

The Senate Insurance and Labor Committee offered the following substitute to HB 1364:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide that the Georgia Insurers Insolvency Pool shall be liable to claimants and electing
3 insureds in emergency circumstances; to provide for legislative intent; to provide for
4 definitions; to provide for exceptions to certain provisions relative to the liability of the pool
5 and the filing of claims with the pool; to provide for related matters; to provide an effective
6 date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
9 revising subparagraph (G) of paragraph (4) of Code Section 33-36-3, relating to definitions,
10 as follows:
11

12 "(G) A covered claim shall not include any ~~first party~~ first-party claim by an insured
13 whose net worth exceeds \$10 million on December 31 of the year next preceding the
14 date the insurer becomes an insolvent insurer; provided, however, that an insured's net
15 worth on such date shall be deemed to include the aggregate net worth of the insured
16 and all of its subsidiaries and affiliates as calculated on a consolidated basis; ~~or any~~
17 ~~third party claim relating to a policy of an insured whose net worth exceeds \$25 million~~
18 ~~on December 31 of the year next preceding the date the insurer becomes an insolvent~~
19 ~~insurer; provided, however, that an insured's net worth on such date shall be deemed~~
20 ~~to include the aggregate net worth of the insured and all of its subsidiaries and affiliates~~
21 ~~as calculated on a consolidated basis; and further provided that this exclusion shall not~~
22 ~~apply to third party claims against the insured where the insured has applied for or~~
23 ~~consented to the appointment of a receiver, trustee, or liquidator for all or a substantial~~
24 ~~part of its assets, filed a voluntary petition in bankruptcy, filed a petition or an answer~~
25 ~~seeking a reorganization or arrangement with creditors or to take advantage of any~~
26 ~~insolvency law or, if an order, judgment, or decree is entered by a court of competent~~

27 ~~jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or~~
 28 ~~insolvent or approving a petition seeking reorganization of the insured or of all or~~
 29 ~~substantial part of its assets."~~

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SECTION 2.

31 Said title is further amended by revising Code Section 33-36-9, relating to coverage afforded
 32 by insolvent insurers to become obligation of pool, as follows:

33 "33-36-9.

34 In the event an insurer is ordered to be liquidated, the coverage afforded by property and
 35 casualty insurance policies issued by such insurer shall, with respect to covered claims,
 36 become the obligation of the pool for a period of 30 days from the date of such
 37 determination or until policy expiration date if less than said 30 days or until the policy has
 38 been replaced by the insurer within said 30 days. The pool shall be deemed the insurer
 39 only to the extent of its obligation on the covered claims and to such extent, subject to the
 40 limitations provided in this chapter, shall have all rights, duties, and obligations of the
 41 insolvent insurer as if the insurer had not become insolvent, including, but not limited to,
 42 the right to pursue and retain salvage and subrogation recoverable on paid covered claim
 43 obligations. The pool shall not be deemed the insolvent insurer for any purpose relating
 44 to the issue of whether the pool is amenable to the personal jurisdiction of the courts of any
 45 state. The pool is authorized to investigate, adjust, compromise, and settle covered claims
 46 or to investigate, handle, and deny noncovered claims. The pool shall have the authority,
 47 upon approval of the Commissioner, to borrow funds necessary to effect the purposes of
 48 this chapter. The pool shall have the authority to establish procedures for requesting
 49 financial information from insureds on a confidential basis for purposes of applying Code
 50 sections concerning their net worth, subject to such information being shared with any
 51 other association similar to the pool and the liquidator for the insolvent company on the
 52 same confidential basis. If the insured refuses to provide the requested financial
 53 information and an auditor's certification of the same where requested and available, the
 54 pool may deem the net worth of the insured, in the instance of a ~~first party~~ first-party claim,
 55 to be in excess of \$10 million at the relevant time ~~or, in the event of a third party claim, to~~
 56 ~~be in excess of \$25 million at the relevant time.~~ In any lawsuit contesting the applicability
 57 of subparagraph (G) of paragraph (4) of Code Section 33-36-3 or subsection (d) of Code
 58 Section 33-36-14 where the insured has declined to provide financial information under the
 59 procedure provided pursuant to this Code section, the insured shall bear the burden of proof
 60 concerning its net worth at the relevant time. If the insured fails to prove that its net worth
 61 at the relevant time was less than the applicable amount, the court shall award the pool its
 62 full costs, expenses, and reasonable attorney's fees in contesting the claim."

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SECTION 3.

Said title is further amended by revising Code Section 33-36-11, relating to the limitation for filing claims, claims filed after the final date set by court, and default judgments, as follows:

"33-36-11.

(a) Notwithstanding any other provisions of this chapter, except as provided for in Code Section 33-36-20, 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~~ 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 an order of liquidation, nor during the pendency of insolvency proceedings, nor during a 120 day stay following 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 4.

Said title is further amended by revising Code Section 33-36-14, relating to exhaustion of rights by claimants against insolvent insurers prior to recovery, recovery of payment to claimants in excess of amounts authorized, reduction of liability of insured, and recovery of amounts paid on behalf of certain persons, as follows:

"33-36-14.

(a) ~~Any~~ Except as provided for in Code Section 33-36-20, any person 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 or her 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.

98 (d) ~~The~~ Except as provided for in Code Section 33-36-20, the pool shall have the right to
 99 recover from ~~the following persons~~ any person who is an affiliate of the insolvent insurer
 100 all amounts paid by the pool on behalf of such person, whether for indemnity or defense
 101 or otherwise:

102 (1) ~~Any insured whose net worth on December 31 of the year immediately preceding the~~
 103 ~~date the insurer becomes an insolvent insurer exceeds \$25 million,~~ provided that an
 104 insured's net worth on such date shall be deemed to include the aggregate net worth of
 105 the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis;
 106 and

107 (2) ~~Any person who is an affiliate of the insolvent insurer."~~

108 SECTION 5.

109 Said title is further amended by adding a new Code section to read as follows:

110 "33-36-20.

111 (a) It is the policy of this state to protect insureds and their claimants from liability as a
 112 result of the insolvency of insurers. In furtherance of this policy, it is the intent of the
 113 legislature, notwithstanding any provision of law to the contrary, that the Georgia Insurers
 114 Insolvency Pool shall be liable to claimants and electing insureds in emergency
 115 circumstances.

116 (b) As used in this Code section, the term:

117 (1) 'Electing insured' means any insured under a workers' compensation insurance policy
 118 that is impacted by an emergency circumstance. Such term shall include but not be
 119 limited to governmental insureds and other insureds under a workers' compensation
 120 insurance policy impacted by an emergency circumstance whose net worth exceeds \$25
 121 million as of December 31 of the year preceding the filing of a claim.

122 (2) 'Emergency circumstance' means a circumstance in which an association or industrial
 123 insured captive insurance company, including such a captive company that subsequently
 124 was authorized to transact business pursuant to Chapter 3 of this title, that is issuing, or
 125 which has issued, workers' compensation insurance contracts and has been declared
 126 insolvent.

127 (3) 'Emergency claimant' means any third-party claimant, under a workers' compensation
 128 insurance policy, who is impacted by an emergency circumstance and whose employer
 129 has, by a court of competent jurisdiction, been declared bankrupt or insolvent.

130 (c) Any electing insured whose net worth is less than \$25 million as of December 31 of
 131 the year preceding the filing of a claim may be shielded from liability by the pool and have
 132 any workers' compensation claims filed against such electing insured covered by the pool,
 133 provided said electing insured pays \$20,000.00 per claim to the insolvency pool prior to

134 October 1, 2010. Any electing insured whose net worth exceeds \$25 million as of
 135 December 31 of the year preceding the filing of a claim may be shielded from liability by
 136 the pool and have any workers' compensation claims filed against such electing insured
 137 covered by the pool, provided said electing insured pays \$100,000.00 per claim to the
 138 insolvency pool prior to October 1, 2010. Claims of all emergency claimants shall be
 139 covered by the insolvency pool.

140 (d) Claimants shall retain the right to pursue claims against any insured that is not an
 141 electing insured."

142 **SECTION 6.**

143 Said title is further amended by revising Code Section 33-41-20.1, relating to the
 144 membership of captive insurance companies in Georgia Insurers Insolvency Pool, as follows:

145 "33-41-20.1.

146 (a) ~~On and after January 1, 2008, every~~ Every association and industrial insured captive
 147 insurance company that is issuing, or which has issued, workers' compensation insurance
 148 contracts shall ~~become~~ be a member of the Georgia Insurers Insolvency Pool under Chapter
 149 36 of this title as to workers' compensation only. Such captive insurance companies shall
 150 be liable for assessments pursuant to Code Section 33-36-7 and for all other obligations
 151 imposed pursuant to Chapter 36 of this title as to workers' compensation only.

152 (b) ~~The Georgia Insurers Insolvency Pool shall not be liable for~~ For any workers'
 153 compensation insurance claims incurred by any association and industrial insured captive
 154 insurance company before January 1, 2008, the Georgia Insurers Insolvency Pool shall be
 155 liable in accordance with Code Section 33-36-20."

156 **SECTION 7.**

157 This Act shall become effective upon its approval by the Governor or upon its becoming law
 158 without such approval.

159 **SECTION 8.**

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