House Bill 491 (AS PASSED HOUSE AND SENATE)
By: Representatives Taylor of the 173rd, Smith of the 134th, Lumsden of the 12th, Hawkins of the 27th, and Blackmon of the 146th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to insurance holding company systems, so as to update the regulation of insurance company holding systems; to provide for definitions; to provide the Commissioner with new supervisory authority; to provide for enforcement authority; to provide for confidentiality; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 13 of Title 33 of the Official Code of Georgia Annotated, relating to insurance holding company systems, is amended in Code Section 33-13-1, relating to definitions, by adding new paragraphs to read as follows:

"(4.1) 'Group-wide supervisor' means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the Commissioner under Code Section 33-13-7.1 to have sufficient significant contacts with an internationally active insurance group."

"(6.1) 'Internationally active insurance group' means an insurance holding company system that includes an insurer registered under Code Section 33-13-4 and that meets the following criteria:

(A) Premiums written in at least three countries;

(B) The percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company system's total gross written premiums; and

(C) Based on a three-year rolling average, the total assets of the insurance holding company system are at least $50 billion or the total gross written premiums of the insurance holding company system are at least $10 billion."

SECTION 2.

Said chapter is further amended by adding a new Code section to read as follows:

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33-13-7.1.  

(a) The Commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this Code section. However, the Commissioner may acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(1) Does not have substantial insurance operations in the United States;

(2) Has substantial insurance operations in the United States but not in this state; or

(3) Has substantial insurance operations in the United States and this state, but the Commissioner has determined pursuant to the factors set forth in subsections (b) and (f) of this Code section that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the Commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this Code section.

(b) In cooperation with other state, federal, and international regulatory agencies, the Commissioner shall identify a single group-wide supervisor for an internationally active insurance group. The Commissioner may determine that he or she is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the Commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for an internationally active insurance group. The Commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets, or liabilities;

(2) The place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the internationally active insurance group;

(3) The location of the executive offices or largest operational offices of the internationally active insurance group;

(4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the Commissioner determines to be:

(A) Substantially similar to the system of regulation provided under the laws of this state; or

(B) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
(5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the Commissioner with reasonably reciprocal recognition and cooperation.

The Commissioner acting as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in paragraphs (1) through (5) of this subsection, in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of the members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(c) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the Commissioner shall acknowledge such regulatory official as the group-wide supervisor. In the event of a material change in the internationally active insurance group that results in such group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities or that results in this state being the place of domicile of the top tiered insurer or insurers in the insurance holding company system of the internationally active insurance group, the Commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such internationally active insurance group pursuant to subsection (b) of this Code section.

(d) Pursuant to Code Section 33-13-6, the Commissioner is authorized to collect from any insurer registered pursuant to Code Section 33-13-4 all information necessary to determine whether the Commissioner may act as the group-wide supervisor of an internationally active insurance group or if the Commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the Commissioner, the Commissioner shall notify the insurer registered pursuant to Code Section 33-13-4 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the Commissioner with additional information pertinent to the pending determination. The Commissioner shall publish in a newspaper having general state-wide circulation and on its internet website the identity of internationally active insurance groups that the Commissioner has determined are subject to group-wide supervision by the Commissioner.

(e) If the Commissioner is the group-wide supervisor for an internationally active insurance group, the Commissioner is authorized to engage in any of the following group-wide supervision activities:

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(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

(A) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(B) Reasonable and effective mitigation measures are in place;

(2) Request from any member of such group information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(A) Governance, risk assessment, and management;

(B) Capital adequacy; and

(C) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Code Section 33-13-8 through supervisory colleges as set forth in Code Section 33-13-7 or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under Code Section 33-13-4, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the Commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities consistent with the authorities and purposes enumerated in this subsection as deemed necessary by the Commissioner.

(f) If the Commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the Commissioner is authorized to reasonably cooperate, through
supervisory colleges or otherwise, with group-wide supervision undertaken by such group-wide supervisor, provided that:

(1) The Commissioner's cooperation is in compliance with the laws of this state; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the Commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the Commissioner is authorized to refuse recognition and cooperation.

(g) The Commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Code Section 33-13-4, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(h) The Commissioner may promulgate rules and regulations necessary for the administration of this Code section.

(i) A registered insurer subject to this Code section shall be liable for and shall pay the reasonable expenses of the Commissioner's participation in the administration of this Code section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.”

SECTION 3.

Said chapter is further amended in Code Section 33-13-8, relating to confidentiality of information and documents obtained during examinations or investigations, sharing certain information, not delegation of regulatory authority or rule making, and responsibility for enforcement, by revising subsection (a) as follows:

“(a) Documents, materials, or other information in the possession or control of the department that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to Code Section 33-13-6 and all information reported or provided to the department pursuant to paragraphs (12) and (13) of subsection (b) of Code Section 33-13-3, and Code Sections 33-13-4, and Code Section 33-13-5, and 33-13-7.1 shall be confidential by law and privileged, shall not be subject to public disclosure under Article 4 of Chapter 18 of Title 50, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the
insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates that would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the Commissioner may publish all or any part in such manner as may be deemed appropriate."

SECTION 4.

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