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INSURANCE

*Authorization and General Requirements for Transaction of Insurance:
Establish New Procedures to Ensure the Financial Stability of
Insurance Companies*

CODE SECTIONS: O.C.G.A. §§ 33-3-18 (amended), 33-3-21.3 (new), 33-7-14 (amended), 33-11-43 (new), 33-13-3.1 (new), 33-13-5 (amended), 33-37-1 to -58 (new), 33-47-1 to -7 (new), 33-48-1 to -4 (new), 33-49-1 to -11 (new)

BILL NUMBER: SB 347

ACT NUMBER: 522

SUMMARY: The Act expands the power of the Insurance Commissioner to suspend the certificate of authority of an insurance company. The Act requires that insurers authorized to operate in Georgia file certain documents with the National Association of Insurance Commissioners. Requirements controlling the manner in which insurers may reinsure their risks are amended. Insurance holding companies may not enter into major transactions without giving notice to the Commissioner, subject to her disapproval. Power is given to the Commissioner to prevent the acquisition of an insurer in a manner that would lessen competition among insurers in Georgia. The Act amends the procedures for the reorganization and liquidation of insurers. Regulation of nonemployee agents of insurers is established, including required elements of the contracts governing such agency; penalties for violations of those requirements are provided. The Act provides for the regulation of insurers controlled by producer agents and for regulation of reinsurance intermediaries.

EFFECTIVE DATE: July 1, 1991

History

Regulation of the insurance industry is a matter of state responsibility, despite the industry's national scope.¹ This includes the regulation of an insurer's solvency by the state in which it is domiciled.² To help each state rely upon the financial regulation conducted by other states, the National Association of Insurance Commissioners (NAIC) has established a system of regulation standards; if met by a state's regulation system, the NAIC will certify the procedures as in compliance.³

SB 347

Senate Bill 347 was requested by the Insurance Commissioner to address the seven areas in which Georgia's regulation statutes fall short of the NAIC standards.⁴ On February 18, 1991,⁵ it was introduced in the Senate bearing the title and a short section expanding the powers of the Insurance Commissioner to suspend the license of an insurer.⁶ The Industry and Labor Committee put forth a substitute that could be considered the bill in its original inception; it did not affect the section of the bill that had been introduced, but it included an additional five sections that brought the law in Georgia concerning the regulation of insurers into line with the NAIC standards.⁷ The Senate approved the committee substitute and the bill went to the House.⁸ The House Insurance Committee offered a substitute to SB 347, which added two additional sections.⁹ The committee substitute was adopted by the House, and the Senate agreed to the House substitute.¹⁰

1. Senate Research Office (Ga.), Senate Bill 347: NAIC Financial Regulation Legislation (Feb. 1991) (unpublished manuscript, available in Georgia State University College of Law Library) [hereinafter Senate Research].

2. *Id.*

3. *Id.*

4. *Id.*

5. Final Composite Status Sheet, Mar. 15, 1991.

6. SB 347 (as introduced), 1991 Ga. Gen. Assem. The remainder of the bill had not been prepared by the Commissioner's office by that date. Telephone Interview with Sen. Pete Robinson, Senate District No. 16 (Apr. 12, 1991) [hereinafter Robinson Interview].

7. SB 347 (SCS), 1991 Ga. Gen. Assem. The Senate Committee Substitute was reported on Feb. 21, 1991. See Final Composite Status Sheet, Mar. 15, 1991. This substitute had been prepared by the Commissioner's office. Robinson Interview, *supra* note 6. All components of the Act are based on model legislation proposed by the NAIC. Senate Research, *supra* note 1.

8. Final Composite Status Sheet, Mar. 15, 1991.

9. SB 347 (HCS), 1991 Ga. Gen. Assem. These substitutes had been supplied by the Commissioner's office. Telephone Interview with Rep. Wesley Dunn, Vice-Chairman, House Insurance Committee, House District No. 73 (Apr. 19, 1991) [hereinafter Dunn Interview]. The only change in addition to the two sections was the deletion of the word "counsel" from a portion of the bill concerning the Commissioner of Insurance's authority

The Act supplements the Commissioner's power to suspend an insurer's certificate of authority without notice or hearing.¹¹ The Commissioner may do so if delinquency proceedings against an insurer have been commenced by another state,¹² if another state has restricted the insurer's authority to do business, or if it appears in her discretion that the suspension is warranted.¹³

Any insurer authorized to transact insurance in Georgia is required to file with the NAIC a copy of its annual statement convention blank and actuarial certification, in addition to any other filings required by the Commissioner.¹⁴ Insurers domiciled in a state with a similar law need not make additional filings.¹⁵ Members and agents of the NAIC are not "subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, and dissemination" of the information contained in the filings, when they operate without actual malice.¹⁶ Information submitted by the NAIC to the Department of Insurance in which the NAIC has "an expectation of confidentiality" shall be kept confidential by the Department.¹⁷ The Commissioner has the power to suspend, revoke, or not renew the certificate of authority of any insurer that does not file.¹⁸

to employ and compensate "such counsel, clerks, and assistants as deemed necessary." See SB 347 (SCS), 1991 Ga. Gen. Assem. This deletion was made on the belief that the Commissioner's general staff, together with the terms "clerks" and "assistants" adequately covered the Commissioner's need for additional assistance. Dunn Interview.

10. Final Composite Status Sheet, Mar. 15, 1991.

11. O.C.G.A. § 33-3-18 (Supp. 1991).

12. This was the sole basis for suspension before the Act. See 1969 Ga. Laws 585, § 1 (formerly found at O.C.G.A. § 33-3-18 (1981)).

13. O.C.G.A. § 33-3-18 (Supp. 1991). The Commissioner's discretion may be exercised if:

(A) The insurer's condition renders the continuance of its business hazardous to the public or its insureds;

(B) The insurer exceeded its powers granted under its certificate of authority and applicable law;

(C) The insurer has failed to comply with the applicable provisions of this title;

(D) The business of the insurer is being conducted fraudulently; or

(E) The insurer gives its consent.

O.C.G.A. § 33-3-18(3) (Supp. 1991).

14. O.C.G.A. § 33-3-21.3 (Supp. 1991). Prior to the Act, filing to the Commissioner only was required. See O.C.G.A. §§ 33-3-21 to -21.2 (Supp. 1989).

15. O.C.G.A. § 33-3-21.3(b)(2) (Supp. 1991).

16. O.C.G.A. § 33-3-21.3(c) (Supp. 1991).

17. O.C.G.A. § 33-3-21.3(d) (Supp. 1991). This ensures that no additional damage is done to an insurance company when its financial position requires improvement, as that would adversely affect policyholders. Senate Research, *supra* note 1.

18. O.C.G.A. § 33-3-21.3(e) (Supp. 1991).

An insurer can reinsure its risks and receive a credit to its asset requirements only when the reinsurer meets certain standards.¹⁹ The reinsurer must be licensed in Georgia; become accredited in Georgia by being licensed in another state, submitting to Georgia's jurisdiction, allowing the Commissioner to examine its records, and filing annual statements with the Commissioner showing either a surplus of \$20 million or approval by the Commissioner; or be reinsuring risks located in jurisdictions that require the reinsurance of those risks.²⁰ If the reinsurer is not licensed or accredited in Georgia, it must be domiciled or licensed in a state with similar standards and must maintain a surplus of at least \$20 million and allow examination of its records.²¹ A reinsurer not licensed or accredited in Georgia may also qualify as a source of reinsurance credit if it maintains an individual trust account with a surplus of \$20 million, is a member of an unincorporated group trust with a surplus of \$100 million, or is in a group of incorporated international insurers with a common administration and has a joint trust for the benefit of United States ceding insurers with a surplus of \$100 million.²² Trusts must be in a form approved by the Commissioner, and claims shall be valid upon final order of a United States court of competent jurisdiction.²³

Additionally, for credit to be given for risks reinsured with a reinsurer not licensed or accredited in Georgia, the reinsurance agreements must include the reinsurer's submission to the jurisdiction of any court of competent jurisdiction of any state and the designation of the Commissioner or an attorney as its attorney for service of process.²⁴ Credit may be taken in the amount set forth in the reinsurance agreement to the extent that security is held in a qualified United States financial institution under the ceding insurer's control in the form of cash, securities listed by the NAIC, irrevocable letters of credit, or other security accepted by the Commissioner.²⁵

Insurers that operate as part of a holding company system are subject to the Commissioner's regulation when making an acquisition of a Georgia insurer.²⁶ If such acquisition would operate so as to lessen

19. O.C.G.A. § 33-7-14 (Supp. 1991).

20. *Id.*

21. O.C.G.A. § 33-7-14(a)(3) (Supp. 1991).

22. O.C.G.A. § 33-7-14(a)(4) (Supp. 1991).

23. *Id.* Annual statements concerning the balance and duration of the trusts must be filed. *Id.*

24. O.C.G.A. § 33-7-14(a)(6) (Supp. 1991).

25. O.C.G.A. § 33-7-14(b) (Supp. 1991).

26. O.C.G.A. § 33-13-3.1 (Supp. 1991). The section does not apply to some types of acquisitions. O.C.G.A. § 33-13-3.1(b)(2) (Supp. 1991).

competition among insurers in Georgia, or if the insurer fails to give proper notification of the acquisition, the Commissioner may enter an order denying the acquisition application or requiring the insurer to cease operating in Georgia.²⁷ Such an order requires notice and a hearing.²⁸ Standards by which the Commissioner can establish an impact on competition are set forth; specified market share compositions or trends in market share will be *prima facie* evidence of an impact.²⁹ Additional evidence may be used.³⁰ Even if the acquisition would impact competition, the Commissioner has discretion to allow the acquisition if benefits to the public would result from the acquisition.³¹

Holding companies must notify the Commissioner, subject to her disapproval within thirty days, of their intention to enter into any major transactions within the holding company.³² Guidelines for the Commissioner's approval are basically that the transaction be fair and reasonable.³³ Any insurer must also give the Commissioner notice before any extraordinary dividend or distribution to shareholders occurs, subject to his disapproval within thirty days.³⁴ Guidelines for the Commissioner's approval concern the insurer's size, diversification, reinsurance, investments, and reserves.³⁵

The Act completely replaces Chapter 37 of Title 33 with the Insurers Rehabilitation and Liquidation Act.³⁶ This amendment was intended to give Chapter 37 a more logical structure and to clarify the responsibilities and powers of the Insurance Commissioner when an insurer is in financial difficulty.³⁷ The purpose of the Insurers Rehabilitation and Liquidation Act is to protect "interests of insureds, claimants, creditors, and the public generally" with due regard to the prerogatives of insurers.³⁸ It establishes the Commissioner as the sole person who can

27. *Id.* Violation of a cease and desist order can carry a penalty of \$10,000 for each day of the violation, as well as revocation of an insurer's license to operate. O.C.G.A. § 33-13-3.1(e)(2) (Supp. 1991).

28. *Id.*

29. O.C.G.A. § 33-13-3.1(d)(2)(A), (B) (Supp. 1991).

30. O.C.G.A. § 33-13-3.1(d)(2)(D) (Supp. 1991).

31. O.C.G.A. § 33-13-3.1(d)(3) (Supp. 1991).

32. O.C.G.A. § 33-13-5 (Supp. 1991). These major transactions are primarily loans, extensions of credit, or guarantees amounting to three percent of the insured's assets or 25 percent of its surplus, or reinsurance of five percent of its surplus, but also include "management agreements, service contracts, and all-cost-sharing agreements." O.C.G.A. § 33-13-5(a)(2) (Supp. 1991).

33. O.C.G.A. § 33-13-5(a) (Supp. 1991).

34. O.C.G.A. § 33-13-5(b) (Supp. 1991). Dividends and distributions conditioned on approval can be made but confer no rights on the recipient if not approved. *Id.*

35. O.C.G.A. § 33-13-5(c) (Supp. 1991).

36. O.C.G.A. §§ 33-37-1 to -58 (Supp. 1991).

37. Senate Research, *supra* note 1.

38. O.C.G.A. § 33-37-1(d) (Supp. 1991).

bring a delinquency proceeding in court against an insurer in Georgia.³⁹ The Act provides for formal procedures by which the Commissioner can apply for court orders naming her rehabilitator or liquidator of an insurer.⁴⁰ It also expresses the personal jurisdiction of Georgia courts over those who have certain connections with an insurer or reinsurer against whom delinquency proceedings have begun, or who hold assets of the insurer, or who are obligated to the insurer.⁴¹ Anyone who fails to cooperate with the Commissioner in the course of a delinquency proceeding, or a preliminary investigation, may be fined up to \$10,000 or imprisoned for up to one year, or both, or be subject to a civil penalty of up to \$10,000 and revocation of insurance licenses.⁴²

The Commissioner may institute a summary procedure against a Georgia insurer when the public will be endangered by delay, and obtain an order to seize the insurer.⁴³ A hearing and review of the order must be granted within fifteen days of a request.⁴⁴ A seizure cannot constitute an anticipatory breach of any contract of the insurer,⁴⁵ and all information in the proceedings shall be confidential.⁴⁶

The Commissioner may apply to the court for a formal order naming her rehabilitator of a domestic insurer in a variety of circumstances.⁴⁷ As rehabilitator, she can manage and direct the property and business of the insurer as necessary to reform and revitalize the insurer.⁴⁸ Any reorganization plan must be approved by the court after notice and hearing.⁴⁹ Any court action already pending against the insurer shall be stayed.⁵⁰

The Commissioner (or the directors of the insurer) may petition the court for an order terminating the rehabilitation and restoring the property and business of the insurer.⁵¹ The Commissioner may, if she believes it necessary, petition for an order to liquidate an insurer, even

39. O.C.G.A. § 33-37-4 (Supp. 1991).

40. O.C.G.A. §§ 33-37-1 to -58 (Supp. 1991).

41. O.C.G.A. § 33-37-4(c) (Supp. 1991). Actions brought under Chapter 37 must be brought in the Superior Court of Fulton County.

42. O.C.G.A. § 33-37-6(d) (Supp. 1991).

43. O.C.G.A. § 33-37-9 (Supp. 1991).

44. *Id.*

45. *Id.*

46. O.C.G.A. § 33-37-10 (Supp. 1991).

47. O.C.G.A. § 33-37-11 (Supp. 1991). These circumstances include financial danger to others, failure to cooperate with certain of the Commissioner's duties, failure to pay just obligations, or reason to believe that illegal conduct has occurred with respect to the insured's assets. *Id.*

48. O.C.G.A. § 33-37-13 (Supp. 1991). An accounting must be given the court at least every six months. O.C.G.A. § 33-37-12(c) (Supp. 1991).

49. O.C.G.A. § 33-37-13(e) (Supp. 1991).

50. O.C.G.A. § 33-37-14 (Supp. 1991).

51. O.C.G.A. § 33-37-15(c) (Supp. 1991).

if not previously in rehabilitation.⁵² This order can be based on the same grounds needed for an order to rehabilitate or on the grounds of insolvency.⁵³ The entry of an order freezes the rights and obligations of those interested in the estate of the insurer.⁵⁴

Liquidation of the insurer proceeds under a plan submitted by the Commissioner to the court with the court's supervision.⁵⁵ The Commissioner has powers enabling her to liquidate the insurer in a reasonable manner.⁵⁶ The Commissioner must give notice of the liquidation order to all those affected by the liquidation.⁵⁷

Claims must be filed in the manner and time set forth in the notice, although the Commissioner has discretion to allow late filings.⁵⁸ Claims contingent upon a judgment against one of the insured's clients must be filed (and considered) as though a judgment had occurred.⁵⁹ If a claim is denied by the Commissioner, objection must be made to her within sixty days or the right to further objection to the denial is lost.⁶⁰ The priority of claims in liquidation is established.⁶¹ Any person may apply to the court for an order discharging the Commissioner and terminating the liquidation.⁶² If an application for discharge is denied, the person who made the application must reimburse the Commissioner the costs of contesting it.⁶³

Special procedures are established for governing the liquidation of Georgia assets of out-of-state insurers being liquidated in another state,

52. O.C.G.A. §§ 33-37-15(a), -16 (Supp. 1991). This action may be opposed by the directors of the insurer, and the court may order costs of this opposition to be paid from the estate of the insurer. O.C.G.A. § 33-37-15(a) (Supp. 1991).

53. O.C.G.A. § 33-37-16 (Supp. 1991). If granted, only the Commissioner will be named liquidator. O.C.G.A. § 33-37-17(a) (Supp. 1991).

54. O.C.G.A. §§ 33-37-17(b), -23 (Supp. 1991). Insurance policies for life, accident, sickness, and annuities that are guaranteed by a guaranty association will remain in force; if not guaranteed, they remain in force for no more than 30 days. O.C.G.A. § 33-37-23 (Supp. 1991). Obligations of other entities to pay a premium on behalf of an insured are due at the declaration of insolvency. O.C.G.A. § 33-37-32(a) (Supp. 1991). Failure to pay such a premium can result in the Commissioner's suspension or revocation of licenses and the imposition of a \$5000 fine. O.C.G.A. § 33-37-32 (Supp. 1991).

55. O.C.G.A. §§ 33-37-17(f), -19, -20, -24, -30, -33, -40, -42, -43, -47, -48 (Supp. 1991).

56. O.C.G.A. §§ 33-37-19 to -20 (Supp. 1991). The Commissioner and the court have specific powers to handle fraudulent transfers, voidable preferences, and setoffs. O.C.G.A. §§ 33-37-25 to -29 (Supp. 1991).

57. O.C.G.A. § 33-37-21 (Supp. 1991). The notice must include information necessary to make a claim against the insurer's estate. O.C.G.A. §§ 33-37-21, -35 (Supp. 1991).

58. O.C.G.A. § 33-37-34 (Supp. 1991).

59. O.C.G.A. § 33-37-36 (Supp. 1991). The insured may file on his own behalf as well. O.C.G.A. § 33-37-37 (Supp. 1991).

60. O.C.G.A. § 33-37-38 (Supp. 1991).

61. O.C.G.A. § 33-37-41 (Supp. 1991).

62. O.C.G.A. § 33-37-45 (Supp. 1991). The Commissioner must apply for a discharge when he deems it justified. *Id.*

63. *Id.*

and for governing the liquidation of out-of-state assets of insurers undergoing Georgia liquidation.⁶⁴ If those states have statutes similar to the Georgia Insurers Rehabilitation and Liquidation Act, claims against insurers being liquidated may be filed in either state.⁶⁵ The Commissioners of each state can assist the liquidation efforts of the other.⁶⁶

The Act also places special requirements on certain kinds of relationships in the insurance industry. A new Code chapter, titled the Managing General Agents Act, is created.⁶⁷ Managing general agents are defined, in essence, as nonemployee agents of an insurer who manage or negotiate insurance business on behalf of an insurer, who handle business of the insurer that is at least five percent of the insurer's policyholder surplus, and who either negotiate reinsurance or adjust or pay claims for the insurer.⁶⁸ The Managing General Agents Act places special requirements on managing general agents and their relations with insurers. The insurer must make various financial examinations of its managing general agents, and may not appoint a managing general agent to its board of directors or any other position with the insurer.⁶⁹ The contractual relationship between the insurer and the managing general agent must meet several criteria, which include the insurer's right to terminate the contract for cause, monthly reporting to the insurer by the agent, no ability of the agent to assign the contract, the inclusion of specified underwriting guidelines, and the exclusion of the agent from binding the insurer to most forms of reinsurance commitments.⁷⁰ If a violation of the Managing General Agents Act occurs, the Insurance Commissioner may order a fine of up to \$10,000, the revocation of the agent's license, and reimbursement of the insurer by the agent.⁷¹ The conduct of the hearing and judicial review of the Commissioner's findings and orders will be governed by the previously established provisions of Chapter 2 of Title 33.⁷²

Special regulation is also extended to insurance companies that are controlled by insurance agents.⁷³ The Business Transacted with Producer Controlled Property and Casualty Insurer Act basically regulates the relationship between the agents and the company.⁷⁴ Control is presumed if the agent controls a majority of the company, but is not presumed

64. O.C.G.A. §§ 33-37-49 to -58 (Supp. 1991).

65. O.C.G.A. §§ 33-37-54, -55 (Supp. 1991).

66. O.C.G.A. §§ 33-37-52, -53 (Supp. 1991).

67. O.C.G.A. §§ 33-47-1 to -7 (Supp. 1991).

68. O.C.G.A. § 33-47-2 (Supp. 1991).

69. O.C.G.A. § 33-47-5 (Supp. 1991).

70. O.C.G.A. § 33-47-4 (Supp. 1991).

71. O.C.G.A. § 33-47-7 (Supp. 1991).

72. *Id.*

73. O.C.G.A. §§ 33-48-1 to -4 (Supp. 1991).

74. *Id.*

merely by the agent's being a director or officer of the company.⁷⁵ Business placed with the controlled insurer by the controlling agent must not involve "a pattern of charging" premiums below the general market, must follow the insurer's usual underwriting procedures, and must be demonstrably "fair and equitable."⁷⁶ Additionally, written notice of the relationship between agent and company must be given to any policyholder before the effective date of the policy, and the notice must be signed by the policyholder.⁷⁷ Special reports must be filed with the Insurance Commissioner,⁷⁸ and the Commissioner may establish special capitalization requirements for the agent controlled insurer.⁷⁹ The Commissioner may pursue violations of Chapter 48 under her authority previously established in Chapter 2 of Title 33.⁸⁰

The Reinsurance Intermediary Act⁸¹ regulates nonemployee agents who serve either as brokers for the purchase and placement of reinsurance or as managers for the insurer's reinsurance business.⁸² Attorneys acting in their professional capacity do not fall under these definitions.⁸³ The reinsurance intermediary must be licensed in Georgia, and may be required by the Insurance Commissioner to post a bond.⁸⁴ The Commissioner may refuse to issue a license if she judges any controlling or principal person in the reinsurance arrangement to be untrustworthy or to have given sufficient cause for the revocation of a license.⁸⁵ A summary of the basis for that judgment may be requested and will not be subject to the Open Records Act.⁸⁶ Separate regulations for the contractual arrangements with brokers and managers are specified;⁸⁷ each must maintain records of all transactions for at least ten years after the expiration of the relationship.⁸⁸ Regardless of the contractual relationship, the reinsurance manager may not commit the company to participate in reinsurance syndicates, may not commit the reinsurer to pay a claim greater than one percent of the reinsurer's surplus without prior approval, and may not appoint a submanager.⁸⁹ Any reinsurance intermediary is subject to full examination by the

75. O.C.G.A. § 33-48-2 (Supp. 1991).

76. O.C.G.A. § 33-48-2(6) (Supp. 1991).

77. O.C.G.A. § 33-48-3(a)(2) (Supp. 1991).

78. O.C.G.A. § 33-48-3(a)(4), (5) (Supp. 1991).

79. O.C.G.A. § 33-48-2(6)(E) (Supp. 1991).

80. O.C.G.A. § 33-48-4 (Supp. 1991).

81. O.C.G.A. §§ 33-49-1 to -11 (Supp. 1991).

82. O.C.G.A. § 33-49-2 (Supp. 1991).

83. O.C.G.A. § 33-49-3(f) (Supp. 1991).

84. O.C.G.A. § 33-49-3(a), (c) (Supp. 1991).

85. O.C.G.A. § 33-49-3(e) (Supp. 1991).

86. *Id.*

87. O.C.G.A. §§ 33-49-4, -7 (Supp. 1991).

88. O.C.G.A. §§ 33-49-5, -7 (Supp. 1991).

89. O.C.G.A. § 33-49-8 (Supp. 1991).

Commissioner.⁹⁰ If a violation of the Reinsurance Intermediary Act occurs, the Insurance Commissioner may order a fine of up to \$10,000, the revocation of licenses, and reimbursement of the reinsurer by the intermediary.⁹¹ The conduct of the hearing and judicial review of the Commissioner's findings and orders is governed by the previously established provisions of Chapter 2 of Title 33.⁹²

Additionally, any insurer brought within the reach of Title 33 of the Code by this Act or any other provision must comply with the provisions on investments found in Chapter 11 of Title 33.⁹³

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90. O.C.G.A. § 33-49-10 (Supp. 1991).

91. O.C.G.A. § 33-49-11 (Supp. 1991).

92. *Id.*

93. O.C.G.A. § 33-11-43 (Supp. 1991).