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Judy Lynn Poag

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INSURANCE

Domestic Stock and Mutual Insurers: Create Exceptions to Prohibited Transactions for Directors and Employees; Permit Transferability of Insurable Interests

CODE SECTIONS:	O.C.G.A. §§ 33-14-19, 33-24-3, -6, 33-27-3 (amended)
BILL NUMBER:	SB 332
ACT NUMBER:	374
GEORGIA LAWS:	1995 Ga. Laws 776
SUMMARY:	The Act allows officers, directors, committee members, and employees of an insurance company to engage in transactions with the insurance company if a written request is given to the Insurance Commissioner's office and the request is not denied. The Act also changes the law relating to a corporation's insurable interests. If a corporation is merged, sold, or otherwise becomes part of another corporation, the new corporation may retain the former corporation's insurable interests.
EFFECTIVE DATE:	April 18, 1995 ¹

History

Previously, Code section 33-14-19 prohibited any person with a fiduciary relationship with an insurance company, who invested or handled the insurer's funds, from engaging in any other financial transactions with the company.² However, this section was interpreted by the Insurance Commissioner's office to apply to almost any employee of an insurance company.³ Senator Steve Langford introduced SB 332 to clarify this issue.⁴

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1. The Act became effective upon approval by the Governor.
 2. 1960 Ga. Laws 289 (formerly found at O.C.G.A. § 33-14-19(a) (1992)).
 3. Telephone Interview with Sen. Steve Langford, Senate District No. 29 (Apr. 10, 1995) [hereinafter Langford Interview].
 4. *Id.*

Additionally, prior to the Act, Georgia law allowed a corporation to take out a life insurance policy on its directors, officers, or employees if it had an "insurable interest" in such persons.⁵ An insurable interest exists if the person's "death or physical or mental disability might cause financial loss to the corporation."⁶

However, Georgia law did not give a merged corporation an interest in the employees it gained from the merger.⁷ For example, if Company A purchased Company B, which had insurable interests in the lives of four employees, Company A would not receive the insurable interests in those key employees.⁸ Although the employees might still be vital to Company A, the company would not have an insurable interest in their lives.⁹ Representatives Jimmy Lord and Robin Williams amended the bill to remedy this problem.¹⁰

SB 332

Exceptions to Prohibited Transactions

The Act allows employees, directors, committee members, and officers of an insurance company to do business with the company if the insurer submits written notice of any proposed transaction with the company to the Insurance Commissioner's office.¹¹ The insurer must provide the written notice to the Commissioner's office no later than thirty days before the

5. See O.C.G.A. § 33-24-3(c), (d) (Supp. 1995); *Turner v. Davidson*, 4 S.E.2d 814 (Ga. 1939). In *Turner*, the Georgia Supreme Court held that a company must show more than a mere employment relationship to have an insurable interest. *Id.* at 817. An employer must show that the key employee's death would likely "result in substantial pecuniary loss to the employer." *Id.* A small economic loss is insufficient to establish this relationship. *Id.*; see also *Legislative Review*, 5 GA. ST. U. L. REV. 435 (1988).

6. O.C.G.A. § 33-24-3(c) (Supp. 1995).

7. Telephone Interview with Rep. Jimmy Lord, House District No. 121 (Apr. 7, 1995) [hereinafter Lord Interview].

8. *Id.*

9. *Id.* Rep. Lord stated that there was no particular individual or group that requested this change. The fact that this scenario could occur was simply an oversight by the writers of the original bill. The amendment was introduced to correct the oversight. *Id.*

10. *Id.*; SB 332 (HFS), 1995 Ga. Gen. Assem.

11. O.C.G.A. § 33-14-19(a)(3)(A) (Supp. 1995).

transaction is to occur or "such lesser period as may be permitted by the Commissioner."¹² The Commissioner's office has the authority to deny the request.¹³ If no denial is issued, the proposed transaction is considered approved¹⁴ as long as the transaction has been approved by the Board of Directors or the shareholders, if necessary.¹⁵

The bill, as introduced, allowed the Commissioner thirty days to deny the transaction, otherwise the transaction was valid.¹⁶ Senator Steve Langford, the original sponsor of the bill, introduced a floor amendment which would allow the Commissioner to extend the initial review period up to an additional thirty days, provided that the Commissioner's office sent written notice "to the insurer no less than five days prior to the expiration of the initial review period."¹⁷ The floor amendment was introduced at the request of the Insurance Commissioner's office because the initial thirty-day period might not provide the Commissioner's office with enough time to perform an adequate review of the proposed transaction.¹⁸

Additionally, the Act requires that the proposed transaction, if permitted by the Commissioner's office, be approved by the Board of Directors or the shareholders when "the proposed transaction would be a director's conflicting interest transaction."¹⁹ For example, an officer could now open a janitorial business and contract with the insurance company to provide services as long as written notice was given to the Commissioner, the Commissioner did not disapprove the transaction, and the Board of Directors or shareholders of the company approved, if necessary.²⁰

12. *Id.*

13. *Id.*

14. *Id.* § 33-14-19(a)(3)(A), (B). The provisions governing required approval by directors or shareholders can be found at 1988 Ga. Laws 1070 (codified at O.C.G.A. § 14-2-862 (1994) (directors) and *id.* § 14-2-863 (shareholders)).

15. *Id.* § 34-14-19(a)(3)(B).

16. SB 332, as introduced, 1995 Ga. Gen. Assem.

17. SB 332 (SFA), 1995 Ga. Gen. Assem.; O.C.G.A. § 33-14-19(a)(3)(A) (Supp. 1995).

18. Langford Interview, *supra* note 3.

19. O.C.G.A. § 33-14-19(a)(3)(B) (Supp. 1995).

20. Langford Interview, *supra* note 3.

Insurable Interests

The Act adds a new provision that conveys the insurable interests of one corporation "automatically to another corporation . . . which has acquired by purchase, merger, or otherwise all or part of the first corporation's business."²¹ The Act also gives to corporations an insurable interest in "former employees" for the limited purpose of replacing existing policies.²² The new policy limit, however, must not exceed the amount of the former policy.²³ These additions were submitted as a floor substitute to SB 332 by Representatives Lord and Williams.²⁴ This substitute was enacted without further amendments.²⁵

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21. O.C.G.A. § 33-24-3(c.1) (Supp. 1995).

22. *Id.* §§ 33-24-3(c), -6(d); *id.* § 33-27-3(a)(11) (concerning group life insurance policies).

23. *Id.* §§ 33-24-3(c), -6(d), 33-27-3(a)(11); *see also* Lord Interview, *supra* note 17.

24. Lord Interview, *supra* note 17; *see* SB 332 (HFS), 1995 Ga. Gen. Assem.

25. *Compare* SB 332 (HFS), 1995 Ga. Gen. Assem. *with* O.C.G.A. § 33-24-3 (Supp. 1995).