

House Bill 1364 (AS PASSED HOUSE AND SENATE)

By: Representative Rogers of the 26th

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:

8 **SECTION 1.**

9 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
10 revising Code Section 33-36-11, relating to the limitation for filing claims, claims filed after
11 the final date set by court, and default judgments, as follows:

12 "33-36-11.

13 (a) Notwithstanding any other provisions of this chapter, except as provided for in Code
14 Section 33-36-20, a covered claim shall not include a claim filed with the pool after the
15 earlier of (i) 18 months after the date of the order of liquidation, or (ii) the final date set by
16 the court for the filing of claims against the liquidator or receiver of an insolvent insurer
17 and shall not include any claim filed with the pool or a liquidator for protection afforded
18 under the insured's policy for ~~incurred-but-not-reported~~ incurred but not reported losses.

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

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

25 **SECTION 2.**

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

30 "33-36-14.

31 (a) ~~Any~~ Except as provided for in Code Section 33-36-20, any person having a claim
 32 against a policy or an insured under a policy issued by an insolvent insurer, which claim
 33 is a covered claim and is also a claim within the coverage of any policy issued by a solvent
 34 insurer, shall be required to exhaust first his or her rights under such policy issued by the
 35 solvent insurer. The policy of the solvent insurer shall be treated as primary coverage and
 36 the policy of the insolvent insurer shall be treated as secondary coverage and his or her
 37 rights to recover such claim under this chapter shall be reduced by any amounts received
 38 from the solvent insurers.

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

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

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

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

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

54 **SECTION 3.**

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

56 "33-36-20.

57 (a) It is the policy of this state to protect insureds and their claimants from liability as a
 58 result of the insolvency of insurers. In furtherance of this policy, it is the intent of the
 59 legislature, notwithstanding any provision of law to the contrary, that the Georgia Insurers

60 Insolvency Pool shall be liable to claimants and electing insureds in emergency
 61 circumstances.

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

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

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

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

76 (c) Any electing insured whose net worth is less than \$25 million as of December 31 of
 77 the year preceding the filing of a claim may be shielded from liability by the pool and have
 78 any workers' compensation claims filed against such electing insured covered by the pool,
 79 provided said electing insured pays \$10,000.00 per claim to the insolvency pool prior to
 80 October 1, 2010. Any electing insured whose net worth exceeds \$25 million as of
 81 December 31 of the year preceding the filing of a claim may be shielded from liability by
 82 the pool and have any workers' compensation claims filed against such electing insured
 83 covered by the pool, provided said electing insured pays \$50,000.00 per claim to the
 84 insolvency pool prior to October 1, 2010. Claims of all emergency claimants shall be
 85 covered by the insolvency pool.

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

88 **SECTION 4.**

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

91 "33-41-20.1.

92 (a) On and after January 1, 2008, every association and industrial insured captive
 93 insurance company issuing workers' compensation insurance contracts shall become a
 94 member of the Georgia Insurers Insolvency Pool under Chapter 36 of this title as to
 95 workers' compensation only. Such captive insurance companies shall be liable for

96 assessments pursuant to Code Section 33-36-7 and for all other obligations imposed
97 pursuant to Chapter 36 of this title as to workers' compensation only.

98 (b) Except as provided for in Code Section 33-36-20, the The Georgia Insurers Insolvency
99 Pool shall not be liable for any claims incurred by any captive insurance company before
100 January 1, 2008.

101 **SECTION 5.**

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

104 **SECTION 6.**

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