

House Bill 552 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 115th, Shaw of the 176th, Smith of the 134th, Efstration of the 104th, and Golick of the 40th

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 for changes to the captive insurance company provisions; to add certain definitions;
3 to change prerequisites to transacting insurance; to amend provisions relating to directors;
4 to revise the required amounts of capital or surplus for each captive insurance company; to
5 provide for application of certain provisions to the examination of a captive insurance
6 company and add confidentiality of certain information and documents provided to the
7 Commissioner; to change the taxation requirements; to provide for federal home loan bank
8 rights regarding collateral pledged by an insurer-member subject to a delinquency
9 proceeding; to provide for definitions; to provide for certain limitations for a receiver to void
10 transfer of certain property in connection with any federal home loan bank security
11 agreement; to provide for transfer avoidance under certain circumstances; to provide for
12 related matters; to provide for an effective date; to repeal conflicting laws; and for other
13 purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **PART I**
16 **SECTION 1-1.**

17 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
18 revising Code Section 33-41-2, relating to definitions, as follows:

19 "33-41-2.

20 Terms not otherwise defined in this chapter shall have the same meaning ascribed to them
21 in this title. As used in this chapter, unless the context otherwise requires, the term:

22 (1) 'Affiliate' means an individual, partnership, corporation, trust, or estate that directly,
23 or indirectly through one or more intermediaries, controls, is controlled by, or is under
24 common control with one or more of the shareholders or members of a captive insurance
25 company. Affiliates shall also include employees of any shareholder or member, or any

26 affiliate thereof, of a captive insurance company. For the purpose of the foregoing
 27 definition of affiliate, 'control' means:

28 (A) Ownership of shares of a corporation possessing 50 percent or more of the total
 29 voting power of all classes of shares entitled to vote or possessing 50 percent or more
 30 of the total value of the outstanding shares of the corporation; and

31 (B) Ownership of 50 percent or more by value of the beneficial interests in a
 32 partnership, trust, or estate.

33 (2) 'Association' means any membership organization whose members consist of a group
 34 of individuals, corporations, partnerships, or other associations who engage in similar or
 35 related professional, trade, or business activities and who collectively own, control, or
 36 hold with power to vote all of the outstanding voting interests of an association captive
 37 insurance company or of a corporation that is the sole shareholder of an association
 38 captive insurance company.

39 (3) 'Association captive insurance company' means any domestic insurance company
 40 granted a certificate of authority under this chapter to insure or reinsure the similar or
 41 related risks of members and affiliates of members of its association.

42 (4) 'Captive insurance company' means any pure captive insurance company, association
 43 captive insurance company, industrial insured captive insurance company, or risk
 44 retention group captive insurance company.

45 (5) 'Controlled unaffiliated business' means:

46 (A) A person:

47 (i) That is not an affiliate;

48 (ii) That has an existing contractual relationship with an affiliate under which the
 49 affiliate bears a potential financial loss; and

50 (iii) The risks of which are managed by a captive insurance company under an
 51 arrangement approved by the Commissioner; or

52 (B) A reinsurance pooling arrangement with other captive insurance companies that
 53 is approved by the Commissioner.

54 ~~(5)~~(6) 'Industrial insured' means an insured:

55 (A) Who procures the insurance of any risk or risks through the use of the services of
 56 a full-time employee who acts as an insurance manager, risk manager, or insurance
 57 buyer or through the services of a person licensed as a property and casualty agent,
 58 broker, or counselor in such person's state of domicile;

59 (B) Whose aggregate annual premiums for insurance on all risks total at least
 60 \$25,000.00; and

61 (C) Who either:

62 (i) Has at least 25 full-time employees;

63 (ii) Has gross assets in excess of \$3 million; or

64 (iii) Has annual gross revenues in excess of \$5 million.

65 ~~(6)~~(7) 'Industrial insured captive insurance company' means any domestic insurance
66 company granted a certificate of authority under this chapter to insure or reinsure the
67 risks of industrial insureds and their affiliates and which has as its shareholders or
68 members only industrial insureds that are insured or reinsured by the industrial insured
69 captive insurance company or which has as its sole shareholder or sole member a
70 corporation whose only shareholders are industrial insureds that are insured or reinsured
71 by the industrial insured captive insurance company.

72 ~~(7)~~(8) 'Parent' means a corporation which directly owns shares representing more than
73 50 percent of the total outstanding voting power and value of a pure captive insurance
74 company.

75 ~~(8)~~(9) 'Pure captive insurance company' means any domestic insurance company granted
76 a certificate of authority under this chapter to insure or reinsure the risks of its parent and
77 affiliates of its parent, and controlled unaffiliated business.

78 ~~(9)~~(10) 'Risk retention group captive insurance company' is any pure, association, or
79 industrial insured captive insurance company which has been granted a certificate of
80 authority under this chapter and determined by the Commissioner to be established and
81 maintained as a 'risk retention group' as defined under the federal Liability Risk Retention
82 Act of 1986, as amended. A risk retention group may be chartered and licensed either
83 under this chapter or under Chapter 40 of this title.

84 ~~(10)~~(11) 'Transact,' as used in this chapter, shall not include the organizational activities
85 associated with the preliminary formation, incorporation, petitioning for a certificate of
86 authority, and initial capitalization of a captive insurance company."

87 **SECTION 1-2.**

88 Said title is further amended by revising Code Section 33-41-4, relating to prerequisites to
89 transacting insurance, as follows:

90 "33-41-4.

91 No captive insurance company may transact any insurance in this state unless:

92 (1) It first obtains from the Commissioner a certificate of authority authorizing it to
93 transact insurance in this state;

94 (2) It maintains its principal place of business in this state; ~~and~~

95 (3) Any organization providing the principal administrative or management services to
96 such captive insurance company shall maintain its principal place of business in this state
97 and shall be approved by the Commissioner; and

98 (4) Its board of directors holds at least one meeting each year in this state."

99

SECTION 1-3.

100 Said title is further amended by revising Code Section 33-41-7, relating to directors, as
101 follows:

102 "33-41-7.

103 (a) The affairs of every captive insurance company shall be managed by not less than three
104 directors.

105 (b) At least ~~one-third~~ one of the directors of every captive insurance company ~~must~~ shall
106 be a resident of this state, ~~except that no more than three directors shall be required to be~~
107 ~~residents of this state.~~ A and a majority of the directors ~~must~~ shall be citizens of the United
108 States.

109 (c) Every captive insurance company ~~must~~ shall report to the Commissioner within 30
110 days after any change in its directors including in its report a statement of the business and
111 professional background and affiliations of any new director."

112

SECTION 1-4.

113 Said title is further amended by revising subsection (a) of Code Section 33-41-8, relating to
114 amount of capital or surplus, as follows:

115 "(a) The amount of minimum capital or surplus required for each captive insurance
116 company shall be determined on an individual basis, however:

117 (1) ~~No~~ A pure captive insurance company ~~incorporated as a stock insurer shall be issued~~
118 ~~a certificate of authority unless it shall possess and thereafter maintain a minimum of~~
119 ~~\$500,000.00 in capital~~ maintain at least \$250,000.00 in surplus; or

120 (2) ~~No~~ An association captive insurance company ~~incorporated as a mutual insurer shall~~
121 ~~be issued a certificate of authority unless it shall possess and thereafter maintain a~~
122 ~~minimum of \$500,000.00 in surplus.~~ maintain at least \$500,000.00 in surplus;

123 (3) An industrial insured captive insurance company shall maintain at least \$500,000.00
124 in surplus; and

125 (4) A risk retention group shall maintain at least \$500,000.00 in surplus.

126 The Commissioner may require additional capital or surplus of any captive insurance
127 company in an amount he or she deems appropriate under the circumstances based on the
128 captive insurance company's business plan as described in paragraph (2) of subsection (a)
129 of Code Section 33-41-10. Additional capital or surplus may be required if the captive
130 insurance company's business plan indicates that an increase is required in order for the
131 captive insurance company to meet its contractual obligations to its policyholders or to
132 maintain its solvency."

SECTION 1-5.

133

134 Said title is further amended by revising Code Section 33-41-16, relating to examination by
135 the Commissioner or agent, as follows:

136 "33-41-16.

137 (a) The Commissioner or his or her designated agent may visit each captive insurance
138 company at any time and examine its affairs in order to ascertain its financial condition, its
139 ability to fulfill its contractual obligations, and its compliance with this chapter. For these
140 purposes, the Commissioner or his or her designated agent shall have free access to all of
141 the books and records relating to the business of the captive insurance company. The
142 expenses and charges of any examination conducted pursuant to this Code section shall be
143 paid directly by the captive insurance company examined.

144 (b) When necessary or desirable to assist in any examination under this Code section, the
145 Commissioner may retain such independent agents as described in subsection (b) of Code
146 Section 33-41-10, as the Commissioner deems appropriate, in order to facilitate his or her
147 examination under this Code section. The expenses and charges of such persons so retained
148 or designated shall be paid directly by the captive insurance company. The provision of
149 subsection (g) of Code Section 33-2-14 shall apply to examinations of any captive
150 insurance company.

151 (c) All portions of license applications reasonably designated confidential by or on behalf
152 of an applicant pure captive insurance company, all information and documents, and any
153 copies of the foregoing, produced or obtained by or submitted or disclosed to the
154 Commissioner pursuant to this chapter that are reasonably designated confidential by a
155 pure captive insurance company, and all examination reports, preliminary examination
156 reports, working papers, recorded information, other documents, and any copies of any of
157 the foregoing, produced or obtained by or submitted or disclosed to the Commissioner
158 pursuant to this chapter shall be given confidential treatment, except as to disclosures
159 consented to by the pure captive insurance company, and shall not be subject to subpoena,
160 shall not be made public by the Commissioner, and shall not be provided or disclosed to
161 any other person at any time except to:

162 (1) Insurance commissioners of any state or of any foreign country or jurisdiction,
163 provided that:

164 (A) Such receiving party shall agree in writing to maintain the confidentiality of such
165 information; and

166 (B) The laws of the receiving party require such information to be and to remain
167 confidential; or

168 (2) A law enforcement official or agency of this state, any other state, or the United
 169 States of America so long as such official or agency agrees in writing to hold it
 170 confidential and in a manner consistent with this Code section."

171 **SECTION 1-6.**

172 Said title is further amended by revising Code Section 33-41-22, relating to taxation, as
 173 follows:

174 "33-41-22.

175 ~~All captive insurance companies chartered and licensed under this chapter shall be taxed~~
 176 ~~under the provisions of Chapter 8 of this title and any other provisions of law in the same~~
 177 ~~manner as other domestic insurance companies.~~

178 In lieu of any other taxes imposed by this title, all captive insurance companies licensed
 179 under this chapter shall pay the following taxes:

180 (1) A tax at the rate of 0.4 percent on the first \$20 million and 0.3 percent on each dollar
 181 thereafter on its direct premiums collected, after deducting from the direct premiums
 182 subject to the tax the amounts paid to policyholders as return premiums which must
 183 include dividends on unabsorbed premiums or premium deposits returned or credited to
 184 policyholders;

185 (2) A tax at the rate of 0.225 percent on the first \$20 million of assumed reinsurance
 186 premium, and 0.150 percent on the next \$20 million and 0.050 percent on the next \$20
 187 million, and 0.025 percent of each dollar thereafter. However, no reinsurance tax applies
 188 to premiums for risks or portions of risks that are subject to taxation on a direct basis
 189 pursuant to paragraph (1) of this Code section. No reinsurance premium tax shall be
 190 payable in connection with the receipt of assets in exchange for the assumption of loss
 191 reserves and other liabilities of another insurer under common ownership and control,
 192 provided that the Commissioner verifies that such transaction is part of a plan to
 193 discontinue the operations of such other insurer, and if the intent of the parties to such
 194 transaction is to renew or maintain such business with the captive insurance company;

195 (3) If the aggregate taxes to be paid by a captive insurance company calculated under
 196 paragraphs (1) and (2) of this Code section amount to more than \$100,000.00 in any year,
 197 the captive insurance company shall pay a maximum tax of \$100,000.00 for that year;

198 (4) Two or more captive insurance companies under common ownership and control
 199 shall be taxed as though they were a single captive insurance company; and

200 (5) The tax provided for in paragraphs (1) and (2) of this Code section shall be calculated
 201 on an annual basis, notwithstanding policies or contracts of insurance or contracts of
 202 reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the
 203 premium shall be prorated for purposes of determining the tax due."

204

PART II

205

SECTION 2-1.

206 Said title is further amended in Code Section 33-37-3, relating to definitions, by adding new
207 paragraphs to read as follows:

208 "(7.1) 'Federal home loan bank' means a federal home loan bank established under the
209 federal Home Loan Bank Act, 12 U.S.C. Section 1421, et seq."

210 "(12.1) 'Insurer-member' means an insurer who is a member of a federal home loan
211 bank."

212

SECTION 2-2.

213 Said title is further amended by revising Code Section 33-37-5, relating to grounds for
214 restraining orders and injunctions, as follows:

215 "33-37-5.

216 (a) Any receiver appointed in a proceeding under this chapter may at any time apply for,
217 and any court of general jurisdiction may grant, such restraining orders, preliminary and
218 permanent injunctions, and other orders as may be deemed necessary and proper to
219 prevent:

220 (1) The transaction of further business;

221 (2) The transfer of property;

222 (3) Interference with the receiver or with a proceeding under this chapter;

223 (4) Waste of the insurer's assets;

224 (5) Dissipation and transfer of bank accounts;

225 (6) The institution or further prosecution of any actions or proceedings;

226 (7) The obtaining of preferences, judgments, attachments, garnishments, or liens against
227 the insurer, its assets, or its policyholders;

228 (8) The levying of execution against the insurer, its assets, or its policyholders;

229 (9) The making of any sale or deed for nonpayment of taxes or assessments that would
230 lessen the value of the assets of the insurer;

231 (10) The withholding from the receiver of books, accounts, documents, or other records
232 relating to the business of the insurer; or

233 (11) Any other threatened or contemplated action that might lessen the value of the
234 insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the
235 administration of any proceeding under this chapter.

236 (b) The receiver may apply to any court outside of the state for the relief described in
237 subsection (a) of this Code section.

238 (c)(1) After the seventh day following the filing of a delinquency proceeding, a federal
 239 home loan bank shall not be stayed or prohibited from exercising its rights regarding
 240 collateral pledged by an insurer-member.

241 (2) If a federal home loan bank exercises its rights regarding collateral pledged by an
 242 insurer-member who is subject to a delinquency proceeding, the federal home loan bank
 243 shall repurchase any outstanding capital stock that is in excess of that amount of federal
 244 home loan bank stock that the insurer-member is required to hold as a minimum
 245 investment to the extent the federal home loan bank in good faith determines the
 246 repurchase to be permissible under applicable laws, regulations, regulatory obligations,
 247 and the federal home loan bank's capital plan and consistent with the federal home loan
 248 bank's current capital stock practices applicable to its entire membership.

249 (d) Following the appointment of a receiver for an insurer-member, the federal home loan
 250 bank shall, within ten business days after a request from the receiver, provide a process and
 251 establish a timeline for all of the following:

252 (1) The release of collateral that exceeds the amount required to support secured
 253 obligations remaining after any repayment of loans as determined in accordance with the
 254 applicable agreements between the federal home loan bank and the insurer-member;

255 (2) The release of any of the insurer-member's collateral remaining in the federal home
 256 loan bank's possession following repayment of all outstanding secured obligations of the
 257 insurer-member in full;

258 (3) The payment of fees owed by the insurer-member and the operation of deposits and
 259 other accounts of the insurer-member with the federal home loan bank; and

260 (4) The possible redemption or repurchase of federal home loan bank stock or excess
 261 stock of any class that an insurer-member is required to own.

262 (e) Upon request from a receiver, the federal home loan bank shall provide any available
 263 options for an insurer-member subject to a delinquency proceeding to renew or restructure
 264 a loan to defer associated prepayment fees, subject to market conditions, the terms of any
 265 loans outstanding to the insurer-member, the applicable policies of the federal home loan
 266 bank, and the federal home loan bank's compliance with federal laws and regulations."

267 **SECTION 2-3.**

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

269 "33-37-26.1.

270 The receiver for an insurer-member shall not void any transfer of, or any obligation to
 271 transfer, money or any other property arising under or in connection with any federal home
 272 loan bank security agreement; any pledge, security, collateral, or guarantee agreement; or
 273 any other similar arrangement or credit enhancement relating to a federal home loan bank

274 security agreement made in the ordinary course of business and in compliance with the
275 applicable federal home loan bank agreement. However, a transfer may be avoided under
276 this Code section if the transfer was made with intent to hinder, delay, or defraud the
277 insurer-member, the receiver for the insurer-member, or existing or future creditors. This
278 Code section shall not affect a receiver's rights regarding advances to an insurer-member
279 in delinquency proceedings pursuant to 12 C.F.R. Section 1266.4."

280

PART III

281

SECTION 3-1.

282 This Act shall become effective on July 1, 2015.

283

SECTION 3-2.

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