

House Bill 428 (AS PASSED HOUSE AND SENATE)

By: Representatives Keen of the 179<sup>th</sup>, Ralston of the 7<sup>th</sup>, and Rogers of the 26<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

To amend Chapter 7 of Title 33 of the Official Code of Georgia Annotated, relating to kinds of insurance, limits of risks, and reinsurance, so as to provide an exception to the category of property insurance for warranty service agreements for major appliances, utility systems, and roofing; to provide for surety bonds; to provide for identification of an insurer or surety insurer; to provide for cancellation; to require warranty agreements that are not insurance to so state; 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 7 of Title 33 of the Official Code of Georgia Annotated, relating to kinds of insurance, limits of risks, and reinsurance, is amended by striking in its entirety Code Section 33-7-6, relating to property insurance and exceptions thereto, and inserting in its place a new Code Section 33-7-6, to read as follows:

"33-7-6.

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

(b) Property insurance also includes:

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

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

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

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

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

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

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

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

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

16 (E) Any contract, agreement, or instrument whereby any person assumes the risk of  
17 and the expense or portion of such expense for the breakdown, service, repair, or  
18 replacement due to normal wear and tear or structural or inherent defect to the major  
19 appliances, utility systems, and roofing system of any one-family or two-family  
20 residential building structure in exchange for a separately stated consideration and does  
21 not otherwise provide direct or consequential coverage under a property contract  
22 defined in paragraph (1) or (2) of this subsection (b) or the introductory language of  
23 paragraph (3) of this subsection (b) and such contract, agreement, or instrument is  
24 guaranteed by a surety bond executed by a corporate surety insurer authorized to offer  
25 surety insurance in this state in favor of and approved by the Commissioner in an  
26 amount of not less than \$100,000.00.

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

36 (2) In the event a regulated contract, agreement, or instrument is issued by a party other  
37 than an insurer so that the holder thereof, in the first instance, must make a claim or

request for refund pursuant to paragraph (3) of this subsection against a party other than the insurer, the contract, agreement, or instrument shall provide that the holder shall be entitled to make a direct claim against the insurer upon the failure of the issuer to pay any claim or to refund the consideration paid by the holder for the contract, agreement, or instrument within 60 days after proof of loss has been filed with the issuer.

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

(4) Any contract, agreement, or instrument exempt under subparagraph (b)(3)(D) or (b)(3)(E) of this Code section shall state clearly and conspicuously substantially the following: 'This is not a contract of insurance.'

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

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

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

## SECTION 2.

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