

House Bill 294 (AS PASSED HOUSE AND SENATE)

By: Representatives DeLoach of the 167th, Lumsden of the 12th, Williams of the 148th, and Taylor of the 173rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for additional value-added products or services that are excluded from being unfair
3 trade practices and unlawful inducements in insurance; to allow an insurer or insurance
4 producer to offer or provide a value-added product or service that enhances the health or
5 financial wellness of a customer, incentivizes behavioral changes of a customer, or assists
6 in the administration of employee or retiree benefit insurance coverage; to provide for the
7 administration of contracts reinsuring life, disability income, health, or long-term care
8 policies or annuities issued by a ceding insurer that has been placed into liquidation; to
9 provide for a guaranty association to elect to assume the rights and obligations of a ceding
10 insurer; to provide for duties, rights, and obligations of such association, the reinsurer, and
11 the receiver; to provide for time restrictions for certain actions; to provide for mandatory
12 negotiation; to provide for arbitration; to provide for construction; to provide for related
13 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 "33-24-59.31.

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17 (a) For purposes of this Code section, the term 'customer' means a policyholder, potential
18 policyholder, certificate holder, potential certificate holder, insured, potential insured, or
19 applicant.

20 (b) The following shall not be construed as an unfair trade practice under subsection (b)
21 of Code Section 33-6-4 or an unlawful inducement under subsection (c) of Code
22 Section 33-9-36:

23 (1) An insurer or insurance producer, by or through employees, affiliates, or third-party
24 representatives, may offer or provide a value-added product or service to a customer at
25 no or reduced cost when such product or service is not specified in the policy of insurance
26 when:

27 (A) The value-added product or service relates to the insurance coverage;

28 (B) The value-added product or service is offered in a manner that is not unfairly
29 discriminatory, and the availability of the value-added product or service is based on
30 documented objective criteria that is maintained by the insurer or insurance producer
31 and produced upon request by the Commissioner;

32 (C) The cost to the insurer or insurance producer for offering or providing the
33 value-added product or service is reasonable in comparison to the premiums or
34 insurance coverage for the policy class; and

35 (D) The value-added product or service is primarily designed to:

36 (i) Provide loss mitigation or loss control;

37 (ii) Reduce claim costs or claim settlement costs;

38 (iii) Provide education about liability risks or risk of loss to persons or property;

39 (iv) Monitor or assess risk, identify sources of risk, or develop strategies for
40 eliminating or reducing risk;

41 (v) Enhance the health of a customer;

42 (vi) Enhance the financial wellness of a customer through items such as education or
43 financial planning services;

44 ~~(v)(vii)~~ Provide post-loss services; ~~or~~
 45 ~~(vi)(viii)~~ Incentivize ~~Encourage~~ behavioral changes to improve the health or reduce
 46 the risk of death or disability of a customer ~~or potential customer that is a~~
 47 ~~policyholder, potential policyholder, certificate holder, potential certificate holder,~~
 48 ~~insured, potential insured or applicant; or~~
 49 (ix) Assist in the administration of employee or retiree benefit insurance coverage;
 50 and

51 (2) When an insurer or insurance producer does not have sufficient evidence but has a
 52 good-faith belief that the value-added product or service meets the criteria in
 53 subparagraph (D) of paragraph (1) of this Code section, the insurer or insurance producer
 54 may offer or provide a value-added product or service in a manner that is not unfairly
 55 discriminatory as part of a pilot program for no more than a one year. An insurer or
 56 insurance producer must notify the Commissioner prior to implementing the pilot
 57 program and may proceed with such program unless the Commissioner objects in writing
 58 within 21 days of notice."

59 **SECTION 2.**

60 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
 61 adding a new Code section to read as follows:

62 "33-37-31.1.

63 (a)(1) For purposes of this Code section, 'guaranty association' means the Georgia Life
 64 and Health Insurance Guaranty Association created by Chapter 38 of this title or any
 65 foreign guaranty association as defined in paragraph (10) of Code Section 33-37-3, unless
 66 context clearly requires a different construction.

67 (2) Contracts reinsuring life, disability income, health, or long-term care insurance
 68 policies or annuities issued by a ceding insurer that has been placed into liquidation

69 pursuant to this chapter shall be continued, subject to the provisions of this Code section;
70 provided, however, that, contracts terminated pursuant to contractual terms prior to the
71 date of the order of liquidation or terminated pursuant to the order of liquidation shall be
72 subject to the provisions of subsection (i) of this Code section.

73 (b)(1) At any time within 180 days of the date of the order of liquidation, a guaranty
74 association covering life, disability income, health, or long-term care insurance policies
75 or annuities, in whole or in part, may elect to assume the rights and obligations of the
76 ceding insurer related to such policies under any one or more reinsurance contracts
77 between the ceding insurer and its reinsurers. Any such assumption shall be effective as
78 of the date of the order of liquidation. The election shall be made by a guaranty
79 association or the National Organization of Life and Health Insurance Guaranty
80 Associations on its behalf by sending written notice, return receipt requested, to the
81 affected reinsurers.

82 (2) To facilitate the decision, the receiver and each affected reinsurer shall make
83 available upon request to any affected guaranty association or to the National
84 Organization of Life and Health Insurance Guaranty Associations on their behalf copies
85 of in-force reinsurance contracts and all related files and records relevant to the
86 determination of whether such contracts should be assumed, and notices of any defaults
87 under the reinsurance contracts or any known event or condition which with the passage
88 of time may become a default under the reinsurance contracts.

89 (3) For reinsurance contracts assumed by a guaranty association, the following
90 provisions shall apply:

91 (A) The guaranty association shall be responsible for all unpaid premiums due under
92 the reinsurance contracts, for periods both before and after the date of the order of
93 liquidation and shall be responsible for the performance of all other obligations to be
94 performed after the date of the order of liquidation;

95 (B) The guaranty association shall be entitled to any amounts payable by the reinsurer
96 under the reinsurance contracts with respect to losses or events that occur in periods on
97 or after the date of the order of liquidation;

98 (C) The guaranty association and the reinsurer shall, within 30 days following the date
99 of such guaranty association's election to assume a reinsurance contract, calculate the
100 balance due to or from such association under each reinsurance contract as of the date
101 of such election, and such association or reinsurer shall pay any remaining balance due
102 the other within 35 days of the date of such election. Any disputes over the amounts
103 due to such association or reinsurer shall be resolved by arbitration pursuant to the
104 terms of the affected reinsurance contract, or, if the contract contains no arbitration
105 clause, pursuant to the provisions of paragraph (3) of subsection (i) of this Code
106 section; and

107 (D) If the guaranty association or receiver on behalf of such association, within 60 days
108 of the date such association's election to assume a reinsurance contract, pays the unpaid
109 premiums due for periods both before and after the date of such election that are due
110 pursuant to the reinsurance contract, the reinsurer shall not be entitled to terminate the
111 reinsurance contract for failure to pay premiums and shall not be entitled to set off any
112 unpaid amounts due under other contracts, or unpaid amounts due from parties other
113 than such association, against amounts due the such association.

114 (c) When, pursuant to court approval provided for in Code Section 33-37-17, a receiver
115 continues insurance policies or annuities following an order of liquidation, and the policies
116 or annuities are not covered in whole or in part by one or more guaranty associations, the
117 receiver may, within 180 days of the date of the order of liquidation, elect to assume the
118 rights and obligations of the ceding insurer under any one or more of the reinsurance
119 contracts that relate to the policies or annuities; provided, however, that the contracts have
120 not been terminated as provided for in subsection (a) of this Code section. Such election
121 shall be made by sending written notice, return receipt requested, to the affected reinsurers.

122 After such notification to affected reinsurers has been made, payment of premiums on the
123 reinsurance contracts for the policies and annuities, for periods both before and after the
124 date of the order of liquidation, shall be chargeable against the estate as a Class 1
125 administrative expense. Amounts paid by the reinsurer on account of losses on the policies
126 and annuities shall be to the estate of the ceding insurer.

127 (d) During the period from the date of the order of liquidation until the date a guaranty
128 association or the receiver elects to assume the rights and obligations of the ceding insurer
129 under any one or more of the reinsurance contracts that relate to the policies or annuities
130 as provided for in subsection (b) or (c) of this Code section, the guaranty association, the
131 receiver, and the reinsurer shall not have any rights or obligations under any reinsurance
132 contract that is eligible for assumption by such association or the receiver.

133 (e) When a guaranty association or the receiver timely elected to assume a reinsurance
134 contract as provided for in subsection (b) or (c) of this Code section, the parties' rights and
135 obligations shall be governed by subsection (b) or (c) of this Code section as applicable.

136 (f) When a guaranty association or the receiver does not timely elect to assume a
137 reinsurance contract pursuant to subsection (b) or (c) of this Code section, the reinsurance
138 contract shall be terminated retroactively effective on the date of the order of liquidation
139 and subsection (i) of this Code section shall apply.

140 (g) When policies of life, disability income, health, or long-term care insurance or
141 annuities, or the guaranty association's obligations with respect thereto, are transferred to
142 an assuming insurer, reinsurance on the policies or annuities may also be transferred by
143 such association for contracts assumed as provided for in subsection (b) of this Code
144 section, or by the receiver for contracts assumed as provided for in subsection (c) of this
145 Code section; provided, however, that all of the following conditions are met:

146 (1) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance
147 contract transferred shall not cover any new policies or annuities in addition to those
148 transferred;

149 (2) The obligations described in subsections (b) and (c) of this Code section shall no
150 longer apply with respect to matters arising after the effective date of the transfer; and

151 (3) Notice shall be given in writing, return receipt requested, by the transferring party to
152 the affected reinsurer not less than 30 days prior to the effective date of the transfer.

153 (h) The provisions of this Code section shall, to the extent provided in this Code section,
154 supersede the provisions of law or of any affected reinsurance contract that provides for or
155 requires any payment of reinsurance proceeds, on account of losses or events that occur in
156 periods after the date of the order of liquidation, to the receiver of the ceding insurer or any
157 other person. The receiver shall remain entitled to any amounts payable by the reinsurer
158 under the reinsurance contracts with respect to losses or events that occur in periods prior
159 to the date of the order of liquidation, subject to provisions of this chapter including
160 applicable setoff provisions.

161 (i) When a reinsurance contract is terminated pursuant to this Code section, the reinsurer
162 and the receiver shall commence a mandatory negotiation procedure in accordance with the
163 following procedures:

164 (1) No later than 30 days after the date of termination, each party shall appoint an actuary
165 to determine an estimated sum due as a result of the termination of the reinsurance
166 contract calculated in a way expected to make the parties economically indifferent as to
167 whether the reinsurance contract continues or terminates, giving due regard to the
168 economic effects of the insolvency. The sum shall take into account the present value of
169 future cash flows expected under the reinsurance contract and be based on a gross
170 premium valuation of net liability using current assumptions that reflect post-insolvency
171 experience expectations, with no additional margins, net of any amounts payable and
172 receivable, with a market value adjustment to reflect premature sale of assets to fund the
173 settlement;

174 (2) Within 90 days of the date of termination, each party shall provide the other party
175 with its estimate of the sum due as a result of the termination of the reinsurance contract,

176 together with all relevant documents and other information supporting the estimate. The
177 parties shall make a good faith effort to reach an agreement on the sum due;
178 (3) If the parties are unable to reach agreement within 90 days following the submission
179 of materials as provided for in paragraph (2) of this subsection, either party may initiate
180 arbitration proceedings as provided in the reinsurance contract. When the reinsurance
181 contract does not contain an arbitration clause, either party may initiate arbitration
182 pursuant to this paragraph by providing the other party with a written demand for
183 arbitration. Such arbitration shall be conducted pursuant to the following procedures:
184 (A) Venue for the arbitration shall be within the county of the court's jurisdiction or
185 another location agreed to by the parties;
186 (B) Within 30 days of the responding party's receipt of the arbitration demand, each
187 party shall appoint an arbitrator who is a disinterested active or retired officer or
188 executive of a life or health insurance or reinsurance company, or other professional
189 with no less than ten years' experience in or relating to the field of life or health
190 insurance or reinsurance. The two arbitrators shall appoint an independent, impartial,
191 disinterested umpire who is an active or retired officer or executive of a life or health
192 insurance or reinsurance company, or other professional with no less than ten years'
193 experience in the field of life or health insurance or reinsurance. If the arbitrators are
194 unable to agree on an umpire, each arbitrator shall provide the other with the names of
195 three qualified individuals, each arbitrator shall strike two names for the other's list, and
196 the umpire shall be chosen by drawing lots from the remaining individuals;
197 (C) Within 60 days following the appointment of the umpire, the parties shall submit
198 to the arbitration panel, unless otherwise order by the panel, their estimates of the sum
199 due as a result of the termination of the reinsurance contract, together with all relevant
200 documents and other information supporting the estimate;
201 (D) The time periods set forth in these subsections may be extended upon mutual
202 agreement of the parties; and

203 (E) The panel shall have all powers necessary to conduct the arbitration proceedings
204 in a fair and appropriate manner, including the power to request additional information
205 from the parties, authorize discovery, hold hearings and hear testimony. The panel also
206 may appoint independent actuarial experts, the expense of which shall be shared equally
207 between the parties;

208 (4) An arbitration panel considering the matters set forth in this subsection shall apply
209 the standards set forth in this subsection and shall issue a written award specifying a net
210 settlement amount due from one party or the other as a result of the termination of the
211 reinsurance contract. The receivership court shall confirm that award absent proof of
212 statutory grounds for vacating or modifying arbitration awards under the Federal
213 Arbitration Act, P.L. 68-401; and

214 (5) If the net settlement amount agreed or awarded as provided for in this subsection is
215 payable by the reinsurer, the reinsurer shall pay the amount due to the estate, subject to
216 any applicable setoff as provided for in Code Section 33-37-29. If the net settlement
217 amount agreed or awarded pursuant to this subsection is payable by the ceding insurer,
218 the reinsurer shall be deemed to have a timely filed claim against the estate for that
219 amount, which claim shall be paid pursuant to the priority provided for in Code
220 Section 33-37-41. The guaranty associations shall not be entitled to receive the net
221 settlement amount, except to the extent they are entitled to share in the estate assets as
222 creditors of the estate, and shall have no responsibility for the net settlement amount.

223 (j) Except as otherwise provided in this Code section, nothing in this Code section shall
224 alter or modify the terms and conditions of any reinsurance contract. Nothing in this Code
225 section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to
226 rescind a reinsurance contract. Nothing in this Code section shall give a policyholder or
227 beneficiary an independent cause of action against a reinsurer that is not otherwise set forth
228 in the reinsurance contract. Nothing in this Code section shall limit or affect any guaranty

229 association's rights as a creditor of the estate against the assets of the estate. Nothing in this
230 Code section shall apply to reinsurance contracts covering property or casualty risks.
231 (k) This Code section and paragraph (20) of Code Section 33-38-7 shall be construed
232 together in a manner that is consistent with each other and with the purpose provided for
233 in Code Section 33-38-1."

234 **SECTION 3.**

235 This Act shall become effective upon its approval by the Governor or upon its becoming law
236 without such approval.

237 **SECTION 4.**

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