

House Bill 754

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

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide for the division of a domestic insurer into two or more resulting domestic insurers; to provide for definitions; to provide for a plan of division subject to approval by the Insurance Commissioner; to provide for a certificate of division; to provide for the effect of a division; to provide for the responsibilities of a resulting insurer; to provide for shareholder appraisal rights; to provide for rules and regulations; to revise the authorization and procedure for merger or consolidation; to amend Part 1 of Article 13 of Chapter 2 of Title 14 of the Official Code of Georgia Annotated, relating to the right to dissent and obtain payment for shares, so as to add the right to dissent and obtain payment for shares for a division of a domestic insurer; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"ARTICLE 6

33-14-120.

As used in this article, the term:

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

(2) 'Director' means a person:

(A) By or under whose authority the powers of a corporation are exercised; and

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(B) Under whose direction the business and affairs of the corporation are managed pursuant to the articles of incorporation or bylaws of the corporation.

(3) 'Divide' or 'division' means a transaction in which a domestic insurer divides into two or more resulting domestic insurers.

(4) 'Dividing insurer' means a domestic insurer that approves a plan of division pursuant to Code Section 33-14-122.

(5) 'Liability' means a debt, obligation, or any other liability arising in any manner, regardless of whether it is secured or contingent.

(6) 'New insurer' means a domestic insurer that is created by a division occurring on or after the effective date of this article.

(7) 'Property' means all property, whether real, personal, or mixed, tangible or intangible, or any right or interest therein, including rights under contracts and other binding agreements.

(8) 'Resulting insurer' means a new insurer or a dividing insurer that survives a division.

(9) 'Share' means a share of membership in a corporation.

(10) 'Shareholder' means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(11) 'Sign' or 'signature' means any manual, facsimile, conformed, or electronic signature.

(12) 'Surplus' means total statutory surplus less capital stock, adjusted for the par value of any treasury stock, calculated in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, version effective January 1, 2001, and subsequent revisions.

(13) 'Transfer' means an assignment, conveyance, sale, lease, or encumbrance, including a mortgage or security interest, gift, or transfer by operation of law.

33-14-121.

(a) Any domestic insurer may, in accordance with the requirements of this article, divide into two or more resulting insurers pursuant to a plan of division.

(b)(1) A plan of division shall include:

(A) The name of the dividing insurer seeking to divide;

(B) The name of each resulting insurer or insurers that will be created by the proposed division, including its proposed articles of incorporation and proposed bylaws;

(C) The manner of allocating between or among the resulting insurers:

(i) The property of the dividing insurer that will not be owned by all of the resulting insurers as tenants in common pursuant to Code Section 33-14-125; and

(ii) Those policies and other liabilities of the dividing insurer to which not all of the resulting insurers will be jointly and severally liable pursuant to paragraph (3) of subsection (a) of Code Section 33-14-126;

(D) The manner of distributing shares in a new insurer to the dividing insurer or its shareholders;

(E) A reasonable description of liabilities, capital, surplus, or other property the dividing insurer proposes to allocate to a new insurer, including the manner by which each reinsurance contract is to be allocated;

(F) All terms and conditions required by the laws of this state or the articles of incorporation or bylaws of the dividing insurer; and

(G) All other terms and conditions of the division.

(2) If the dividing insurer will survive the division, the plan of division shall include, in addition to the information required by paragraph (1) of this subsection:

(A) All proposed amendments to the dividing insurer's articles of incorporation and bylaws, if any;

(B) If the dividing insurer desires to cancel some but not all shares in the dividing insurer, the manner in which it will cancel such shares; and

(C) If the dividing insurer desires to convert some but not all shares in the dividing insurer into interests, securities, shares, obligations, money, other property, or rights to acquire interests, securities, or shares, or any combination thereof, a statement disclosing the manner in which it will convert such shares.

(3) If the dividing insurer will not survive the proposed division, the plan of division shall contain, in addition to the information required by paragraph (1) of this subsection, the manner in which the dividing insurer will cancel or convert shares in the dividing insurer into interests, securities, shares, obligations, money, other property, or rights to acquire interests, securities, or shares, or any combination thereof.

(c) A dividing insurer may amend a plan of division in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in any manner determined by the board of directors of the dividing insurer, except that a shareholder that was entitled to vote on or consent to approval of the plan of division is entitled to vote on or consent to any amendment of the plan that will change:

(1) The amount or kind of interests, securities, shares, obligations, money, other property, or rights to acquire interests, securities, or shares, or any combination thereof, to be received by any of the shareholders of the dividing insurer under the plan;

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

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

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

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

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

33-14-122.

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

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

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

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

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

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

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

(c)(1) If any provision of the articles of incorporation and bylaws of a dividing insurer adopted before the effective date of this article requires that a specific number or percentage of directors or shareholders approve the proposal or adoption of a plan of merger, or imposes other special procedures for the proposal or adoption of a plan of merger, such dividing insurer shall adhere to such provision in proposing or adopting a plan of division.

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

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

33-14-123.

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

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

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

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

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

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

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

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

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

(A) The resulting insurer as a debtor;

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

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

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

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

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

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

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

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

33-14-124.

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

(b) The certificate of division shall set forth:

(1) The name of the dividing insurer;

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

(3) The name of each resulting insurer;

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

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

(6) A statement that the division was approved by the Commissioner in accordance with Code Section 33-14-123;

(7) A statement that the dividing insurer provided, not later than ten business days after the dividing insurer filed the plan of division with the Commissioner, reasonable notice

to each insurer or reinsurer that is party to a reinsurance contract allocated in the plan of division;

(8) If the dividing insurer will survive the division, any amendment to its articles of incorporation approved as part of the plan of division;

(9) For each new insurer created by the division, its articles of incorporation, which need not state the name or address of an incorporator of a corporation; and

(10) A reasonable description of the capital, surplus, other property, and policies and other liabilities of the dividing insurer that are to be allocated to each resulting insurer.

(c) The articles of incorporation, if any, of each new insurer must satisfy the requirements of the laws of this state, but such articles need not be signed or include any provision that need not be included in a restatement of such articles.

(d) A certificate of division shall be effective when filed with the Secretary of State or on such other date specified in the plan of division, whichever is later; provided, however, that a certificate of division shall become effective not more than 90 days after it is filed with the Secretary of State. A division shall be effective when the relevant certificate of division becomes effective.

33-14-125.

(a) When a division becomes effective pursuant to subsection (d) of Code Section 33-14-124:

(1) If the dividing insurer has survived the division:

(A) It continues to exist;

(B) Its articles of incorporation, if any, shall be amended as provided in the plan of division; and

(C) Its bylaws, if any, shall be amended as provided in the plan of division;

(2) If the dividing insurer has not survived the division, its separate existence ceases to exist;

(3) Each new insurer:

(A) Comes into existence;

(B) Shall hold any capital, surplus, and other property allocated to it as a successor to the dividing insurer, and not by transfer, whether directly or indirectly; and

(C) Its articles of incorporation and bylaws shall be effective;

(4) Capital, surplus, and other property of the dividing insurer:

(A) That is allocated by the plan of division either:

(i) Vests in the new insurers as provided in the plan of division; or

(ii) Remains vested in the dividing insurer;

(B) That is not allocated by the plan of division:

(i) Remains vested in the dividing insurer, if the dividing insurer survives the division; or

(ii) Is allocated to and vests equally in the resulting insurers as tenants in common, if the dividing insurer does not survive the division; or

(C) Vests as provided in this subsection without transfer, reversion, or impairment:

(5) A resulting insurer to which a cause of action is allocated as provided in paragraph (4) of this subsection may be substituted or added in any pending action or proceeding to which the dividing insurer is a party when the division becomes effective;

(6) The policies and other liabilities of the dividing insurer are allocated among the resulting insurers as provided in Code Section 33-14-126 and the resulting insurers to which policies or other liabilities are allocated are liable for those policies and other liabilities as successors to the dividing insurer, and not by transfer, whether directly or indirectly;

(7) Any division that becomes effective pursuant to subsection (d) of Code Section 33-14-124 shall not be deemed to constitute an assignment of any insurance policy, annuity, reinsurance agreement, or any other type of contract under the laws of this state; and

(8) The shares in the dividing insurer that are to be converted or canceled in the division are converted or canceled, and the shareholders of those shares are entitled only to the rights provided to them under the plan of division and any appraisal rights they may have pursuant to Code Section 33-14-127.

(b) Except as provided in the articles of incorporation or bylaws of the dividing insurer, the division shall not give rise to any rights that a director, shareholder, or third party would have upon a dissolution, liquidation, or winding up of the dividing insurer.

(c) The allocation to a new insurer of capital, surplus, or other property that is collateral covered by an effective financing statement shall not be effective until a new financing statement naming the new insurer as a debtor is effective under Articles 1 through 9 of Title 11.

(d) Unless otherwise provided in the plan of division, the interests in and any shares of each new insurer shall be distributed to:

(1) The dividing insurer, if it survives the division; or

(2) The shareholders of the shares of the dividing insurer that do not assert appraisal rights, pro rata, if the dividing insurer does not survive the division.

33-14-126.

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

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

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

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

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

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

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

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

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

33-14-127.

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

33-14-128.

The Commissioner may, in accordance with the procedures set forth in Code Section 33-2-9, promulgate rules and regulations necessary to implement and enforce the provisions of this article. If the Commissioner should find that extraordinary circumstances exist and that it would be in the best interests of the citizens of this state, the Commissioner

311 may suspend temporarily the applicability of any rule or regulation promulgated pursuant
312 to this article."

313 **SECTION 2.**

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

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

331 **SECTION 3.**

332 Part 1 of Article 13 of Chapter 2 of Title 14 of the Official Code of Georgia Annotated,
333 relating to the right to dissent and obtain payment for shares, is amended in Code Section
334 14-2-1302, relating to right to dissent, by adding a new paragraph to subsection (a) to read
335 as follows:

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

339 **SECTION 4.**

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