

House Bill 1737

By: Representative Ralston of the 6<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 33 of the Official Code of Georgia Annotated, relating to kinds  
2 of insurance, limits of risk, and reinsurance, so as to provide an exception to the category of  
3 property insurance for warranty service agreements for major appliances, utility systems, and  
4 roofing; to provide for surety bonds under certain circumstances; to provide for identification  
5 of an insurer or surety insurer; to provide for cancellation; to require warranty agreements  
6 that are not insurance to provide a disclaimer; to repeal conflicting laws; and for other  
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 7 of Title 33 of the Official Code of Georgia Annotated, relating to kinds of  
11 insurance, limits of risk, and reinsurance, is amended by striking Code Section 33-7-6,  
12 relating to property insurance, and inserting in lieu thereof a new Code Section 33-7-6 to read  
13 as follows:

14 "33-7-6.

15 (a) Property insurance is insurance on real or personal property of every kind and interest  
16 therein against loss or damage from any or all hazards or causes and against loss  
17 consequential upon such loss or damage other than noncontractual legal liability for any  
18 such loss or damage. Property insurance shall also include miscellaneous insurance as  
19 defined in paragraph (10) of Code Section 33-7-3, except as to any noncontractual liability  
20 coverage includable therein.

21 (b) Property insurance also includes:

22 (1) Any contract, agreement, or instrument whereby a person assumes the risk of and the  
23 expense or portion thereof for the mechanical breakdown or mechanical failure of a  
24 motor vehicle and shall include those agreements commonly known as vehicle service  
25 agreements or extended warranty agreements, if made by a person other than the motor  
26 vehicle manufacturer in exchange for a separately stated charge or the cost of the contract

1 or contracts is included on a nonidentifiable basis in the cost of a motor vehicle sold in  
2 conjunction therewith, except that this provision shall not apply to an agreement  
3 underwritten by an insurer licensed to transact insurance in this state, either directly or  
4 through a reinsurance contract or, without regard to the requirement that the insurance  
5 cannot be obtained from an insurer authorized to do business in this state as required by  
6 Code Section 33-5-21, to an agreement underwritten by a surplus lines insurer which has  
7 not been rejected by the Commissioner for such purpose;

8 (2) Any contract, agreement, or instrument whereby a person assumes the risk of and the  
9 expense or portion of such expense for the structural or mechanical breakdown, loss of,  
10 or damage to a one-family or two-family residential building structure or any part thereof  
11 from any cause, including loss of or damage to or loss of use of the building structure or  
12 major components thereof which are attached to and become a part of said structure ~~by~~  
13 ~~reason of depreciation, deterioration, wear and tear, use, obsolescence, or breakage,~~ if  
14 made by a person other than the constructing contractor or manufacturer of the building  
15 structure or part thereof in exchange for a separately stated charge or the cost of the  
16 contract or contracts is included on a nonidentifiable basis in the cost of such building  
17 structure sold in conjunction therewith, except that this provision shall not apply to an  
18 agreement underwritten by an insurer licensed to transact insurance in this state, either  
19 directly or through a reinsurance contract or underwritten by a surplus line insurer  
20 approved by the Commissioner nor shall this provision apply to an agreement: (A) the  
21 performance of which is guaranteed by a surety bond executed by an authorized corporate  
22 surety insurer in favor of and approved by the Commissioner in an amount of not less  
23 than \$1.5 million; provided further that a surety bond of an additional \$100,000.00 shall  
24 be required for every additional \$500,000.00 in written premium above \$2 million in  
25 written premium. Any company relying upon one or more bonds pursuant to this  
26 subsection shall keep such bonds or equivalent coverage in place until the expiration of  
27 the contract, agreement, or instrument contemplated in this paragraph; or (B)  
28 notwithstanding with a duration of 13 months or less covering damage to or loss of use  
29 of the major appliances located in an existing or resold home where the performance of  
30 any covered repair is guaranteed by a surety bond executed by a corporate surety insurer  
31 authorized to offer surety insurance in this state in favor of the Commissioner and in an  
32 amount which in the discretion of the Commissioner will provide adequate protection to  
33 all the residents of this state who are covered by such agreements, provided that such  
34 amount shall not be less than \$100,000.00; or

35 (3) Any contract, agreement, or instrument, other than an agreement, contract, or  
36 instrument covered by paragraphs (1) and (2) of this subsection, whereby a person  
37 assumes the risk of and the expense or portion thereof for the cost of repair or

1 replacement of a product if such contract, agreement, or instrument is made by a person  
2 other than the manufacturer in exchange for a separately stated charge or the cost of the  
3 contract or contracts is included on a nonidentifiable basis in the cost of the product sold  
4 in conjunction therewith, except that this provision shall not apply to:

5 (A) An agreement underwritten by an insurer licensed to transact insurance in this  
6 state, either directly or through a reinsurance contract;

7 (B) Any contract, agreement, or instrument relating to similar services furnished by  
8 any air carrier that provides interstate air transportation;

9 (C) Any tire replacement contract, agreement, or instrument; ~~or~~

10 (D) A contract, agreement, or instrument whereby a retailer in the business of selling  
11 consumer products or a wholly owned subsidiary of such retailer assumes the risk of  
12 and the expense or portion thereof for the cost of repair or replacement of consumer  
13 products where such contract, agreement, or instrument is guaranteed by a surety bond  
14 executed by a corporate surety insurer authorized to offer surety insurance in this state  
15 in favor of and approved by the Commissioner in an amount of not less than  
16 \$100,000.00; or

17 (E) Any contract, agreement, or instrument whereby any person assumes the risk of  
18 and the expense or portion of such expense for the breakdown, service, repair, or  
19 replacement due to normal wear and tear, structural or inherent defect to the major  
20 appliances, utility systems, and roofing system of any one-family or two-family  
21 residential building structure in exchange for a separately stated consideration and does  
22 not otherwise provide direct or consequential coverage under a property contract as  
23 provided in this subsection and such contract, agreement, or instrument is guaranteed  
24 by a surety bond executed by a corporate surety insurer authorized to offer surety  
25 insurance in this state in favor of and approved by the Commissioner in an amount of  
26 not less than \$100,000.00.

27 (c)(1) Any contract, agreement, or instrument, as defined in paragraphs (1), (2), and (3)  
28 of subsection (b) of this Code section, shall state clearly and conspicuously ~~on the cover~~  
29 ~~page in the contract, agreement, or instrument~~ the name and address of the insurer or  
30 surety which has underwritten the contract, agreement, or instrument, either directly or  
31 through a reinsurance contract. ~~Any contract, agreement, or instrument as defined in~~  
32 ~~paragraphs (2) and (3) of subsection (b) of this Code section, the performance of which~~  
33 ~~is guaranteed by a surety insurer, shall state clearly and conspicuously on the cover page~~  
34 ~~the name, address, telephone number, and principal contact person of the surety insurer.~~

35 (2) In the event a contract, agreement, or instrument is issued by a party other than an  
36 insurer so that the holder thereof, in the first instance, must make a claim or request for  
37 refund pursuant to paragraph (3) of this subsection against a party other than the insurer,

1 the contract, agreement, or instrument shall provide that the holder shall be entitled to  
2 make a direct claim against the insurer upon the failure of the issuer to pay any claim or  
3 to refund the consideration paid by the holder for the contract, agreement, or instrument  
4 within 60 days after proof of loss has been filed with the issuer.

5 (3) The contract, agreement, or instrument shall be noncancelable by the issuer except  
6 for fraud, material misrepresentation, or failure to pay the consideration due therefor. The  
7 cancellation shall be in writing and shall conform to the requirements of Code Section  
8 33-24-44. The holder may cancel at any time upon demand and surrender of the contract,  
9 agreement, or instrument whereupon the issuer shall refund the excess of the  
10 consideration paid for the contract, agreement, or instrument above the customary short  
11 rate for the expired term of the contract, agreement, or instrument.

12 (4) Any contract, agreement, or instrument exempt under subparagraphs (D) or (E) of  
13 paragraph (3) of subsection (b) shall state clearly and conspicuously on the cover page  
14 or signature page substantially the following:

15 'This is not a contract of insurance.'

16 (d) The Commissioner shall have the power and authority to promulgate rules and  
17 regulations regarding vehicle service agreements or extended warranty agreements as  
18 described in paragraph (1) of subsection (b) of this Code section. Such rules and  
19 regulations shall include filing requirements, disclosures for the benefit of the agreement  
20 holder, record keeping, and procedures for public complaints. Such rules and regulations  
21 shall also include the conditions under which surplus lines insurers may be rejected for the  
22 purpose of underwriting vehicle service agreements and extended warranty agreements.

23 (e)(1) As used in this subsection, the term 'heavy equipment dealer' means a person, firm,  
24 or corporation which is primarily engaged in the business of selling, renting, leasing, and  
25 servicing heavy equipment, engines, power generation equipment, and parts and  
26 attachments to such heavy equipment which is primarily used for construction, industrial,  
27 maritime, mining, agriculture, or similar purposes and who is not required to be licensed.

28 (2) The provisions of this Code section shall not apply to heavy equipment dealers."

## 29 SECTION 2.

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