

Georgia Insurers Insolvency Pool Act

Consumer Reference Copy — Ga. Code Ann. § 33-36

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§ 33-36-1. Short title

This chapter shall be known and may be cited as the Georgia Insurers Insolvency Pool Act.

§ 33-36-2. Creation of pool; accounts; duties; members

There is created a Georgia Insurers Insolvency Pool which shall consist of three accounts: (1) workers' compensation account; (2) automobile account; and (3) all other covered insurance account. The pool shall be responsible for the investigation, adjustment, compromise, settlement, and payment of covered claims; for the investigation, handling, and denial of noncovered claims; and for the management and investment of funds administered by the pool. The members of the pool shall be responsible for the payment of assessments levied pursuant to subsection (b) of Code Section 33-36-7; for adherence to the rules of the plan approved pursuant to Code Section 33-36-6; and for other obligations imposed by this chapter. The pool shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

§ 33-36-3. Definitions

As used in this chapter, the term:

- (1) Affiliate means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.
- (2) Affiliate of the insolvent insurer means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.
- (3) Control means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person.

This presumption may be rebutted by a showing that control does not exist in fact and any person disputing his or her status as an affiliate of an insurer authorized to do business in Georgia or an insolvent insurer may file a disclaimer in accordance with subsection (i) of Code Section 33-13-4.

(4)(A) Covered claim means an unpaid claim which:

(i) Arises out of a property or casualty insurance policy issued by an insurer which becomes an insolvent insurer which was authorized to do an insurance business in this state either at the time the policy was issued or when the insured event occurred; and

(ii) Is within any of the classes of claims under subparagraph (B) of this paragraph.

(B) A claim shall not be paid unless it arises out of an insurable event under a property or casualty insurance policy and it is:

(i) An unearned premium claim of a policyholder who at the time of the insolvency was a resident of this state;

(ii) An unearned premium claim of a policyholder under a policy affording coverage for property permanently situated in this state;

(iii) The claim of a policyholder or insured who at the time of the insured event was a resident of this state;

(iv) The claim of a person having an insurable interest in or related to property which was permanently situated in this state; or

(v) A claim under a liability or workers' compensation insurance policy when either the insured or third-party claimant was a resident of this state at the time of the insured event.

(C) A covered claim shall not include any claim in an amount of less than \$50.00; provided, however, that any claim of \$50.00 or more shall be paid in full.

(D) A covered claim shall not include that portion of any first-party claim which is in excess of the applicable limits provided in the policy or \$300,000.00, whichever is less.

(E) A covered claim shall not include that portion of any third-party claim, other than a workers' compensation claim, which is in excess of the applicable limits provided in the policy or \$300,000.00, whichever is less.

(F) A covered claim shall not include any obligation to insurers, reinsurers, insurance pools, underwriting associations, health maintenance organizations, hospital plan corporations, or professional health service corporations as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise. No such claim for any amount due any reinsurer, insurer, insurance pool, underwriting association, health maintenance organization, hospital plan corporation, or professional health service corporation may be asserted against

a person insured under a policy issued by an insolvent insurer other than to the extent such claim exceeds the pool obligation limitations set forth in this Code section.

(G) A covered claim shall not include any first-party claim by an insured whose net worth exceeds \$10 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer; provided, however, that an insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; or any third-party claim relating to a policy of an insured whose net worth exceeds \$25 million on December 31 of the year next preceding the date the insurer becomes an insolvent insurer; provided, however, that an insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; and further provided that this exclusion shall not apply to third-party claims against the insured where the insured has applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of its assets, filed a voluntary petition in bankruptcy, filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law or, if an order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition seeking reorganization of the insured or of all or substantial part of its assets.

(H) A covered claim shall not include any first-party claims by an insured which is an affiliate of the insolvent insurer.

(I) A covered claim shall not include any claim or judgment for punitive damages and attorney's fees associated therewith against any insolvent insurer, its insured, or the insurers insolvency pool.

(J) A covered claim shall not include any workers' compensation benefits payable under subsection (e) or (f) of Code Section 34-9-221 or paragraph (2), (3), or (4) of subsection (b) of Code Section 34-9-108 after the effective date of the court order of rehabilitation or liquidation.

(K) A covered claim shall include a claim for unearned premium only if such claim derives from the payment of a stated premium and shall not include those which derive from an unstated premium such as calculated from audit, dividend, deposit, or retrospect plans. Further, a covered claim shall not include:

(i) That portion of a claim for unearned premium which is in excess of \$20,000.00; or

(ii) A claim for unearned premium resulting from a policy which was not in force on the date of the final order of liquidation.

(L) A covered claim shall not include any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent.

(M) A covered claim shall not include any fee or other amount sought by or on behalf of an attorney or other provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the pool. However, in such a case, the pool shall not offset amounts from any recovery paid to a claimant in such an action which the claimant has agreed are to be paid to the attorney in a contingency fee arrangement.

(N) A covered claim shall not include any claims for interest.

(O) Notwithstanding any other provision of this chapter, an insurance policy issued by a member insurer and later allocated, transferred, or assumed by, or otherwise made the sole responsibility of another insurer, pursuant to any provision of law of this state providing for the division of an insurance company or the statutory assumption or transfer of designated policies and under which there is no remaining obligation to the transferring entity, shall be considered to have been issued by a member insurer which is an insolvent insurer for the purposes of this chapter in the event that the insurer to which the policy has been allocated, transferred, assumed by, or otherwise made the sole responsibility of is placed in liquidation.

(P) An insurance policy that was issued by a nonmember insurer and later allocated, transferred, assumed by, or otherwise made the sole responsibility of a member insurer under any provision of law of this state described in subparagraph (O) of this paragraph shall not be considered to have been issued by a member insurer for the purposes of this chapter.

(5) Insolvent insurer means an insurer which was licensed to issue property or casualty insurance policies in this state at any time subsequent to July 1, 1970, and against which a final order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction in the insurer's state of domicile or of this state and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

(6) Insolvency pool or pool means the Georgia Insurers Insolvency Pool established pursuant to Code Section 33-36-2.

(7) Insured means any named insured, any additional insured, any vendor, any lessor, or any other party identified as an insured under the policy as long as insurable interests remain relevant.

(8) Insurer or company means any corporation or organization that has held or currently holds a license to engage in the writing of property or casualty insurance policies in

this state, including the exchanging of reciprocal or interinsurance contracts among individuals, partnerships, and corporations, except farmer assessment mutual insurers, county assessment mutual insurers, and municipal assessment mutual insurers.

- (9) Net direct written premiums means direct gross premiums written on property or casualty insurance policies, less return premiums on the policies and dividends paid or credited to policyholders on such direct business. Premiums written by any authorized insurer on policies issued to self-insurers, whether or not designated as reinsurance contracts, shall be deemed net direct written premiums.
- (10) Person means any individual or legal entity, including governmental entities.
- (11) Property and casualty insurance policies or policy means any contract, including endorsements to such contract and without regard to the nature or form of the contract or endorsement, which provides coverages as enumerated in Code Sections 33-7-3 and 33-7-6, except:
 - (A) Life insurance and annuities (being that class of insurance referred to in Code Section 33-7-4);
 - (B) Accident, health, and disability insurance except where written as part of an automobile insurance contract (being that class of insurance referred to in Code Section 33-7-2);
 - (C) Title insurance (being that class of insurance referred to in Code Section 33-7-8);
 - (D) Credit life insurance (being that class of insurance referred to in paragraph (2) of Code Section 33-31-1);
 - (E) Credit insurance, vendors' single interest insurance, or collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
 - (F) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
 - (G) Fidelity or surety bonds or any other bonding obligations;
 - (H) Insurance of warranties or service contracts including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits;
 - (I) Ocean marine insurance;

(J) Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, which involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk; or

(K) Any insurance provided by or guaranteed by government.

§ 33-36-4. Insurers Solvency Board; organization; access to information

- (a) There shall be a board of trustees of the Georgia Insurers Insolvency Pool which shall be known as the Insurers Solvency Board and which shall consist of seven members. At all times, the board shall contain at least one member from a domestic insurer. The members of the board shall not be considered employees of the department. The members of the board shall be selected by the Commissioner. Each board member so selected shall represent a company licensed to do business in Georgia. Any member may be removed from office by the Commissioner when, in his or her judgment, the public interest may so require. Each member appointed shall serve for a term of three years and until his or her successor has been appointed and qualified and, in case of a vacancy for any reason in the office of any such member, the Commissioner shall appoint a member to fill the unexpired term of such vacant office.
 - (b) In approving selections to the board, the Commissioner shall consider among other things whether all member insurers are fairly represented.
 - (c) The actual expenses of the members of the board incurred in attending meetings shall be paid out of the assets of the insolvency pool, but members of the board shall not otherwise be compensated by the pool for their services. For the purpose of considering questions before it, the board shall have access to all the books, records, reports, and papers in the department, including all confidential communications; and the members of the board shall treat such communications as confidential.
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§ 33-36-5. Property and casualty insurers subject to chapter

Every insurer authorized to write property or casualty insurance policies in this state shall be a member of the insolvency pool and shall be liable for assessments pursuant to Code Section 33-36-7 and shall also be responsible for the other obligations imposed pursuant to this chapter.

§ 33-36-6. Insurers Insolvency Pool; status as nonprofit legal entity; actions by and against pool; members

- (a) The Georgia Insurers Insolvency Pool is a nonprofit legal entity with the right to bring and defend actions and such right to bring and defend actions includes the power and right to intervene as a party before any court in this state that has jurisdiction over an insolvent insurer as defined in this chapter. The pool shall adopt, and the Commissioner shall approve, a reasonable plan which is not inconsistent with this chapter and which is fair to insurers and equitable to their policyholders, pursuant to which all admitted insurers shall become members of the pool. All members of the pool shall adhere to the rules of the plan. The plan may be amended by an affirmative vote of a majority of the Insurers Solvency Board.
- (b) If, for any reason, the pool fails to adopt a suitable plan, or if, at any time, the pool fails to adopt necessary amendments to the plan, the Commissioner shall adopt and promulgate, after a hearing, such reasonable rules as are necessary to effectuate this chapter. The rules shall continue in force until modified by the Commissioner or superseded by a plan of operation adopted by the pool and approved by the Commissioner.
- (c) The plan as provided for in subsection (a) of this Code section shall:
 - (1) Establish the procedures whereby all the powers and duties of the pool under this chapter will be performed;
 - (2) Establish procedures for handling assets of the pool;
 - (3) Mandate that procedures be established for the disposition of liquidating dividends or other moneys received from the estate of the insolvent insurer;
 - (4) Mandate that procedures be established to designate the amount and method of reimbursing members of the board of trustees under Code Section 33-36-4;
 - (5) Establish procedures by which claims may be filed with the pool and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the pool or its agent and a list of claims shall be periodically submitted to the pool or insolvency fund or its equivalent in another state by the receiver or liquidator;
 - (6) Establish regular places and times for meetings of the board of trustees;
 - (7) Mandate that procedures be established for records to be kept of all financial transactions of the pool, its agents, and the board of trustees;
 - (8) Establish the procedures whereby selections for the board of trustees will be submitted to the Commissioner; and

(9) Contain additional provisions necessary or proper for the execution of the powers and duties of the pool.

- (d) In accordance with the plan, the pool may designate insurers to act on behalf of the pool to carry out the purposes of this chapter, but a member may decline such designation. The Commissioner may disapprove such designation. The plan may provide a procedure under which pending claims or judgments against the insolvent insurer or its insureds are assigned to the member companies designated to act for the pool. The assignee-insurer is authorized to appear and defend a claim in a court of competent jurisdiction or otherwise and to investigate, adjust, compromise, and settle a covered claim or to investigate, handle, and deny a noncovered claim, and to do so on behalf of and in the name of the pool. If an assignee-insurer pays the covered claim, it shall be reimbursed by the pool or be entitled to set off said payment against future assessments. The unreimbursed claim of such an insurer against the pool shall be an admitted asset of the insurer. Insureds entitled to protection of this chapter shall cooperate with the pool and the assignee-insurer.
 - (e) The pool as a legal entity and any of its individual members shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer and except as otherwise provided in this chapter. The pool shall be subrogated to the rights of any insured or claimant, to the extent of a covered claim, to participate in the distribution of assets of the insolvent insurer to the extent that the pool has made payment. Any claimant or insured entitled to the benefits of this chapter shall be deemed to have assigned to the pool, to the extent of any payment received, his or her rights against the estate of the insolvent insurer. After determination of insolvency of any insurer, the pool shall be a party in interest in all proceedings involving policies insured or assumed by the pool with the same rights to receive notice and defend, appeal, and review as the insolvent insurer would have had if solvent. All moneys recovered under this Code section or any other Code section shall be added to the assessments collected under Code Section 33-36-7.
 - (f) Except for actions by member insurers aggrieved by final actions or decisions of the pool pursuant to Code Section 33-36-18, all actions relating to or arising out of this chapter against the pool must be brought in the courts in this state. Such courts shall have exclusive jurisdiction over all actions relating to or arising out of this chapter against the pool.
 - (g) Exclusive venue in any action by or against the pool is in the Superior Court of DeKalb County. The pool may, at the option of the pool, waive such venue as to specific actions.
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§ 33-36-7. Assessments

- (a) For the purposes of administration and assessment under this Code section, the pool shall be divided into three separate accounts: (1) workers' compensation insurance account; (2) automobile insurance account; and (3) all other covered insurance account. Separate assessment shall be made for each account. No assessment shall be levied for any account as long as the assets held in such account are sufficient to cover all estimated payments for liquidation in process under the account.
- (b) To the extent necessary to secure the funds for the respective accounts of the pool for the payment of covered claims and also to pay the reasonable costs to administer the pool, the Commissioner, upon certification of the pool, shall levy assessments in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bear to the total of the net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the pool in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments. If sufficient funds from the assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers designated to act for the pool, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.
- (c) The pool may exempt any insurer from an assessment if an assessment by the pool would result in the insurer's financial statement reflecting an amount of capital or surplus less than the sum of the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.
- (d) Any necessary and proper expenses incurred by an insurer in the investigation, adjustment, compromise, settlement, denial, or handling of claims assigned to it shall, upon proper verification under the rules of the pool, entitle the insurer to reimbursement. Any insurer whose employee serves on the staff of the pool may set off from its assessment any necessary and proper expenses incurred by the insurer resulting from said service of its employee.

- (e) An insurer which ceases to engage in the business of writing property or casualty insurance policies in this state shall have no right to a refund of any assessment previously remitted to the pool.
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§ 33-36-7.1. Assessments paid by member insurers; obligation to recoup by way of surcharge on premiums

- (a) The plan adopted pursuant to Code Section 33-36-6 shall contain provisions whereby each member insurer is required to recoup over the year following the year of the assessment a sum calculated to recoup the assessments paid by the member insurer under this chapter by way of a surcharge on premiums charged for insurance policies to which this chapter applies. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agents' commission.
- (b) The amount of any surcharge shall be separately stated on either a billing or policy declaration sent to an insured. Member insurers who collect surcharges in excess of assessments paid pursuant to Code Section 33-36-7 for an insolvent insurer shall remit the excess to the pool as an additional assessment within 30 days after the pool has determined the amount of the excess recoupment and given notice to the member of that amount. The excess shall be applied to reduce future assessment charges in the appropriate category.
- (c) The plan of operation may permit a member insurer to omit collection of the surcharge from its insureds when the expense of collecting the surcharge would exceed the amount of the surcharge. However, nothing in this Code section shall relieve the member insurer of its obligation to recoup the amount of surcharge otherwise collectable.
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§ 33-36-8. Determination of insolvency; notice of insolvency

Upon the determination of a court of competent jurisdiction of the state of domicile of an insurer that the insurer is insolvent, the Commissioner of this state shall promptly give notice of the insurer's insolvency by first-class mail to all persons known or reasonably expected to have or be interested in claims against the insurer at such person's last known address, all insureds of the insolvent insurer known to the Commissioner at such insured's last known address, and all insurers subject to this chapter. The Commissioner may also require each agent of the insolvent insurer to give prompt written notice by first-class mail at the insured's last known address to each insured of the insolvent insurer for whom he was agent of record. Notice shall also be given by publication in a newspaper of general circulation published in the county where the insurer had its principal office not less than once per week for four weeks and by publication elsewhere in this state as the court may direct.

§ 33-36-9. Insurers ordered to be liquidated; coverage afforded by policies issued by insurer obligation of pool; limitations; authority of pool

In the event an insurer is ordered to be liquidated, the coverage afforded by property and casualty insurance policies issued by such insurer shall, with respect to covered claims, become the obligation of the pool for a period of 30 days from the date of such determination or until policy expiration date if less than said 30 days or until the policy has been replaced by the insurer within said 30 days. The pool shall be deemed the insurer only to the extent of its obligation on the covered claims and to such extent, subject to the limitations provided in this chapter, shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations. The pool shall not be deemed the insolvent insurer for any purpose relating to the issue of whether the pool is amenable to the personal jurisdiction of the courts of any state. The pool is authorized to investigate, adjust, compromise, and settle covered claims or to investigate, handle, and deny noncovered claims. The pool shall have the authority, upon approval of the Commissioner, to borrow funds necessary to effect the purposes of this chapter. The pool shall have the authority to establish procedures for requesting financial information from insureds on a confidential basis for purposes of applying Code sections concerning their net worth, subject to such information being shared with any other association similar to the pool and the liquidator for the insolvent company on the same confidential basis. If the insured refuses to provide the requested financial information and an auditor's certification of the same where requested and available, the pool may deem the net worth of the insured, in the instance of a first-party claim, to be in excess of \$10 million at the relevant time or, in the event of a third-party claim, to be in excess of \$25 million at the relevant time. In any lawsuit contesting the applicability of subparagraph (G) of paragraph (4) of Code Section 33-36-3 or subsection (d) of Code Section 33-36-14 where the insured has declined to provide financial information under the procedure provided pursuant to this Code section, the insured shall bear the burden of proof concerning its net worth at the relevant time. If the insured fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the pool its full costs, expenses, and reasonable attorney's fees in contesting the claim.

§ 33-36-10. Nonduplication of recovery

- (a) It is not the purpose of this chapter to provide or permit duplicate recoveries of covered claims under this chapter and an insolvency fund or its equivalent of any other state. In the construction and application of this chapter with respect to a covered claim which may be recoverable under this chapter and under an insolvency fund or its equivalent in

another state, the sole recovery: (1) with respect to a workers' compensation claim, shall be under the insolvency fund or its equivalent of the state of residence of the claimant; (2) with respect to a first-party claim of an insured for damage to or destruction of property with a permanent location, shall be under the insolvency fund or its equivalent of the state where the property is permanently situated; and (3) with respect to any other covered claim, shall be under the insolvency fund or its equivalent of the state of residence of the insured.

- (b) Any recovery obtained from the pool pursuant to this chapter shall be reduced by those amounts recovered in any other state from a similar or equivalent insolvency fund in such state when the recovery was obtained by the same claimant for the same claim filed against the pool in this state.

§ 33-36-11. Claims excluded; findings of default or default judgments

- (a) Notwithstanding any other provisions of this chapter, except as provided for in Code Section 33-36-20, a covered claim shall not include a claim filed with the pool after the earlier of (1) 18 months after the date of the order of liquidation, or (2) the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the pool or a liquidator for protection afforded under the insured's policy for incurred but not reported losses.
- (b) The pool may not be found in default. No default judgments may be entered against the pool, the insolvent insurer, or the insured of the insolvent insurer after the instigation of an insolvency proceeding prior to an order of liquidation, nor during the pendency of insolvency proceedings, nor during a 120 day stay following an order of liquidation.
- (c) In no instance may a finding of default or the entry of a default judgment against an insurer be applicable or enforceable against the pool or the insured of the insolvent insurer.

§ 33-36-12. Duties of Commissioner

The Commissioner shall bring an action for and recover, on behalf of the pool, any assessment not paid when due. He may, after notice and hearing, revoke the certificate of authority to transact business in this state of an insurer who is a member of the pool which fails to pay an assessment when due as provided in this chapter and after demand having been made or which otherwise fails to comply with the plan as approved pursuant to Code Section 33-36-6. Any action taken by the Commissioner shall be subject to judicial review as provided in Code Sections 33-2-26 through 33-2-28.

§ 33-36-13. Proper claims on asset of insolvent insurers incorporated in state; pool appointed as agent condition of insurer doing business in state

With respect to insolvent insurers incorporated in this state, the receiver, liquidator, or statutory successor shall allow as a proper claim on the assets of the insolvent insurer amounts paid under this chapter by or on behalf of the pool or paid by an insolvency fund or its equivalent in another state on or with respect to covered claims, notwithstanding provisions to the contrary in any statute of this state relating to the rights and duties of such receiver, liquidator, or statutory successor. As a condition of an insurer doing business in this state, all property and casualty insurance policies issued or renewed shall be deemed to provide that the insurer appoints the pool as its agent with respect to investigation, adjustment, compromise, and settlement of covered claims and to reimburse the pool for any payment made under the terms of this chapter, and that such appointment and obligation shall be binding on any receiver, liquidator, or statutory successor appointed to liquidate or wind up its affairs.

§ 33-36-14. Claims covered by solvent and insolvent insurers

- (a) Except as provided for in Code Section 33-36-20, any person having a claim against a policy or an insured under a policy issued by an insolvent insurer, which claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, shall be required to exhaust first his or her rights under such policy issued by the solvent insurer. The policy of the solvent insurer shall be treated as primary coverage and the policy of the insolvent insurer shall be treated as secondary coverage and his or her rights to recover such claim under this chapter shall be reduced by any amounts received from the solvent insurers.
- (b) Any amount paid a claimant in excess of the amount authorized by this chapter may be recovered by an action brought by or on behalf of the pool.
- (c) To the extent that the pool's obligation is reduced by the application of this Code section, the liability of the person insured by the insolvent insurer's policy for the claim shall be reduced in the same amount.
- (d) Except as provided for in Code Section 33-36-20, the pool shall have the right to recover from the following persons all amounts paid by the pool on behalf of such person, whether for indemnity or defense or otherwise:
 - (1) Any insured whose net worth on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds \$25 million, provided that an insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; and

(2) Any person who is an affiliate of the insolvent insurer.

§ 33-36-14.1. Detection and prevention of insurer insolvencies; recommendations and reports by board of trustees

(a) To aid in the detection and prevention of insurer insolvencies:

(1) The board of trustees may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of insurer insolvencies;

(2) The board of trustees may, upon majority vote, make recommendations to the Commissioner on matters generally related to improving or enhancing regulation for solvency; and

(3) The board of trustees may, at the conclusion of any domestic insurer insolvency in which the pool was obligated to pay covered claims, prepare a report on the history and causes of such insolvency based on the information available to the pool and submit such report to the Commissioner.

(b) Reports and recommendations made pursuant to this Code section shall not be considered public documents.

§ 33-36-15. Insolvency pool subject to examination

The pool shall be deemed a company or insurer within the scope of Code Section 33-2-11 relating to examinations. Notwithstanding the provisions of Code Section 33-2-11 or this Code section, whether such examinations shall be conducted and the frequency of any such examinations shall be at the sole discretion of the Commissioner.

§ 33-36-16. Insolvency pool; limitation on taxability

The pool shall be exempt from all license fees, income, franchise, privilege, occupation, or other taxes levied or assessed by the state, any municipality, county, or other political subdivision of the state, except state, county, or municipal taxes upon the real or personal property of the pool, which shall be assessed and taxed in the same manner as real property and personal property of other nonexempt persons.

§ 33-36-16.1. Liability for action taken or failure to act in performance of power and duties

There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer, the pool or its agents or employees, the board of trustees, or any person serving as a representative of any member of the board of trustees for any action

taken or any failure to act by them in the performance of their powers and duties under this chapter.

§ 33-36-17. Termination, distribution of fund

(a) The Commissioner shall by order terminate the operation of the insolvency pool as to any kind of insurance afforded by property or casualty insurance policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which:

(1) Is a permanent plan which is adequately funded or for which adequate funding is provided; and

(2) Extends, or will extend to the Georgia policyholders and residents, protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to that kind of insurance under this chapter.

(b) The Commissioner shall by the same order authorize discontinuance of future payments by insurers to the insolvency pool with respect to the same kinds of insurance, provided that assessments and payments shall continue as necessary to liquidate covered claims of insurers adjudged insolvent prior to the order and the related expenses not covered by the other plan.

(c) In the event the operation of any account of the insolvency pool shall be so terminated as to all kinds of insurance otherwise within its scope, the pool as soon as possible after the termination shall distribute the balance of moneys and assets remaining in the account (after discharge of the functions of the pool with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in this state policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of the payments made by the respective insurers to the account during the period of five years preceding the date of the order. Upon completion of such distribution with respect to all of the accounts specified in Code Section 33-36-7, this chapter shall be deemed to have expired.

§ 33-36-18. Appeals

Any action of the Insurers Solvency Board may be appealed to the Commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the Commissioner shall be subject to judicial review in a court of competent jurisdiction.

§ 33-36-19. References to membership in pool prohibited in advertisements for insurance

- (a) No person, including an insurer or agent or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public in any newspaper, magazine, or other publication; in the form of a notice, circular, pamphlet, letter, or poster; over any radio station or television station; or in any other way any advertisement, announcement, or statement which uses the existence of the pool for the purposes of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. This Code section shall not apply to the pool or any other entity which does not sell or solicit insurance.
 - (b) Any person who violates subsection (a) of this Code section may, after notice and hearing and upon order of the Commissioner, be subject to one or both of the following:
 - (1) A monetary penalty of not more than \$1,000.00 for each act or violation, but not to exceed an aggregate penalty of \$10,000.00; or
 - (2) Suspension or revocation of his license or certificate of authority.
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§ 33-36-20. Liability of Georgia Insurers Insolvency Pool in emergency circumstances

- (a) It is the policy of this state to protect insureds and their claimants from liability as a result of the insolvency of insurers. In furtherance of this policy, it is the intent of the legislature, notwithstanding any provision of law to the contrary, that the Georgia Insurers Insolvency Pool shall be liable to claimants and electing insureds in emergency circumstances.
- (b) As used in this Code section, the term:
 - (1) Electing insured means any insured under a workers' compensation insurance policy that is impacted by an emergency circumstance. Such term shall include but not be limited to governmental insureds and other insureds under a workers' compensation insurance policy impacted by an emergency circumstance whose net worth exceeds \$25 million as of December 31 of the year preceding the filing of a claim.
 - (2) Emergency circumstance means a circumstance in which an association or industrial insured captive insurance company, including such a captive company that subsequently was authorized to transact business pursuant to Chapter 3 of this title, that is issuing, or which has issued, workers' compensation insurance contracts and has been declared insolvent.

(3) Emergency claimant means any third-party claimant, under a workers' compensation insurance policy, who is impacted by an emergency circumstance and whose employer has, by a court of competent jurisdiction, been declared bankrupt or insolvent.

(c) Any electing insured whose net worth is less than \$25 million as of December 31 of the year preceding the filing of a claim may be shielded from liability by the pool and have any workers' compensation claims filed against such electing insured covered by the pool, provided said electing insured pays \$10,000.00 per claim to the insolvency pool prior to October 1, 2010. Any electing insured whose net worth exceeds \$25 million as of December 31 of the year preceding the filing of a claim may be shielded from liability by the pool and have any workers' compensation claims filed against such electing insured covered by the pool, provided said electing insured pays \$50,000.00 per claim to the insolvency pool prior to October 1, 2010. Claims of all emergency claimants shall be covered by the insolvency pool.

(d) Claimants shall retain the right to pursue claims against any insured that is not an electing insured.