

House Bill 24 (AS PASSED HOUSE AND SENATE)

By: Representatives Golick of the 30th, Lord of the 121st, Dodson of the 94th, Harbin of the 113th and Maddox of the 72nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 33-7-11.1 of the Official Code of Georgia Annotated, relating to
2 commencement of liability of insurer to pay benefits to third party on behalf of insured, so
3 as to include towing and storage costs in the losses for which an insurer must pay to a third
4 party on behalf of an insured under a motor vehicle or automobile liability insurance policy;
5 to amend Chapter 22 of Title 33 of the Official Code of Georgia Annotated, relating to
6 insurance premium finance companies, so as to change certain provisions relating to
7 requirements for license for transaction of business, fees, change of address, and examination
8 of applicants; to change certain provisions relating to maintenance of records of transactions
9 by licensees and examination of records by the Commissioner of Insurance; to change certain
10 provisions relating to form, contents, execution, and delivery of premium finance
11 agreements; to change certain provisions relating to service charges; to change certain
12 provisions relating to notice to insured by premium finance company, copy of premium
13 finance agreement, and notice of existence of power of attorney; to change certain provisions
14 relating to procedure for cancellation of insurance contract upon default; to change certain
15 provisions relating to disposition of unearned premiums upon cancellation of insurance
16 policies; to provide for use of electronic records and signatures subject to certain provisions
17 of law; to change certain provisions relating to applicability of said chapter; to provide for
18 related matters; to repeal conflicting laws; and for other purposes.

19 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

20 **SECTION 1.**

21 Code Section 33-7-11.1 of the Official Code of Georgia Annotated, relating to
22 commencement of liability of insurer to pay benefits to third party on behalf of insured, is
23 amended by striking the Code section in its entirety and inserting in lieu thereof a new Code
24 Section 33-7-11.1 to read as follows:

1 "33-7-11.1.

2 (a) As used in this Code section, 'liability insurance policy' means an automobile liability
3 or motor vehicle liability insurance policy issued or delivered in this state to the owner of
4 such vehicle or issued or delivered by any insurer licensed in this state upon any such
5 motor vehicle then principally garaged or principally used in this state.

6 (b) ~~Whenever any insurer undertakes~~ Any insurer, upon acceptance of liability, pursuant
7 to any automobile liability or motor vehicle liability insurance policy, ~~to~~ shall pay
8 reasonable benefits for losses, including total losses, to a third party on behalf of an insured
9 for loss of use and towing and storage costs of such a motor vehicle, and the liability of the
10 insurer for payment of ~~the~~ benefits for losses, including total losses, to the third party shall
11 commence as of the time of the incident or occurrence which results in ~~the loss of use of~~
12 ~~the motor vehicle~~ such losses; provided, however, in no event shall this Code section be
13 construed so as to relieve the claimant of his or her obligation to mitigate his or her losses
14 or to require the payment of loss of use and towing and storage costs benefits in an amount
15 which is greater than the actual ~~loss of use~~ losses suffered.

16 (c) The provisions of this Code section shall be applicable to all automobile liability or
17 motor vehicle liability insurance policies ~~pursuant to which an insurer undertakes to~~ that
18 pay benefits to a third party on behalf of an insured for the loss of use and towing and
19 storage costs of such motor vehicle issued, delivered, or renewed in this state on or after
20 ~~November 1, 1982~~ July 1, 2002."

21 SECTION 2.

22 Chapter 22 of Title 33 of the Official Code of Georgia Annotated, relating to insurance
23 premium finance companies, is amended by striking subsection (c) of Code Section 33-22-3,
24 relating to requirements for license for transaction of business, fees, change of address, and
25 examination of applicants, and inserting in lieu thereof the following:

26 "(c) Before any licensee changes his or her address, ~~he or she~~ shall ~~return his license to the~~
27 ~~Commissioner who shall endorse the license indicating the change~~ inform the
28 Commissioner of the change in writing."

29 SECTION 3.

30 Said chapter is further amended by striking subsection (b) of Code Section 33-22-7, relating
31 to maintenance of records of transactions by licensees and examination of records by the
32 Commissioner of Insurance, and inserting in lieu thereof the following:

33 "(b) Every licensee shall preserve its records of its premium finance transactions, including
34 cards used in a card system, for at least three years after making the final entry in respect

1 to any premium finance agreement. The preservation of records in photographic or
 2 electronic form shall constitute compliance with this requirement."

3 SECTION 4.

4 Said chapter is further amended by striking Code Section 33-22-8, relating to form, contents,
 5 execution, and delivery of premium finance agreements, and inserting in lieu thereof the
 6 following:

7 "33-22-8.

8 (a) A premium finance agreement shall:

9 (1) Be dated and signed by or on behalf of the insured, and the printed portion of the
 10 agreement shall be in ~~at least~~ approximately eight-point type and shall be readable by an
 11 individual with average eyesight;

12 (2) Contain the name and place of business of the insurance agent or insurance broker
 13 negotiating the related insurance contract, the name and residence ~~of~~ or place of business
 14 of the insured as specified by him or her, the name and place of business of the premium
 15 finance company to which payments are to be made, a description of the insurance
 16 contracts involved, and the amount of the premium for the contracts; and

17 (3) Set forth the following items, where applicable:

18 (A) The total amount of the premiums;

19 (B) The amount of the down payment;

20 (C) The principal balance (the difference between subparagraphs (A) and (B) of this
 21 paragraph);

22 (D) The amount of the service charge, including the additional charge as provided in
 23 Code Section 33-22-9;

24 (E) The balance payable by the insured (the sum of subparagraphs (C) and (D) of this
 25 paragraph); and

26 (F) The number of payments required, the amount of each payment expressed in
 27 dollars, and the due date or period of payment.

28 (b) The items set out in paragraph (3) of subsection (a) of this Code section need not be
 29 stated in the sequence or order in which they appear in such clause, and additional items
 30 may be included to explain the computations made in determining the amount to be paid
 31 by the insured.

32 (c) The licensee or the insurance agent or insurance broker shall deliver to the insured or
 33 send by electronic means or mail to the insured at his or her address shown in the
 34 agreement a complete copy of the agreement.

35 (d) Whenever an insurance policy has been financed pursuant to this chapter, an additional
 36 premium to such policy or a renewal or extension of such policy may be financed with the

1 same premium finance company without the execution of a new premium finance
 2 agreement. The premium finance company or the insurance agent or insurance broker shall
 3 ~~mail or deliver to the insured~~ deliver to the insured or send by electronic means or mail to
 4 the insured at his or her address shown in the agreement an addendum to the existing
 5 premium finance agreement ~~in the same manner as provided in subsection (c) of this Code~~
 6 ~~section~~, and such addendum shall contain the information required under subsection (a) of
 7 this Code section."

8 SECTION 5.

9 Said chapter is further amended by striking Code Section 33-22-9, relating to service
 10 charges, and inserting in lieu thereof the following:

11 "33-22-9.

12 (a) As used in this Code section, the term:

13 (1) 'Commercial insurance premium finance agreement' means any insurance premium
 14 finance agreement other than a consumer premium finance agreement.

15 (2) 'Consumer insurance premium finance agreement' means an insurance premium
 16 finance agreement, as defined in Code Section 33-22-2, wherein the insurance contracts
 17 which are the subject of the premium finance agreement are for personal, family, or
 18 household purposes ~~or where the premiums for those agreements are \$3,000.00 or less~~
 19 rather than business or professional purposes.

20 (b) A premium finance company shall not charge, contract for, receive, or collect a service
 21 charge other than as permitted by this chapter.

22 (c) The service charge shall be computed on the balance of the premiums due, after
 23 subtracting the down payment made by the insured in accordance with the premium finance
 24 agreement, from the effective date of the insurance coverage for which the premiums are
 25 being advanced, to and including the date when the final payment of the premium finance
 26 agreement is payable; provided, however, that service charges as specified in the premium
 27 finance agreement may continue to be charged until such agreement is paid in full.

28 (d) The service charge per consumer insurance premium finance agreement shall be a
 29 maximum of \$12.00 per \$100.00 per annum plus an additional charge which shall not
 30 exceed \$20.00 per premium finance agreement, which additional charge need not be
 31 refunded upon prepayment. Any insured may prepay his premium finance agreement in full
 32 at any time before the due date of the final payment and in such event the unearned service
 33 charge shall be refunded in accordance with the Rule of 78 and shall represent at least as
 34 great a proportion of the service charge, if any, as the sum of the periodic balances after the
 35 month in which prepayment is made bears to the sum of all periodic balances under the
 36 schedule of payments in the agreement.

1 (e) The service charge for a commercial insurance premium finance agreement shall be
 2 properly agreed upon by the parties to the contract. The claim or defense of usury by such
 3 insureds who enter into such a commercial insurance premium finance agreement or their
 4 successors or anyone in their behalf shall not be valid if such agreement is a valid contract
 5 in all other respects."

6 **SECTION 6.**

7 Said chapter is further amended by striking Code Section 33-22-12.1, relating to notice to
 8 insured by premium finance company, copy of premium finance agreement, and notice of
 9 existence of power of attorney, and inserting in lieu thereof the following:

10 "33-22-12.1.

11 Whenever a premium finance company executes a premium finance agreement relative to
 12 a personal or family-type policy of insurance, it shall ~~mail or deliver to the insured~~ deliver
 13 to the insured or send by electronic means or mail to the insured at his or her address
 14 shown in the agreement a copy of the agreement ~~as provided in subsection (c) of Code~~
 15 ~~Section 33-22-8~~ and a written notice which clearly discloses to the insured the existence
 16 of the power of attorney contained in such agreement. The written notice shall substantially
 17 comply with the following form:

18 **NOTICE**

19 Your insurance policy premiums have been financed and are payable on a monthly
 20 payment basis. If you do not pay each payment on or before the date due or within 15
 21 days of the date due, we have the right to CANCEL your insurance policy or policies
 22 which are financed under the premium finance agreement. To avoid cancellation of your
 23 policy or policies, MAKE YOUR PAYMENTS ON TIME."

24 **SECTION 7.**

25 Said chapter is further amended by striking subsection (b) of Code Section 33-22-13, relating
 26 to procedure for cancellation of insurance contract upon default, and inserting in lieu thereof
 27 the following:

28 "(b) Not less than ten days' written notice shall be ~~mailed to the insured~~ delivered to the
 29 insured or sent by electronic means or mailed to the insured at his or her address shown in
 30 the agreement of the intent of the premium finance company to cancel the insurance
 31 contract unless the default is cured within such ten-day period. A copy of said notice shall
 32 also be sent to the insurance agent or insurance broker indicated on the premium finance
 33 agreement."

SECTION 8.

Said chapter is further amended by striking paragraph (1) of subsection (b) of Code Section 33-22-14, relating to disposition of unearned premiums upon cancellation of insurance policies, and inserting in lieu thereof the following:

"(b)(1) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess within ten working days of receipt of the return premium or tender of return premium to the insured via the agent, agency, or broker placing the insurance and shall furnish such agent, agency, or broker, upon a written request, a report setting forth an itemization of the unearned finance charge and other charges under the premium finance agreement; provided, however, there shall be no refund required when the excess due the insured is less than ~~\$2.00~~ \$5.00."

SECTION 9.

Said chapter is further amended by adding a new Code Section 33-22-14.1 to read as follows:

"33-22-14.1.

Any use or transmission of electronic records or electronic signatures for purposes of this chapter shall be subject to the provisions of Chapter 12 of Title 10, the 'Georgia Electronic Records and Signatures Act.'"

SECTION 10.

Said chapter is further amended in Code Section 33-22-16, relating to applicability of said chapter, by striking "or" at the end of paragraph (5), striking "." at the end of paragraph (6) and inserting in lieu thereof "; or", and adding a new paragraph (7) to read as follows:

"(7) A holder in due course of the receivables generated by a premium finance company but who is not otherwise acting as a premium finance company under the provisions of this chapter."

SECTION 11.

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