its insureds when the expense of collecting the surcharge would exceed the amount of the surcharge. However, nothing in this Code section shall relieve the member insurer of its obligation to recoup the amount of surcharge otherwise collectible.″

SECTION 17.

Said title is further amended by striking Code Section 33-36-9, relating to coverage afforded by insolvent insurers to become obligation of pool, and inserting in lieu thereof a new Code Section 33-36-9 to read as follows:

″33-36-9.

In the event an insurer is ~~determined to be insolvent~~ ordered to be liquidated, the coverage afforded by property and casualty insurance policies issued by such insurer shall, with respect to covered claims, become the obligation of the pool for a period of 30 days from the date of such determination or until policy expiration date if less than said 30 days or until the policy has been replaced by the insurer within said 30 days. The pool shall be deemed ~~to be~~ the insurer ~~for such period with respect and to the extent of the claims with~~ only to the extent of its obligation on the covered claims and to such extent, subject to the limitations provided in this chapter, shall have all ~~the~~ rights, duties, and obligations of the insolvent insurer~~; and the~~ as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations. The pool shall not be deemed the insolvent insurer for any purpose relating to the issue of whether the pool is amenable to the personal jurisdiction of the courts of any state. The pool is authorized to investigate, adjust, compromise, and settle covered claims or to investigate, handle, and deny noncovered claims. The pool shall have the authority, upon approval of the Commissioner, to borrow funds necessary to effect the purposes of this chapter. The pool shall have the authority to establish procedures for requesting financial information from insureds on a confidential basis for purposes of applying Code sections concerning their net worth, subject to such information being shared with any other association similar to the pool and the liquidator for the insolvent company on the same confidential basis. If the insured refuses to provide the requested financial information and an auditor´s certification of the same where requested and available, the pool may deem the net worth of the insured, in the instance of a first party claim, to be in excess of $10 million at the relevant time or, in the event of a third party claim, to be in excess of $25 million at the relevant time. In any lawsuit contesting the applicability of subparagraph (G) of paragraph (4) of Code Section 33-36-3 or subsection

(d) of Code Section 33-36-14 where the insured has declined to provide financial information under the procedure provided pursuant to this Code section, the insured shall bear the burden of proof concerning its net worth at the relevant time. If the insured fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the pool its full costs, expenses, and reasonable attorney´s fees in contesting the claim.″

SECTION 18.

Said title is further amended by striking Code Section 33-36-11, relating to procedure for proof and allowance of covered claims, and inserting in lieu thereof a new Code Section 33-36-11 to read as follows:

″33-36-11.

(a) ~~Except for (1) voluntary settlements or compromises between a claimant and an assignee-insurer on behalf of the pool or (2) a final judgment, other than a default judgment, against the insured or insurer in a court of competent jurisdiction rendered prior to the determination of insolvency of the insurer, the proof and allowance of a covered claim shall be governed by Code Sections 33-37-54 and 33-37-55; provided, however, in no case shall a covered claim include any claim filed with the pool, ancillary receiver, or liquidator after the final date set by a court for the filing of claims against the liquidator or ancillary receiver of an insolvent insurer~~ Notwithstanding any other provisions of this chapter, a covered claim shall not include a claim filed with the pool after the earlier of (i) 18 months after the date of the order of liquidation, or (ii) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the pool or a liquidator for protection afforded under the insured´s policy for incurred-but-not-reported losses.

(b) The pool may not be found in default. No default judgments may be entered against the pool, the insolvent insurer, or the insured of the insolvent insurer after the instigation of an insolvency proceeding prior to ~~a finding of insolvency~~ an order of liquidation, nor during the pendency of insolvency proceedings, nor during a 120 day stay following ~~a finding of insolvency~~ an order of liquidation.

(c) In no instance may a finding of default or the entry of a default judgment against an insurer be applicable or enforceable against the pool or the insured of the insolvent insurer.″

SECTION 19.

Said title is further amended by striking Code Section 33-36-13, relating to allowance of claims by receivers, liquidators, or statutory successors, and inserting in lieu thereof a new Code Section 33-36-13 to read as follows:

″33-36-13.

With respect to insolvent insurers incorporated in this state, the receiver, liquidator, or statutory successor shall allow as a proper claim on the assets of the insolvent insurer amounts paid under this chapter by or on behalf of the pool or paid by an insolvency fund or its equivalent in another state on or with respect to covered claims, notwithstanding provisions to the contrary in any statute of this state relating to the rights and duties of such receiver, liquidator, or statutory successor. As a condition of an insurer doing business in this state, all property and casualty insurance policies issued or renewed shall be deemed to provide that the insurer appoints the pool as its agent with respect to investigation, adjustment, compromise, and settlement of covered claims and to reimburse the pool for any payment made under the terms of this chapter, and that such appointment and obligation shall be binding on any receiver, liquidator, or statutory successor appointed to liquidate or wind up its affairs.″

SECTION 20.

Said title is further amended by striking Code Section 33-36-14, relating to exhaustion of rights by claimants against insolvent insurers prior to recovery, and inserting in lieu thereof a new Code Section 33-36-14 to read as follows:

″33-36-14.

(a) Any person~~, including any individual, partnership, association, or corporation,~~ having a claim against a policy or an insured under a policy issued by an insolvent insurer, which claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, shall be required to exhaust first his rights under such policy issued by the solvent insurer. The policy of the solvent insurer shall be treated as primary coverage and the policy of the insolvent insurer shall be treated as secondary coverage and his or her rights to recover such claim under this chapter shall be reduced by any amounts received from the solvent insurers.

(b) Any amount paid a claimant in excess of the amount authorized by this chapter may be recovered by an action brought by or on behalf of the pool.

(c) To the extent that the pool´s obligation is reduced by the application of this Code section, the liability of the person insured by the insolvent insurer´s policy for the claim shall be reduced in the same amount.

(d) The pool shall have the right to recover from the following persons all amounts paid by the pool on behalf of such person, whether for indemnity or defense or otherwise:

(1) Any insured whose net worth on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds $25 million; provided that an insured´s net worth on such date shall be deemed to include the aggregate net worth of

the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; and

(2) Any person who is an affiliate of the insolvent insurer.″

SECTION 21.

Said title is further amended by adding a new Code Section 33-36-14.1 to read as follows:

″33-36-14.1.

(a) To aid in the detection and prevention of insurer insolvencies:

(1) The board of trustees may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of insurer insolvencies;

(2) The board of trustees may, upon majority vote, make recommendations to the Commissioner on matters generally related to improving or enhancing regulation for solvency; and

(3) The board of trustees may, at the conclusion of any domestic insurer insolvency in which the pool was obligated to pay covered claims, prepare a report on the history and causes of such insolvency based on the information available to the pool and submit such report to the Commissioner.

(b) Reports and recommendations made pursuant to this Code section shall not be considered public documents.″

SECTION 22.

Said title is further amended by striking Code Section 33-36-15, relating to examination of pool, and inserting in lieu thereof a new Code Section 33-36-15 to read as follows:

″33-36-15.

The pool shall be deemed a company or insurer within the scope of Code Section 33-2-11 relating to examinations. Notwithstanding the provisions of Code Section 33-2-11 or this Code section, whether such examinations shall be conducted and the frequency of any such examinations shall be at the sole discretion of the Commissioner.″

SECTION 23.

Said title is further amended by adding a new Code Section 33-36-16.1 to read as follows:

″33-36-16.1.

There shall be no liability on the part of, and no cause of action of any nature shall arise against any member insurer, the pool or its agents or employees, the board of trustees, or any person serving as a representative of any member of the board of trustees for any action taken or any failure to act by them in the performance of their powers and duties under this chapter.″

SECTION 24.

The provisions of Sections 11 through 23 shall apply to insolvencies which occur on or after the effective date of this Act.

SECTION 25.

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