

House Bill 883 (AS PASSED HOUSE AND SENATE)

By: Representatives Taylor of the 173<sup>rd</sup>, Smith of the 134<sup>th</sup>, Atwood of the 179<sup>th</sup>, Meadows of the 5<sup>th</sup>, Brockway of the 102<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 37 of Title 33 of the Official Code of Georgia Annotated, relating to  
2 insurers rehabilitation and liquidation, so as to change certain provisions relating to insurers  
3 rehabilitation and liquidation; to change provisions related to reciprocal states and  
4 domiciliary liquidators; to provide for the Commissioner to transfer title under his or her  
5 control to a domiciliary liquidator; to modify certain provisions relating to the rights of  
6 nonresident claimants in proceedings against domiciliary insurers; to change certain  
7 provisions relating to the rights of resident claimants in proceedings in other states against  
8 nondomiciliary insurers; to remove the use of reciprocal in superiority of order of distribution  
9 in liquidation proceedings; to amend Chapter 10 of Title 33 of the Official Code of Georgia  
10 Annotated, relating to assets and liabilities, so as to provide for certain updates to the  
11 standard valuation law as it relates to the reserve requirements for companies allowed to opt  
12 out of the principal based reserves standards; to provide for related matters; to repeal  
13 conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Chapter 37 of Title 33 of the Official Code of Georgia Annotated, relating to insurers  
17 rehabilitation and liquidation, is amended by revising Code Section 33-37-3, relating to  
18 definitions, as follows:

19 "33-37-3.

20 As used in this chapter, the term:

21 (1) 'Ancillary state' means any state other than a domiciliary state.

22 (2) 'Commissioner' means the Commissioner of Insurance.

23 (3) 'Creditor' means a person having any claim, whether matured or unmatured,  
24 liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

25 (4) 'Delinquency proceeding' means any proceeding instituted against an insurer for the  
26 purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer and any

27 summary proceeding under Code Section 33-37-9. 'Formal delinquency proceeding'  
 28 means any liquidation or rehabilitation proceeding.

29 (5) 'Doing business' includes any of the following acts, whether effected by mail or  
 30 otherwise:

31 (A) The issuance or delivery of contracts of insurance to persons resident in this state;

32 (B) The solicitation of applications for such contracts or other negotiations preliminary  
 33 to the execution of such contracts;

34 (C) The collection of premiums, membership fees, assessments, or other consideration  
 35 for such contracts;

36 (D) The transaction of matters subsequent to execution of such contracts and arising  
 37 out of them; or

38 (E) Operating under a license or certificate of authority, as an insurer, issued by the  
 39 Insurance Department.

40 (6) 'Domiciliary state' means the state in which an insurer is incorporated or organized;  
 41 or, in the case of an alien insurer, its state of entry.

42 (7) 'Fair consideration' means:

43 (A) When in exchange for property or obligation as a fair equivalent therefor and in  
 44 good faith, property is conveyed, services are rendered, an obligation is incurred, or an  
 45 antecedent debt is satisfied; or

46 (B) When property or obligation is received in good faith to secure a present advance  
 47 or antecedent, debt in amount not disproportionately small as compared to the value of  
 48 the property or obligation obtained.

49 (7.1) 'Federal home loan bank' means a federal home loan bank established under the  
 50 federal Home Loan Bank Act, 12 U.S.C. Section 1421, et seq.

51 (8) 'Foreign country' means any other jurisdiction not in any state.

52 (9) 'General assets' means all property, real, personal, or otherwise, not specifically  
 53 mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of  
 54 specified persons or classes of persons. As to specifically encumbered property, 'general  
 55 assets' includes all such property or its proceeds in excess of the amount necessary to  
 56 discharge the sum or sums secured thereby. Assets held in trust and on deposit for the  
 57 security or benefit of all policyholders or all policyholders and creditors in more than a  
 58 single state shall be treated as general assets.

59 (10) 'Guaranty association' means the Georgia Insurers Insolvency Pool created by  
 60 Chapter 36 of this title, the Georgia Life and Health Insurance Guaranty Association  
 61 created by Chapter 38 of this title, and any other similar entity now or hereafter created  
 62 by the General Assembly for the payment of claims of insolvent insurers. 'Foreign

63 guaranty association' means any similar entities now in existence in or hereafter created  
64 by the legislature of any other state.

65 (11) 'Insolvency' or 'insolvent' means:

66 (A) For an insurer issuing only assessable fire insurance policies:

- 67 (i) The inability to pay any obligation within 30 days after it becomes payable; or
- 68 (ii) If an assessment is made within 30 days after an obligation becomes payable, the
- 69 inability to pay such obligation 30 days following the date specified in the first
- 70 assessment notice issued after the date of loss;

71 (B) For any other insurer, the inability to pay its obligations when they are due, or  
72 when its admitted assets do not exceed its liabilities plus the greater of:

- 73 (i) Any capital and surplus required by law for its organization; or
- 74 (ii) The total par or stated value of its authorized and issued capital stock; and

75 (C) As to any insurer licensed to do business in this state as of July 1, 1991, which does  
76 not meet the standard established under subparagraph (B) of this paragraph, for a period  
77 not to exceed three years from July 1, 1991, the inability to pay its obligations when  
78 they are due or that its admitted assets do not exceed its liabilities plus any required  
79 capital contribution ordered by the Commissioner under provisions of this title.

80 For purposes of this paragraph, 'liabilities' shall include, but not be limited to, reserves  
81 required by statute or by regulations or specific requirements imposed by the  
82 Commissioner upon a subject company at the time of admission or subsequent thereto.

83 (12) 'Insurer' means any person who has done, purports to do, is doing, or is licensed to  
84 do an insurance business and is or has been subject to liquidation, rehabilitation,  
85 reorganization, supervision, the authority of, or conservation by any state insurance  
86 regulatory official. For purposes of this chapter, any other persons included under Code  
87 Section 33-37-2 shall be deemed to be insurers.

88 (12.1) 'Insurer-member' means an insurer who is a member of a federal home loan bank.

89 (13) 'Preferred claim' means any claim with respect to which the terms of this chapter  
90 accord priority of payment from the general assets of the insurer.

91 (14) 'Receiver' means receiver, liquidator, rehabilitator, or conservator as the context  
92 requires.

93 ~~(15) 'Reciprocal state' means any state other than this state in which in substance and~~  
94 ~~effect Code Sections 33-37-17, 33-37-51, 33-37-52, and 33-37-54 through 33-37-56 are~~  
95 ~~in force, and in which provisions are in force requiring that the Commissioner or~~  
96 ~~equivalent official be the receiver of a delinquent insurer, and in which some provision~~  
97 ~~exists for the avoidance of fraudulent conveyances and preferential transfers.~~

98 ~~(16)~~(15) 'Secured claim' means any claim secured by mortgage, trust deed, pledge,  
99 deposit as security, escrow, or otherwise, but not including special deposit claims or

100 claims against general assets. The term also includes claims which have become liens  
101 upon specific assets by reason of judicial process.

102 ~~(17)~~(16) 'Special deposit claim' means any claim secured by a deposit made pursuant to  
103 statute for the security or benefit of a limited class or classes of persons, but not including  
104 any claim secured by general assets.

105 ~~(18)~~(17) 'State' means any state, district, or territory of the United States.

106 ~~(19)~~(18) 'Transfer' shall include the sale and every other and different mode, direct or  
107 indirect, of disposing of or of parting with property, an interest therein, the possession  
108 thereof or of fixing a lien upon property or upon an interest therein, whether absolutely  
109 or conditionally, voluntarily, or by or without judicial proceedings. The retention of a  
110 security title to property delivered to a debtor shall be deemed a transfer suffered by the  
111 debtor."

## 112 SECTION 2.

113 Said chapter is further amended in Code Section 33-37-50, relating to commissioner  
114 appointed as liquidator of foreign or alien insurer's assets and grounds, by revising  
115 subsection (d) as follows:

116 "(d) If a domiciliary liquidator is appointed in a ~~reciprocal~~ another state while a liquidation  
117 is proceeding under this Code section, the liquidator under this Code section shall  
118 thereafter act as ancillary receiver under Code Section 33-37-52. ~~If a domiciliary liquidator~~  
119 ~~is appointed in a nonreciprocal state while a liquidation is proceeding under this Code~~  
120 ~~section, the liquidator under this Code section may petition the court for permission to act~~  
121 ~~as ancillary receiver under Code Section 33-37-52."~~

## 122 SECTION 3.

123 Said chapter is further amended by revising Code Section 33-37-51, relating to title to  
124 property of insurer domiciled in reciprocal or nonreciprocal state, date of vesting in  
125 domiciliary liquidator or Commissioner, rights of resident claimants, as follows:

126 "33-37-51.

127 (a) The domiciliary liquidator of an insurer domiciled in a ~~reciprocal~~ another state shall,  
128 except as to special deposits and security on secured claims under subsection (c) of Code  
129 Section 33-37-52, be vested by operation of law with the title to all of the assets, property,  
130 contracts and rights of action, agents' balances, and all of the books, accounts, and other  
131 records of the insurer located in this state. The date of vesting shall be the date of the filing  
132 of the petition, if that date is specified by the domiciliary law for the vesting of property  
133 in the domiciliary state. Otherwise, the date of vesting shall be the date of entry of the order  
134 directing possession to be taken. The domiciliary liquidator shall have the immediate right

135 to recover balances due from agents and to obtain possession of the books, accounts, and  
 136 other records of the insurer located in this state. He or she also shall have the right to  
 137 recover all other assets of the insurer located in this state, subject to the provisions of Code  
 138 Section 33-37-52.

139 ~~(b) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal~~  
 140 ~~state, the Commissioner of this state shall be vested by operation of law with the title to all~~  
 141 ~~of the property, contracts, and right of action and all of the books, accounts, and other~~  
 142 ~~records of the insurer located in this state at the same time that the domiciliary liquidator~~  
 143 ~~is vested with title in the domicile. The Commissioner may petition for a conservation or~~  
 144 ~~liquidation order under Code Section 33-37-49 or 33-37-50 or for an ancillary receivership~~  
 145 ~~under Code Section 33-37-52 or after approval by the superior court may transfer title to~~  
 146 ~~the domiciliary liquidator as the interests of justice and the equitable distribution of the~~  
 147 ~~assets require.~~

148 ~~(c)~~(b) Claimants residing in this state may file claims with the liquidator or ancillary  
 149 receiver, if any, in this state or with the domiciliary liquidator if the domiciliary law  
 150 permits. The claims must be filed on or before the last date fixed for the filing of claims in  
 151 the domiciliary liquidation proceedings."

#### 152 SECTION 4.

153 Said chapter is further amended by revising Code Section 33-37-52, relating to commissioner  
 154 as ancillary receiver for insurer not domiciled in this state, as follows:

155 "33-37-52.

156 (a) If a domiciliary liquidator has been appointed for an insurer not domiciled in this state,  
 157 the Commissioner may file a petition with the superior court requesting appointment as  
 158 ancillary receiver in this state:

159 (1) If he or she finds that there are sufficient assets of the insurer located in this state to  
 160 justify the appointment of an ancillary receiver; or

161 (2) If the protection of creditors or policyholders in this state so requires.

162 (b) The court may issue an order appointing an ancillary receiver in whatever terms it shall  
 163 deem appropriate. The filing or recording of the order with the appropriate clerk of the  
 164 superior court in this state imparts the same notice as a deed, bill of sale, or other evidence  
 165 of title duly filed or recorded with the clerk.

166 (c) When a domiciliary liquidator has been appointed in a ~~reciprocal~~ another state, then the  
 167 ancillary receiver appointed in this state may, whenever necessary, aid and assist the  
 168 domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary  
 169 receiver shall, as soon as practicable, liquidate from their respective securities those special  
 170 deposit claims and secured claims which are proved and allowed in the ancillary

171 proceedings in this state and shall pay the necessary expenses of the proceedings. He or she  
 172 shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary  
 173 liquidator or his or her designee, at the direction of the domiciliary liquidator. Subject to  
 174 this Code section, the ancillary receiver and his or her deputies shall have the same powers  
 175 and be subject to the same duties with respect to the administration of assets as a liquidator  
 176 of an insurer domiciled in this state.

177 (d) When a domiciliary liquidator has been appointed in this state, ancillary receivers  
 178 appointed in ~~reciprocal~~ other states shall have, as to assets and books, accounts, and other  
 179 records in their respective states, corresponding rights, duties, and powers to those provided  
 180 in subsection (c) of this Code section for ancillary receivers appointed in this state.

181 (e) If the Commissioner elects not to file a petition with the superior court requesting  
 182 appointment as ancillary receiver in this state pursuant to subsection (a) of this Code  
 183 section, the Commissioner may, notwithstanding the provisions of Code Sections 33-3-8  
 184 through 33-3-10 and Code Sections 33-12-8 and 33-12-9, transfer title and possession of  
 185 all special deposits under his or her control to the domiciliary liquidator or his or her  
 186 designee, at the direction of the domiciliary liquidator. Prior to transferring title and  
 187 possession of such special deposits, the Commissioner may require the domiciliary  
 188 liquidator to agree, in writing, to handle such deposits and special deposit claims in  
 189 accordance with the statutes pursuant to which the special deposits were required and to  
 190 any other requirements deemed necessary by the Commissioner."

191 **SECTION 5.**

192 Said chapter is further amended by revising Code Section 33-37-54, relating to rights of  
 193 nonresident claimants in proceeding against domiciliary insurer, as follows:

194 "33-37-54.

195 (a) In a liquidation proceeding begun in this state against an insurer domiciled in this state,  
 196 claimants residing in foreign countries or in other states ~~not reciprocal states~~ where an  
 197 ancillary receiver has not been appointed must file claims in this state, and claimants  
 198 residing in ~~reciprocal~~ other states where an ancillary receiver has been appointed may file  
 199 claims either with the ancillary receivers, ~~if any,~~ in their respective states or with the  
 200 domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing  
 201 of claims in the domiciliary liquidation proceeding.

202 (b) Claims belonging to claimants residing in ~~reciprocal~~ other states where an ancillary  
 203 receiver has been appointed may be proved either in the liquidation proceeding in this state  
 204 as provided in this chapter or in ancillary proceedings, ~~if any,~~ in the ~~reciprocal~~ other states.  
 205 If notice of the claims and opportunity to appear and be heard is afforded the domiciliary  
 206 liquidator of this state as provided in subsection (b) of Code Section 33-37-55 with respect

207 to ancillary proceedings, the final allowance of claims by the courts in ancillary  
 208 proceedings in ~~reciprocal~~ other states shall be conclusive as to amount and as to priority  
 209 against special deposits or other security located in such ancillary states, but shall not be  
 210 conclusive with respect to priorities against general assets under Code Section 33-37-41."

211 **SECTION 6.**

212 Said chapter is further amended by revising Code Section 33-37-55, relating to rights of  
 213 resident claimants in proceeding in reciprocal state against nondomiciliary insurer, as  
 214 follows:

215 "33-37-55.

216 (a) In a liquidation proceeding in a ~~reciprocal~~ another state against an insurer domiciled  
 217 in that state, claimants against the insurer who reside within this state may file claims either  
 218 with the ancillary receiver, if any, in this state or with the domiciliary liquidator. Claims  
 219 must be filed on or before the last dates fixed for the filing of claims in the domiciliary  
 220 liquidation proceeding.

221 (b) Claims belonging to claimants residing in this state may be proved either in the  
 222 domiciliary state under the law of that state or in ancillary proceedings, if any, in this state.  
 223 If a claimant elects to prove his or her claim in this state, he or she shall file his such claim  
 224 with the ~~liquidator~~ ancillary receiver in the manner provided in Code Sections 33-37-34  
 225 and 33-37-35. The ancillary receiver shall make his or her recommendation to the court as  
 226 under Code Section 33-37-42. He or she shall also arrange a date for hearing if necessary  
 227 under Code Section 33-37-38 and shall give notice to the liquidator in the domiciliary state,  
 228 either by certified mail or statutory overnight delivery or by personal service at least 40  
 229 days prior to the date set for hearing. If the domiciliary liquidator, within 30 days after the  
 230 giving of such notice, gives notice in writing to the ancillary receiver and to the claimant,  
 231 either by certified mail or statutory overnight delivery or by personal service, of his or her  
 232 intention to contest the claim, he or she shall be entitled to appear or to be represented in  
 233 any proceeding in this state involving the adjudication of the claim.

234 (c) ~~The~~ If a claimant files a claim in this state with the ancillary receiver, the final  
 235 allowance of the claim by the courts of this state shall be accepted as conclusive as to  
 236 amount and as to priority against special deposits or other security located in this state."

237 **SECTION 7.**

238 Said chapter is further amended in Code Section 33-37-57, relating to superiority of order  
 239 of distribution issued by domiciliary state, priority of payment and claims, and rights of  
 240 secured creditors, by revising subsection (a) as follows:

241 "(a) In a liquidation proceeding in this state involving one or more ~~reciprocal~~ other states,  
 242 the order of distribution of the domiciliary state shall control as to all claims of residents  
 243 of this and ~~reciprocal~~ other states. All claims of residents of ~~reciprocal~~ other states shall  
 244 be given equal priority of payment from general assets regardless of where such assets are  
 245 located."

#### 246 SECTION 8.

247 Chapter 10 of Title 33 of the Official Code of Georgia Annotated, relating to assets and  
 248 liabilities, is amended in Code Section 33-10-13, relating to standard valuation, by revising  
 249 subsection (t) as follows:

250 "(t)(1) An insurer that has less than \$300 million of ordinary life premiums and that is  
 251 licensed and doing business in this state and that is subject to the requirements of  
 252 subsections (o) through (r) of this Code section ~~is deemed to pass the exclusion tests~~  
 253 ~~associated with life insurance reserve requirements incorporated in the valuation manual~~  
 254 may hold reserves based on the mortality tables and interest rates defined by the valuation  
 255 manual for net premium reserves and using the methodologies described in subsections  
 256 (g) through (m) of this Code section as they apply to ordinary life insurance in lieu of the  
 257 reserves required by subsections (o) and (p) of this Code section, provided that:

258 (A) If the insurer is a member of a group of life insurers, the group has combined  
 259 ordinary life premiums of less than \$600 million;

260 (B) The insurer reported total adjusted capital of at least 450 percent of authorized  
 261 control level risk based capital in the risk based capital report for the prior calendar  
 262 year;

263 (C) The appointed actuary has provided an unqualified opinion on the reserves for the  
 264 prior calendar year; and

265 (D) The insurer has provided a certification by a qualified actuary that any universal  
 266 life policy with a secondary guarantee issued by the insurer after the operative date of  
 267 the valuation manual meets the definition of a nonmaterial secondary guarantee  
 268 universal life product as defined in the valuation manual.

269 (2) For purposes of paragraph (1) of this subsection, ordinary life premiums are  
 270 measured as direct premium plus reinsurance assumed from an unaffiliated company, as  
 271 reported in the annual statement for the prior calendar year.

272 ~~(3) A company that meets the requirements under paragraph (1) of this subsection is also~~  
 273 ~~subject to the requirements of subsection (l) of this Code section.~~

274 ~~(4)~~(3) A domestic company meeting all of the conditions provided in this subsection may  
 275 file, prior to July 1 of the current calendar year, a statement with the Commissioner  
 276 certifying that such conditions are met for the current calendar year based on premiums



277 and other values from the financial statements for the prior calendar year. The  
278 Commissioner may reject such statement prior to September 1 and require a company to  
279 comply with the valuation manual requirements for life insurance reserves.”

280

**SECTION 9.**

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