

House Bill 754 (COMMITTEE SUBSTITUTE)

By: Representatives Shaw of the 176th, Smith of the 134th, Blackmon of the 146th, Hugley of the 136th, and Taylor of the 173rd

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 the division of a domestic insurer into two or more resulting domestic insurers;
3 to provide for definitions; to provide for a plan of division subject to approval by the
4 Insurance Commissioner; to provide for a certificate of division; to provide for the effect of
5 a division; to provide for the responsibilities of a resulting insurer; to provide for shareholder
6 appraisal rights; to provide for rules and regulations; to revise rules and regulations to
7 remove the Attorney General's approval requirements; to revise the authorization and
8 procedure for merger or consolidation; to amend Part 1 of Article 13 of Chapter 2 of Title 14
9 of the Official Code of Georgia Annotated, relating to the right to dissent and obtain payment
10 for shares, so as to add the right to dissent and obtain payment for shares for a division of a
11 domestic insurer; to provide for related matters; to repeal conflicting laws; and for other
12 purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in
16 Chapter 14, relating to domestic stock and mutual insurers, by adding a new article to read
17 as follows:

18 "ARTICLE 6

19 33-14-120.

20 As used in this article, the term:

21 (1) 'Capital' means the capital stock component of statutory surplus, as defined in the
22 National Association of Insurance Commissioners Accounting Practices and Procedures
23 Manual, version effective January 1, 2001, and subsequent revisions.

24 (2) 'Director' means a person:

- 25 (A) By or under whose authority the powers of a corporation are exercised; and
 26 (B) Under whose direction the business and affairs of the corporation are managed
 27 pursuant to the articles of incorporation or bylaws of the corporation.
- 28 (3) 'Divide' or 'division' means a transaction in which a domestic insurer divides into two
 29 or more resulting domestic insurers.
- 30 (4) 'Dividing insurer' means a domestic insurer that approves a plan of division pursuant
 31 to Code Section 33-14-122.
- 32 (5) 'Liability' means a debt, obligation, or any other liability arising in any manner,
 33 regardless of whether it is secured or contingent.
- 34 (6) 'New insurer' means a domestic insurer that is created by a division occurring on or
 35 after the effective date of this article.
- 36 (7) 'Property' means all property, whether real, personal, or mixed, tangible or intangible,
 37 or any right or interest therein, including rights under contracts and other binding
 38 agreements.
- 39 (8) 'Resulting insurer' means a new insurer or a dividing insurer that survives a division.
- 40 (9) 'Share' means a share of membership in a corporation.
- 41 (10) 'Shareholder' means the person in whose name shares are registered in the records
 42 of a corporation or the beneficial owner of shares to the extent of the rights granted by
 43 a nominee certificate on file with a corporation.
- 44 (11) 'Sign' or 'signature' means any manual, facsimile, conformed, or electronic
 45 signature.
- 46 (12) 'Surplus' means total statutory surplus less capital stock, adjusted for the par value
 47 of any treasury stock, calculated in accordance with the National Association of
 48 Insurance Commissioners Accounting Practices and Procedures Manual, version effective
 49 January 1, 2001, and subsequent revisions.
- 50 (13) 'Transfer' means an assignment, conveyance, sale, lease, or encumbrance, including
 51 a mortgage or security interest, gift, or transfer by operation of law.
- 52 33-14-121.
- 53 (a) Any domestic insurer may, in accordance with the requirements of this article, divide
 54 into two or more resulting insurers pursuant to a plan of division.
- 55 (b)(1) A plan of division shall include:
- 56 (A) The name of the dividing insurer seeking to divide;
 57 (B) The name of each resulting insurer or insurers that will be created by the proposed
 58 division, including its proposed articles of incorporation and proposed bylaws;
 59 (C) The manner of allocating between or among the resulting insurers:

- 60 (i) The property of the dividing insurer that will not be owned by all of the resulting
61 insurers as tenants in common pursuant to Code Section 33-14-125; and
62 (ii) Those policies and other liabilities of the dividing insurer to which not all of the
63 resulting insurers will be jointly and severally liable pursuant to paragraph (3) of
64 subsection (a) of Code Section 33-14-126;
- 65 (D) The manner of distributing shares in a new insurer to the dividing insurer or its
66 shareholders;
- 67 (E) A reasonable description of liabilities, capital, surplus, or other property the
68 dividing insurer proposes to allocate to a new insurer, including the manner by which
69 each reinsurance contract is to be allocated;
- 70 (F) All terms and conditions required by the laws of this state or the articles of
71 incorporation or bylaws of the dividing insurer; and
- 72 (G) All other terms and conditions of the division.
- 73 (2) If the dividing insurer will survive the division, the plan of division shall include, in
74 addition to the information required by paragraph (1) of this subsection:
- 75 (A) All proposed amendments to the dividing insurer's articles of incorporation and
76 bylaws, if any;
- 77 (B) If the dividing insurer desires to cancel some but not all shares in the dividing
78 insurer, the manner in which it will cancel such shares; and
- 79 (C) If the dividing insurer desires to convert some but not all shares in the dividing
80 insurer into interests, securities, shares, obligations, money, other property, or rights to
81 acquire interests, securities, or shares, or any combination thereof, a statement
82 disclosing the manner in which it will convert such shares.
- 83 (3) If the dividing insurer will not survive the proposed division, the plan of division
84 shall contain, in addition to the information required by paragraph (1) of this subsection,
85 the manner in which the dividing insurer will cancel or convert shares in the dividing
86 insurer into interests, securities, shares, obligations, money, other property, or rights to
87 acquire interests, securities, or shares, or any combination thereof.
- 88 (c) A dividing insurer may amend a plan of division in accordance with any procedures
89 set forth in the plan or, if no such procedures are set forth in the plan, in any manner
90 determined by the board of directors of the dividing insurer, except that a shareholder that
91 was entitled to vote on or consent to approval of the plan of division is entitled to vote on
92 or consent to any amendment of the plan that will change:
- 93 (1) The amount or kind of interests, securities, shares, obligations, money, other
94 property, or rights to acquire interests, securities, or shares, or any combination thereof,
95 to be received by any of the shareholders of the dividing insurer under the plan;

96 (2) The articles of incorporation of any resulting insurer that will be in effect when the
 97 division becomes effective, except for changes that do not require approval of the
 98 shareholders of the resulting insurer under its articles of incorporation; or

99 (3) Any other terms or conditions of the plan, if the change would adversely affect the
 100 shareholders in any material respect.

101 (d)(1) A dividing insurer may abandon a plan of division after it has approved the plan
 102 without any action by the shareholders and in accordance with any procedures set forth
 103 in the plan or, if no such procedures are set forth in the plan, in a manner determined by
 104 the board of directors of the dividing insurer.

105 (2) A dividing insurer may abandon a plan of division after it has delivered a certificate
 106 of division to the Secretary of State by delivering to the Secretary of State a certificate
 107 of abandonment signed by the dividing insurer. The certificate of abandonment shall be
 108 effective on the date it is filed with the Secretary of State, and the dividing insurer shall
 109 be deemed to have abandoned its plan of division on such date.

110 (3) A dividing insurer may not abandon its plan of division once the division becomes
 111 effective.

112 33-14-122.

113 (a) Except as provided in subsections (b) and (c) of this Code section, a dividing insurer
 114 shall not file a plan of division with the Commissioner unless such plan has been approved
 115 in accordance with:

116 (1) All provisions of its articles of incorporation and bylaws; or

117 (2) If its articles of incorporation and bylaws do not provide for approval of a division,
 118 all provisions of its articles of incorporation and bylaws that provide for approval of a
 119 merger.

120 (b) Shareholder approval of a plan of division shall not be required unless:

121 (1) The articles of incorporation and bylaws of the dividing insurer require such
 122 approval;

123 (2) The plan makes an amendment to the articles of incorporation and bylaws requiring
 124 such approval; or

125 (3) The dividing insurer will not survive the proposed division and has only one class of
 126 shares outstanding and the shares of each new insurer will not be distributed pro rata to
 127 the shareholders.

128 (c)(1) If any provision of the articles of incorporation and bylaws of a dividing insurer
 129 adopted before the effective date of this article requires that a specific number or
 130 percentage of directors or shareholders approve the proposal or adoption of a plan of
 131 merger, or imposes other special procedures for the proposal or adoption of a plan of

132 merger, such dividing insurer shall adhere to such provision in proposing or adopting a
 133 plan of division.

134 (2) If a provision of any debt security, note, or similar evidence of indebtedness for
 135 money borrowed, whether secured or unsecured, indenture or other contract relating to
 136 indebtedness, or a provision of any other type of contract other than an insurance policy,
 137 annuity, or reinsurance agreement, that was issued, incurred, or executed by the domestic
 138 insurer before the effective date of this article requires the consent of the obligee to a
 139 merger of the insurer or treats such a merger as a default and does not provide that a
 140 division of the insurer does not require the consent of the obligee or treat a division as a
 141 default, as applicable, then such provision applies to a division of the insurer as if such
 142 division were a merger.

143 (3) If any provision described in paragraph (1) or (2) of this subsection is amended on
 144 or after the effective date of this article, such provision shall thereafter apply to a division
 145 only in accordance with its express terms.

146 33-14-123.

147 (a) A division shall not become effective until it is approved by the Commissioner.

148 (b)(1) The Commissioner shall approve a plan of division unless the Commissioner finds
 149 that:

150 (A) The interest of any policyholder or shareholder will not be adequately protected;

151 or

152 (B) The proposed division constitutes a fraudulent transfer under Article 4 of Chapter
 153 2 of Title 18.

154 The Commissioner may make any additional determinations or findings as the
 155 Commissioner deems necessary or appropriate in connection with his or her approval of
 156 a plan of division.

157 (2) With respect to the dividing insurer, the Commissioner shall:

158 (A) Apply Article 4 of Chapter 2 of Title 18, the 'Uniform Voidable Transactions Act,'
 159 to the dividing insurer only in its capacity as a resulting insurer; and

160 (B) Not apply Article 4 of Chapter 2 of Title 18, the 'Uniform Voidable Transactions
 161 Act,' to the dividing insurer if the dividing insurer will not survive the proposed
 162 division.

163 (3) With respect to each resulting insurer, the Commissioner shall, in applying Article
 164 4 of Chapter 2 of Title 18, the 'Uniform Voidable Transactions Act,' treat:

165 (A) The resulting insurer as a debtor;

166 (B) Liabilities allocated to the resulting insurer as obligations incurred by a debtor;

167 (C) The resulting insurer as not having received a reasonably equivalent value in
 168 exchange for incurring such obligations; and

169 (D) Property allocated to the resulting insurer as remaining property.

170 (c) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, all information,
 171 documents, materials, and copies thereof submitted to, obtained by, or disclosed to the
 172 Commissioner in connection with proceedings under this Code section shall be confidential
 173 and shall not be available for public inspection.

174 (d) All expenses incurred by the Commissioner in connection with proceedings under this
 175 Code section, including expenses for the services of any attorneys, actuaries, accountants,
 176 and other experts not otherwise a part of the Commissioner's staff as may be reasonably
 177 necessary to assist the Commissioner in reviewing a proposed division, shall be paid by the
 178 dividing insurer filing a plan of division. A dividing insurer may allocate expenses
 179 described in this subsection in a plan of division in the same manner as any other liability.

180 (e) If the Commissioner approves a plan of division, the Commissioner shall issue a
 181 certificate of approval to the dividing insurer on a form prescribed by the Commissioner.

182 (f) The Commissioner shall not approve a plan of division unless the Commissioner issues
 183 to each new insurer that will be created by the proposed division a license to transact
 184 insurance business in this state pursuant to Code Section 33-3-15. The Commissioner may
 185 waive application of this subsection to a new insurer that will not survive a merger under
 186 subsection (c) of Code Section 33-14-43.

187 (g) The Commissioner may promulgate any additional procedures necessary or appropriate
 188 in connection with its review and approval of a plan of division under this article.

189 33-14-124.

190 (a) After a plan of division has been adopted and approved under Code Sections 33-14-122
 191 and 33-14-123, an officer or duly authorized representative of the dividing insurer shall
 192 sign a certificate of division.

193 (b) The certificate of division shall set forth:

194 (1) The name of the dividing insurer;

195 (2) A statement disclosing whether the dividing insurer will survive the division;

196 (3) The name of each resulting insurer;

197 (4) The date on which the division is to be effective, which shall not be more than 90
 198 days after the dividing insurer has filed the certificate of division with the Secretary of
 199 State;

200 (5) A statement that the division was approved by the dividing insurer in accordance
 201 with Code Section 33-14-122;

- 202 (6) A statement that the division was approved by the Commissioner in accordance with
 203 Code Section 33-14-123;
- 204 (7) A statement that the dividing insurer provided, not later than ten business days after
 205 the dividing insurer filed the plan of division with the Commissioner, reasonable notice
 206 to each insurer or reinsurer that is party to a reinsurance contract allocated in the plan of
 207 division;
- 208 (8) If the dividing insurer will survive the division, any amendment to its articles of
 209 incorporation approved as part of the plan of division;
- 210 (9) For each new insurer created by the division, its articles of incorporation, which need
 211 not state the name or address of an incorporator of a corporation; and
- 212 (10) A reasonable description of the capital, surplus, other property, and policies and
 213 other liabilities of the dividing insurer that are to be allocated to each resulting insurer.
- 214 (c) The articles of incorporation, if any, of each new insurer must satisfy the requirements
 215 of the laws of this state, but such articles need not be signed or include any provision that
 216 need not be included in a restatement of such articles.
- 217 (d) A certificate of division shall be effective when filed with the Secretary of State or on
 218 such other date specified in the plan of division, whichever is later; provided, however, that
 219 a certificate of division shall become effective not more than 90 days after it is filed with
 220 the Secretary of State. A division shall be effective when the relevant certificate of
 221 division becomes effective.
- 222 33-14-125.
- 223 (a) When a division becomes effective pursuant to subsection (d) of Code Section
 224 33-14-124:
- 225 (1) If the dividing insurer has survived the division:
- 226 (A) It continues to exist;
- 227 (B) Its articles of incorporation, if any, shall be amended as provided in the plan of
 228 division; and
- 229 (C) Its bylaws, if any, shall be amended as provided in the plan of division;
- 230 (2) If the dividing insurer has not survived the division, its separate existence ceases to
 231 exist;
- 232 (3) Each new insurer:
- 233 (A) Comes into existence;
- 234 (B) Shall hold any capital, surplus, and other property allocated to it as a successor to
 235 the dividing insurer, and not by transfer, whether directly or indirectly; and
- 236 (C) Its articles of incorporation and bylaws shall be effective;
- 237 (4) Capital, surplus, and other property of the dividing insurer:

- 238 (A) That is allocated by the plan of division either:
 239 (i) Vests in the new insurers as provided in the plan of division; or
 240 (ii) Remains vested in the dividing insurer;
 241 (B) That is not allocated by the plan of division:
 242 (i) Remains vested in the dividing insurer, if the dividing insurer survives the
 243 division; or
 244 (ii) Is allocated to and vests equally in the resulting insurers as tenants in common,
 245 if the dividing insurer does not survive the division; or
 246 (C) Vests as provided in this subsection without transfer, reversion, or impairment:
 247 (5) A resulting insurer to which a cause of action is allocated as provided in
 248 paragraph (4) of this subsection may be substituted or added in any pending action or
 249 proceeding to which the dividing insurer is a party when the division becomes effective;
 250 (6) The policies and other liabilities of the dividing insurer are allocated among the
 251 resulting insurers as provided in Code Section 33-14-126 and the resulting insurers to
 252 which policies or other liabilities are allocated are liable for those policies and other
 253 liabilities as successors to the dividing insurer, and not by transfer, whether directly or
 254 indirectly;
 255 (7) Any division that becomes effective pursuant to subsection (d) of Code
 256 Section 33-14-124 shall not be deemed to constitute an assignment of any insurance
 257 policy, annuity, reinsurance agreement, or any other type of contract under the laws of
 258 this state; and
 259 (8) The shares in the dividing insurer that are to be converted or canceled in the division
 260 are converted or canceled, and the shareholders of those shares are entitled only to the
 261 rights provided to them under the plan of division and any appraisal rights they may have
 262 pursuant to Code Section 33-14-127.
 263 (b) Except as provided in the articles of incorporation or bylaws of the dividing insurer,
 264 the division shall not give rise to any rights that a director, shareholder, or third party
 265 would have upon a dissolution, liquidation, or winding up of the dividing insurer.
 266 (c) The allocation to a new insurer of capital, surplus, or other property that is collateral
 267 covered by an effective financing statement shall not be effective until a new financing
 268 statement naming the new insurer as a debtor is effective under Articles 1 through 9 of
 269 Title 11.
 270 (d) Unless otherwise provided in the plan of division, the interests in and any shares of
 271 each new insurer shall be distributed to:
 272 (1) The dividing insurer, if it survives the division; or
 273 (2) The shareholders of the shares of the dividing insurer that do not assert appraisal
 274 rights, pro rata, if the dividing insurer does not survive the division.

275 33-14-126.

276 (a) Except as provided in this Code section, when a division becomes effective, a resulting
 277 insurer shall be responsible:

278 (1) Individually for the policies and other liabilities the resulting insurer issues,
 279 undertakes, or incurs in its own name after the division;

280 (2) Individually for the policies and other liabilities of the dividing insurer that are
 281 allocated to or remain the liability of the resulting insurer to the extent specified in the
 282 plan of division; and

283 (3) Jointly and severally with the other resulting insurers for the policies and other
 284 liabilities of the dividing insurer that are not allocated by the plan of division.

285 (b) If a division breaches an obligation of the dividing insurer, all of the resulting insurers
 286 shall be liable, jointly and severally, for the breach, but the validity and effectiveness of the
 287 division shall not be affected by the breach.

288 (c) A direct or indirect allocation of capital, surplus, property, or policies or other
 289 liabilities in a division shall not be considered a distribution for purposes of the articles of
 290 incorporation or bylaws of the dividing insurer or any of the resulting insurers.

291 (d) Liens, security interests, and other charges on the capital, surplus, or other property of
 292 the dividing insurer shall not be impaired by the division, notwithstanding any otherwise
 293 enforceable allocation of policies or other liabilities of the dividing insurer.

294 (e) If the dividing insurer is bound by a security agreement governed by Article 9 of
 295 Title 11, or Article 9 of the Uniform Commercial Code as enacted in any other jurisdiction,
 296 and the security agreement provides that the security interest attaches to after-acquired
 297 collateral, each resulting insurer shall be bound by the security agreement.

298 (f) Except as provided in the plan of division and specifically approved by the
 299 Commissioner, an allocation of a policy or other liability shall not affect the rights under
 300 any other law of a policyholder or creditor owed payment on the policy, or payment of any
 301 other type of liability or performance of the obligation that creates the liability, except that
 302 those rights shall be available only against a resulting insurer responsible for the policy,
 303 liability, or obligation under this Code section.

304 33-14-127.

305 A shareholder of a dividing insurer shall be entitled to appraisal rights and to obtain
 306 payment of the fair value of that shareholder's shares pursuant to Code Section 14-2-1302.

307 33-14-128.

308 The Commissioner may, in accordance with the procedures set forth in Code
 309 Section 33-2-9, promulgate rules and regulations necessary to implement and enforce the

310 provisions of this article. If the Commissioner should find that extraordinary circumstances
 311 exist and that it would be in the best interests of the citizens of this state, the Commissioner
 312 may suspend temporarily the applicability of any rule or regulation promulgated pursuant
 313 to this article."

314 **SECTION 2.**

315 Said title is further amended in Code Section 33-2-9, relating to rules and regulations, by
 316 revising subsection (b) as follows:

317 "(b) Before any rule or regulation shall become effective or before any amendment or
 318 repeal of any rule shall become effective, the proposed rule or regulation or amendment or
 319 repeal ~~shall be approved as to legality by the Attorney General~~ and shall have been on file
 320 as a public record in the office of the Commissioner for at least ten days."

321 **SECTION 3.**

322 Said title is further amended in Code Section 33-14-43, relating to merger or consolidation,
 323 by adding a new subsection to read as follows:

324 "(c) The Commissioner may permit the formation of a domestic insurance company that
 325 is established for the sole purpose of merging or consolidating with an existing domestic
 326 insurer simultaneously with a division authorized by Article 6 of this chapter. Upon
 327 request of the dividing insurer, as defined in Code Section 33-14-120, the Commissioner
 328 may waive the requirements of subsection (a) of this Code section, Code Section 33-3-15,
 329 and Chapter 13 of this title. Each insurer formed under this subsection shall be deemed to
 330 exist before a merger and division under this Code section becomes effective, but solely
 331 for the purpose of being a party to such merger and division. The Commissioner shall not
 332 require that such insurer be licensed to transact insurance business in this state before such
 333 merger and division. All insurance policies, annuities, or reinsurance agreements allocated
 334 to such insurer shall become the obligation of the insurer that survives the merger
 335 simultaneously with the effectiveness of the merger and division. The plan of merger shall
 336 be deemed to have been approved by such insurer if the dividing insurer approved such
 337 plan. The certificate of merger shall state that it was approved by the insurer formed under
 338 this subsection."

339 **SECTION 4.**

340 Part 1 of Article 13 of Chapter 2 of Title 14 of the Official Code of Georgia Annotated,
 341 relating to the right to dissent and obtain payment for shares, is amended in Code
 342 Section 14-2-1302, relating to right to dissent, by adding a new paragraph to subsection (a)
 343 to read as follows:

344 "(6) Consummation of a division, as defined in Code Section 33-14-120, to which the
345 corporation is a party, provided any such appraisal is subject to the limitations of Code
346 Section 33-14-127."

347 **SECTION 5.**

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