

House Bill 410 (AS PASSED HOUSE AND SENATE)

By: Representatives DeLoach of the 167th, Lumsden of the 12th, and Williamson of the 112th

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 efficiency in the practices of the Department of Insurance; to revise the statutory
3 deposit requirement for foreign insurers; to remove fees for branch licensees; to revise
4 application requirements for a domestic stock and mutual insurer; to remove the publication
5 requirement for application, amendments, and surrenders for such insurer; to remove such
6 publication requirement for charters, consolidations, and mergers of fraternal benefit
7 societies; to revise application requirements for farmers' mutual fire insurance companies;
8 to remove the licensure requirement for agency branches; to provide for biennial renewals
9 for agency licenses to be based on the origination month of the agency; to require a license
10 to state the legal name of the licensee; to provide for related matters; to provide for an
11 effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in
15 Chapter 3, relating to authorization and general requirements for transaction of insurance, by

16 revising subsection (b) of Code Section 33-3-8, relating to requirements as to deposit of
17 securities generally, as follows:

18 "(b)(1) Except as otherwise provided in this subsection, the amount of the deposit
19 required under this Code section for a certificate to transact any one class of insurance
20 shall be \$100,000.00; to transact each additional class of insurance, the amount of deposit
21 shall be \$25,000.00, subject to the limitation that not more than \$200,000.00 total deposit
22 shall be required for any combination of classes.

23 (2) As to any foreign insurer, in lieu of such deposit or part of such deposit in this state,
24 the Commissioner shall accept the current certificate in proper form of the public official
25 having supervision over insurers in any other state to the effect that a like deposit or part
26 of like deposit by such insurer is being maintained in public custody in such state in trust
27 for the purpose, ~~among other reasonable purposes, of protection of policyholders and~~
28 ~~creditors or of the protection of all the insurer's policyholders or of all of its policyholders~~
29 ~~and obligees.~~

30 (3) As to any alien insurer, other than a title insurer, which has entered through and the
31 United States branch of which is licensed to transact insurance in another state, in lieu of
32 such deposit or part thereof in this state, the Commissioner shall accept the certificate of
33 the official having supervision over insurance of such other state in the United States,
34 given under his or her hand and seal, that the insurer maintains within the United States
35 by way of deposits with public depositories, or in trust institutions within the United
36 States approved by such official, assets available for discharge of its United States
37 insurance obligations, which assets shall be in an amount not less than the outstanding
38 liabilities of the insurer arising out of its insurance transactions in the United States
39 together with the larger of the following sums: the largest deposit required by this title
40 to be made in this state by any type of domestic insurer transacting like kinds of insurance
41 or \$300,000.00.

42 (4) As to any alien insurer entering through this state to transact insurance in the United
43 States through a United States branch, such insurer shall deposit in accordance with
44 Chapter 12 of this title assets available for discharge of its United States insurance
45 obligations, which assets shall be in an amount not less than the outstanding liabilities of
46 the insurer arising out of its insurance transactions in the United States together with the
47 larger of the following sums: the largest deposit required by this title to be made in this
48 state by any type of domestic insurer transacting like kinds of insurance or \$300,000.00."

49 **SECTION 2.**

50 Said title is further amended in Chapter 8, relating to fees and taxes, by repealing
51 subparagraphs (B.1) and (B.2) of paragraph (1) of Code Section 33-8-1, relating to fees and
52 charges generally.

53 **SECTION 3.**

54 Said title is further amended in Chapter 14, relating to domestic stock and mutual insurers,
55 by revising Code Section 33-14-5, relating to filing of application for charter, fee,
56 certification and publication of application, and approval or disapproval of charter, as
57 follows:

58 "33-14-5.

59 (a) The application for charter with any and all exhibits that may be included with the
60 application shall be filed ~~in triplicate~~ in the office of the Commissioner of Insurance and
61 a fee of \$100.00 shall be paid to the Commissioner to be paid by him or her into the state
62 treasury. The Commissioner shall not receive the application until the fee ~~shall be~~ is paid.

63 (b) Reserved. ~~Immediately upon receipt of the triplicate copies of the application, with~~
64 ~~any and all exhibits included with the application, the Commissioner shall certify one of~~
65 ~~the copies of the application and deliver the same to the applicants and the same shall be~~
66 ~~published by the applicants once a week for four weeks in the newspaper in which is~~

67 ~~published the legal advertisements of the county where the principal office of the company~~
68 ~~is to be located. When the application with any and all exhibits attached to it shall have~~
69 ~~been published once a week for four weeks, the applicants may apply to the judge of the~~
70 ~~probate court of the county to certify the fact of such publication, which certificate shall~~
71 ~~be filed by the applicants in the office of the Commissioner of Insurance.~~

72 (c) The Commissioner shall approve or disapprove the application within 45 days of the
73 date the application is received by the Commissioner.

74 (d) The Commissioner shall examine the application to determine whether the charter, if
75 granted, will enable the insurer to comply with the applicable insurance laws of this state;
76 and, if the Commissioner finds that the charter, if granted, will enable the insurer to comply
77 with the applicable provisions of law for carrying on the business for which incorporation
78 is sought, the Commissioner shall issue under his or her hand and official seal a certificate
79 approving the granting of the charter for such insurer and shall transmit a copy of the
80 certificate of approval to the Secretary of State.

81 (e) If the Commissioner finds that the proposed application for a charter does not comply
82 with the law, or that the corporation, if organized, could not meet the requirements for a
83 certificate of authority as set forth in this chapter or any other provision of this title, the
84 Commissioner shall refuse to approve the application for charter and shall notify the
85 incorporators in writing, as to his or her reasons for such failure to approve; and the
86 Commissioner shall issue under his or her hand and official seal a certificate disapproving
87 the granting of the charter for such insurer."

88 **SECTION 4.**

89 Said title is further amended in said chapter by revising Code Section 33-14-6, relating to
90 grant of corporate powers and privileges, issuance of certificate of incorporation, recordation
91 of documents, and appointment of attorney for acceptance of service of process, as follows:

92 "33-14-6.

93 (a) All corporate powers and privileges to insurance companies shall be issued and granted
94 by the Secretary of State upon the terms, liabilities, and restrictions of and subject to this
95 title and the laws and Constitution of this state. If from any cause the Secretary of State
96 ~~should be~~ is disqualified from issuing and granting said powers, the duties required by this
97 title to be performed by the Secretary of State shall be performed by the Commissioner of
98 Insurance.

99 (b) When ~~the certificate of the judge of the probate court as to the fact of publication of~~
100 ~~the application for charter and the certificate of the Commissioner as to his or her approval~~
101 of the application for charter ~~shall have been~~ is received in the office of the Secretary of
102 State, the Secretary of State shall issue to the corporation under the seal of the state a
103 certificate of incorporation. The corporation shall not transact business as an insurer until
104 it has applied for and received from the Commissioner a certificate of authority as provided
105 by this title.

106 (c) The Secretary of State shall record the application for charter, the certificate of
107 approval of the Commissioner, ~~the certificate of the judge of the probate court as to~~
108 ~~publication~~, and the certificate of incorporation.

109 (d) No corporation shall directly or indirectly take risks or transact any business of
110 insurance in this state by any agent or agents in this state until it ~~shall have~~ has appointed
111 an attorney in this state on whom process of law can be served and filed in the office of the
112 Commissioner a written instrument duly signed and sealed certifying such appointment
113 which shall continue until another attorney ~~shall be~~ is substituted. Any process issued by
114 any court of record in this state and served upon the attorney by the proper officer of the
115 county in which the attorney may reside or may be found shall be deemed a sufficient
116 service of process upon the company, but service of process upon the company may also
117 be made in any other manner provided by law. Any violation of this subsection shall

118 subject the party violating this subsection to a penalty of not less than \$100.00 nor more
119 than \$500.00."

120 **SECTION 5.**

121 Said title is further amended in said chapter by revising Code Section 33-14-8, relating to
122 procedures for amendment or renewal of charter, as follows:

123 "33-14-8.

124 (a) A domestic insurer may amend its charter for any lawful purpose by written
125 authorization by the holders of a majority of the voting power of its outstanding capital
126 stock, by members if a mutual insurer, or by affirmative vote of such a majority voting at
127 a lawful meeting of stockholders or members of which the notice given to stockholders or
128 members included prior notice of not less than ten days of the proposal to amend.

129 (b) Upon authorization of such an amendment, the insurer shall file in the office of the
130 Commissioner of Insurance an application asking that its charter be so amended and a fee
131 of \$50.00 shall be paid to the Commissioner to be transmitted by him or her into the state
132 treasury; and the Commissioner shall not receive said application until said fee ~~shall be~~ is
133 paid. The application with any and all exhibits that may be included shall be filed ~~in~~
134 ~~triplicate~~, and signed with the corporate name and under the corporate seal; and shall state:

135 (1) The name and character of the corporation; and the city ~~or town~~; and county in this
136 state in which is located its principal place of business;

137 (2) The date of its original charter and any and all amendments to the charter, and the
138 date or dates of renewal of the charter; and

139 (3)(A) That it desires an amendment to its charter and the purpose of said amendment; ~~;~~

140 (B) There shall be annexed to the application a certificate ~~in triplicate~~ under the
141 corporate seal of the insurer and executed by the insurer's president or ~~vice-president~~
142 vice president and attested to by the secretary or assistant secretary under the seal of the
143 corporation, setting forth that the amendment has been authorized in writing by the

144 holders of a majority of the voting power of the outstanding capital stock, by members
145 if a mutual insurer, or by affirmative vote of such a majority voting at a lawful meeting
146 of stockholders or members of which the notice given to stockholders or members
147 included prior notice of not less than ten days of the proposal to amend.

148 ~~(c) Immediately upon receipt of the triplicate copies of the application, with any and all~~
149 ~~exhibits included with the application, the Commissioner shall certify one of the copies of~~
150 ~~the application and deliver the same to the applicants and the same shall be published by~~
151 ~~the applicants once a week for four weeks in the newspaper in which is published the legal~~
152 ~~advertisements of the county where the principal office of said company is to be located.~~
153 ~~When the application, with any and all exhibits attached to it, shall have been published~~
154 ~~once a week for four weeks, the applicants may apply to the judge of the probate court of~~
155 ~~the county to certify the fact of such publication, which certificate shall be filed by the~~
156 ~~applicants in the office of the Commissioner. The Commissioner shall approve or~~
157 ~~disapprove the application within 45 days of the date the application is received by him or~~
158 ~~her.~~

159 (d) No amendment shall be granted which will reduce authorized capital of a stock insurer
160 below the amount required by this title for the kinds of insurance thereafter to be
161 transacted; and no amendment shall reduce the surplus of a mutual insurer below the
162 amount required by this title for the kinds of insurance thereafter to be transacted.

163 (e) If an amendment of the charter would reduce the authorized capital stock of a stock
164 insurer below the amount then outstanding, the Commissioner shall not approve the
165 amendment if he or she has reason to believe that the interest of policyholders or creditors
166 of the insurer would be materially prejudiced by such reduction. If any reduction of capital
167 stock is effectuated, the insurer may require return of the original certificates of stock held
168 by each stockholder in exchange for new certificates for such number of shares as the
169 stockholder is then entitled in the proportion that the reduced capital bears to the amount
170 of capital stock outstanding as of immediately prior to the effective date of the reduction.

171 (f) When ~~the certificate of the judge of the probate court as to the fact of publication of the~~
 172 ~~application for amendment to the charter and the certificate of the Commissioner as to his~~
 173 ~~or her approval of the application for amendment shall have been~~ is received in the office
 174 of the Secretary of State, the Secretary of State shall issue to the corporation under the great
 175 seal of the state a certificate of amendment. The Secretary of State shall record the
 176 application for amendment to the charter, the certificate of approval of the Commissioner,
 177 ~~the certificate of the judge of the probate court as to publication,~~ and the certificate of
 178 amendment in a book to be kept by him or her for that purpose.

179 (g) A petition for renewal of the charter shall follow the procedure set forth in
 180 subsections (b) through (f) of this Code section, except that the fee for filing a petition for
 181 renewal of the charter shall be \$100.00."

182 SECTION 6.

183 Said title is further amended in said chapter by revising subsection (b) of Code
 184 Section 33-14-24, relating to procedure for voluntary dissolution generally, effective date of
 185 dissolution, and conditions precedent to effectuation of dissolution, as follows:

186 "(b) If, at the special meeting or any adjournment thereof, the holders of record of stock
 187 entitled to exercise two-thirds of all the voting power on such proposal or if a mutual
 188 insurer, two-thirds of the insurer's members present or represented by proxy at the meeting
 189 shall by resolution consent that the dissolution shall take place, a copy of the resolution
 190 together with a list of the names and residences of the directors and officers certified by the
 191 president or a ~~vice-president~~ vice president and the secretary or an assistant secretary or the
 192 treasurer or an assistant treasurer of the insurer shall be filed ~~in triplicate~~ with the
 193 application to surrender the charter required in Code Section 33-14-25 and ~~one~~ a copy shall
 194 be filed for record in the office of the clerk of the superior court of the county in which the
 195 office or principal place of business of the insurer is located in this state."

196

SECTION 7.

197 Said title is further amended in said chapter by revising Code Section 33-14-25, relating to
198 procedure for surrender of charter, as follows:

199 "33-14-25.

200 (a) Any insurance corporation chartered by the Secretary of State may surrender its charter
201 upon the company filing in the office of the Commissioner of Insurance an application in
202 ~~triplicate~~, signed with its corporate name and under its corporate seal, stating:

203 (1) The name of the company and the location of its principal place of business in this
204 state;

205 (2) The date of its charter and all amendments thereto and the date or dates of renewal
206 or renewals of its charter;

207 (3) That it desires to surrender its charter and franchise to the state;

208 (4) A certificate attested to by two officers of the company that the procedure required
209 by Code Section 33-14-24 has been carried out; and

210 (5) Any other information deemed necessary by the Commissioner of Insurance.

211 (b) Upon receipt thereof, the Commissioner shall take such action to investigate the
212 proposed surrender to determine if the rights of policyholders, creditors, stockholders or
213 members, and third party claimants under liability policies of the insurer have been paid
214 or properly provided for in a fair and equitable manner. The Commissioner shall after
215 making his or her determination issue under his or her hand and official seal a certificate
216 approving or disapproving the application for surrender of the charter and shall transmit
217 a copy of such certificate of approval to the Secretary of State. If the Commissioner does
218 not approve the application, the Commissioner shall notify the insurer in writing of his or
219 her reasons for not approving the application for surrender of the charter.

220 (c) The fee and ~~publication~~ other requirements set out in ~~subsections (a) through (c)~~ of
221 Code Section 33-14-5 shall be applicable to a surrender of charter under this Code section.

222 (d) Upon receipt of ~~the certificate of the judge of the probate court as to the publication of~~
223 ~~the application and~~ the certificate of approval of the surrender from the Commissioner, the
224 Secretary of State shall issue under the seal of the state a certificate dissolving the insurer;
225 and the Secretary of State shall record the application, ~~the certificate of the judge of the~~
226 ~~probate court,~~ the certificate of approval of the Commissioner, and the certificate
227 dissolving the insurer."

228

SECTION 8.

229 Said title is further amended in Chapter 15, relating to fraternal benefit societies, by revising
230 subsection (b) of Code Section 33-15-40, relating to formation of society, petition for charter,
231 preliminary certificate of authority, advance premiums, and certificate of authority, as
232 follows:

233 "(b) The petition for a charter, duly certified copies of the society's bylaws and rules,
234 copies of all proposed forms of certificates, applications therefor, circulars to be issued by
235 the society, and a bond conditioned upon the return to applicants of the advanced payments
236 if the organization is not completed within one year shall be filed with the Secretary of
237 State, who may require such further information which is deemed necessary. The bond
238 with sureties approved by the Commissioner shall be in such amount, not less than
239 \$300,000.00 nor more than \$1.5 million, as required by the Commissioner. All documents
240 filed ~~are to~~ shall be in the English language. The Secretary of State shall transmit
241 immediately one copy of the petition to the Commissioner and shall return one copy to the
242 petitioner. ~~The petition for a charter, with any and all exhibits attached thereto, shall be~~
243 ~~published in the manner provided in subsection (b) of Code Section 33-14-5.~~ If the
244 purposes of the society conform to the requirements of this chapter and all provisions of
245 the law have been complied with, the Commissioner shall so certify in writing to the
246 Secretary of State and shall furnish the incorporators a preliminary certificate of authority

247 authorizing the society to solicit members as hereinafter provided, but only after the
248 granting of the certificate of incorporation by the Secretary of State."

249 **SECTION 9.**

250 Said title is further amended in said chapter by revising subsection (a) of Code
251 Section 33-15-41, relating to amendment of laws, referendum, and approval of
252 Commissioner, as follows:

253 "(a) A domestic society may amend its laws in accordance with the provisions thereof by
254 action of its supreme governing body at any regular or special meeting thereof or, if its
255 laws so provide, by referendum. Such referendum may be held in accordance with the
256 provisions of its laws by the vote of the voting members of the society, by the vote of
257 delegates or representatives of voting members, or by the vote of local lodges. A society
258 may provide for voting by mail. No amendment submitted for adoption by referendum
259 shall be adopted unless, within six months from the date of submission thereof, a majority
260 of the members voting shall have signified their consent to such amendment by one of the
261 methods specified in this Code section. Charter amendments shall be filed ~~in triplicate with~~
262 ~~the Commissioner, published,~~ and approved only under the procedure established in Code
263 Section 33-14-8."

264 **SECTION 10.**

265 Said title is further amended in said chapter by revising subsections (a) and (e) of Code
266 Section 33-15-44, relating to consolidations or mergers, as follows:

267 "(a) A domestic society may consolidate or merge with any other society by complying
268 with the provisions of this Code section. The ~~filing of application, fee, and publication~~
269 ~~other requirements of subsections (a) through (e) of Code Section 33-14-5 shall be~~
270 applicable to a consolidation or merger under this chapter."

271 ~~"(e) Upon receipt of the certificate as to the publication of the application and the~~
272 ~~certificate of approval of the Commissioner, the Secretary of State shall issue, under the~~
273 ~~great seal of the state, a certificate of merger, which certificate shall be the charter of the~~
274 ~~consolidated or merged society. The Secretary of State shall record the application, the~~
275 ~~contract of merger and the other documents required to be filed, the certificate of the judge~~
276 ~~of the probate court, the certificate of the Commissioner, and the certificate of merger in~~
277 ~~a book to be kept by him for that purpose."~~

278 **SECTION 11.**

279 Said title is further amended in Chapter 16, relating to farmer's mutual fire insurance
280 companies, by revising subsection (a) of Code Section 33-16-3, relating to procedure for
281 incorporation of companies generally, filing and contents of application for charter, and
282 granting of charter by Secretary of State, as follows:

283 "(a) Twenty or more persons a majority of whom are citizens of this state may become a
284 body corporate for the purpose of transacting insurance upon the farmers' mutual fire
285 insurance plan as defined in Code Section 33-16-2 by making an application for a charter
286 signed by the persons applying for the charter or their counsel ~~in triplicate~~ specifying:

- 287 (1) The name of the proposed corporation. The name shall contain the words 'Farmers'
288 Mutual' and shall not be so similar to any name already used by any other corporation
289 authorized to transact business in this state as to be confusing or misleading;
- 290 (2) The purpose for which the corporation is formed;
- 291 (3) The name of the county in this state in which the corporation will have its principal
292 office and the names of any other counties in which it proposes to operate;
- 293 (4) The name and address of each incorporator;
- 294 (5) The names and addresses of those composing the board of directors of the
295 corporation in which the management shall be vested until the first meeting of the
296 members; and

297 (6) Any other provisions not inconsistent with this chapter or other applicable laws as
298 are deemed desirable by the incorporators or as may be required by the Commissioner."

299 **SECTION 12.**

300 Said title is further amended in Chapter 23, relating to licensing, by revising subsection (a)
301 of Code Section 33-23-3, relating to agency licensing and biennial renewals and ownership
302 restrictions, as follows:

303 "~~(a) Each principal office and each branch office of an agency as defined in paragraph (2)~~
304 ~~of subsection (a) of Code Section 33-23-1 must of an agency shall~~ obtain an agency license
305 prior to commencement of operations and renew such license biennially ~~and prior to~~
306 ~~December 31~~ prior to the last day of the origination month of such agency by filing
307 application forms prescribed by the Commissioner."

308 **SECTION 13.**

309 Said title is further amended in said chapter by revising subsection (b) of Code Section
310 33-23-11, relating to issuance and contents of license and display certificate of licensure, as
311 follows:

312 "(b) The license shall state the legal name and address of the licensee, the date of issue, the
313 general conditions relative to expiration or termination, the kind or kinds of insurance
314 covered if not an insurance agency license, and the other conditions of licensing."

315 **SECTION 14.**

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

318 **SECTION 15.**

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