

Senate Bill 113

By: Senators Shafer of the 48th, Hudgens of the 47th and Moody of the 56th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to agents, agencies, subagents, counselors, and adjusters, so as to provide for background checks; to require appointment of an agent by an authorized insurer before licensing; to provide for forms for license applications; to provide for appointment of limited subagents; to prohibit agents whose licenses are inactive from selling, soliciting, or negotiating insurance; to provide for rules and regulations for certain adjusters; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to agents, agencies, subagents, counselors, and adjusters, is amended by revising subsection (a) of Code Section 33-23-5, relating to qualifications and requirements for license, as follows:

"(a) For the protection of the people of this state, the Commissioner shall not issue, continue, or permit to exist any license, except in compliance with this chapter and except as provided in Code Sections 33-23-3, 33-23-4, 33-23-12, 33-23-13, 33-23-14, 33-23-16, 33-23-17, 33-23-29, 33-23-29.1, and 33-23-37. The Commissioner shall not issue a license to any individual applicant for a license who does not meet or conform to qualifications or requirements set forth in paragraphs (1) through (8) of this subsection:

(1) The individual applicant must be a resident of this state who will reside and be present within this state for at least six months of every year or an individual whose principal place of business is within this state; provided, however, in cities, towns, or trade areas, either unincorporated or comprised of two or more incorporated cities or towns, located partly within and partly outside the state, requirements as to residence and principal place of business shall be deemed met if the residence or place of business is located in any part of the city, town, or trade area and if the other state in which the city, town, or trade area is located in part has established like requirements as to residence and

1 place of business. The individual applying for an agent, adjuster, or counselor license
2 must be at least 18 years of age;

3 (2) If applying for an agent's license for property and casualty insurance, the applicant
4 must not use or intend to use the license for the purpose of obtaining a rebate or
5 commission upon controlled business; and the applicant must not in any calendar year
6 effect controlled business that will aggregate as much as 25 percent of the volume of
7 insurance effected by such applicant during such year, as measured by the comparative
8 amounts of premiums;

9 (3) If applying for an agent's license, the applicant must ~~have been~~ be appointed an agent
10 by an authorized insurer ~~subject~~ prior to issuance of the license;

11 (4) The individual applicant must be of good character and the Commissioner may, by
12 rule or regulation, establish criteria and procedures for criminal or other background
13 check requirements;

14 (5) The individual applicant must pass any written examination required for the license
15 by this article, provided that:

16 (A) An individual who applies for an insurance agent's license in this state who was
17 previously licensed for the same lines of authority in another state shall not be required
18 to complete any prelicensing education or examination. This exemption is only
19 available if the individual is currently licensed in that state or if the application is
20 received within 90 days of the cancellation of the applicant's previous license and if the
21 prior state issues a certification that, at the time of cancellation, the applicant was in
22 good standing in that state or the state's producer data base records maintained by the
23 National Association of Insurance Commissioners, its affiliates, or subsidiaries indicate
24 that the agent is or was licensed in good standing for the line of authority requested; and

25 (B) An individual licensed as an insurance agent in another state who moves to this
26 state shall make application within 90 days of establishing legal residence to become
27 a resident licensee pursuant to Code Section 33-23-8. No prelicensing education or
28 examination shall be required of that individual to obtain a license for any line of
29 authority previously held in the prior state except where the Commissioner determines
30 otherwise by rule or regulation;

31 (6) If applying for a license as counselor, the applicant must show that he or she either
32 has had five years' experience as an agent, subagent, or adjuster or in some other phase
33 of the insurance business or has sufficient teaching or educational qualifications or
34 experience which, in the opinion of the Commissioner, has qualified the applicant to act
35 as such counselor; and the applicant shall pass such examination as shall be required by
36 the Commissioner unless the applicant is exempted by the Commissioner, based on the

applicant's experience and qualifications and pursuant to a regulation adopted by the Commissioner;

(7) If applying for an agent's license, subagent's license, or adjuster's license, no applicant shall be qualified therefor or be so licensed unless he or she has successfully completed classroom courses in insurance satisfactory to the Commissioner at a school which has been approved by the Commissioner; and

(8) The Commissioner shall by rule or regulation establish criteria and procedures for the scope of prelicensing requirements and exemptions, if any, to the prelicensing or examination requirements."

SECTION 2.

Said article is further amended by revising Code Section 33-23-8, relating to form and contents of license application, as follows:

"33-23-8.

(a) An individual applicant for any license required by this chapter shall file with the Commissioner ~~a written~~ an application upon forms prescribed by the Commissioner. ~~The application shall be signed and verified by the oath of the applicant.~~

(b) If the application is for an agent's or limited subagent's license, the application shall state the kinds of insurance proposed to be transacted, ~~and~~ If applying as a limited subagent, shall be accompanied by written appointment of the applicant must be appointed as agent or a limited subagent by an authorized insurer or a sponsoring agent subject prior to the issuance of the license.

(c) As to any application for ~~an agent's or a limited~~ an agent's or a limited subagent's license or certificate of authority, the Commissioner shall require as part of the application a certificate of the ~~insurer or~~ sponsoring agent proposed to be represented. The certificate shall state, relative to the applicant's character, including criminal background, identity, residence, experience, and instruction as to the kinds of insurance to be transacted, that the ~~insurer or~~ sponsoring agent is satisfied that the applicant is trustworthy and qualified to act as its ~~agent or limited~~ agent or limited subagent and to hold himself or herself out in good faith to the general public as ~~an agent or limited~~ an agent or limited subagent; and the fact that the ~~insurer or~~ sponsoring agent desires that the applicant be licensed as ~~an agent or a limited~~ an agent or a limited subagent to represent it in this state.

(d) Each applicant for an agency license shall file with the Commissioner the information required under Code Section 33-23-3.

(e) All such applications shall be accompanied by the appropriate fees in the respective amounts as provided by law."

SECTION 3.

Said article is further amended by revising subsections (c) and (d) of Code Section 33-23-12, relating to limited licenses, as follows:

"(c)(1) As used in this subsection, the term:

(A) 'Limited licensee' means a person or entity authorized to sell certain coverages relating to the rental of vehicles pursuant to the provisions of this subsection.

(B) 'Rental agreement' means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental company for rental or lease.

(C) 'Rental company' means any person or entity in the business of providing primarily private passenger vehicles to the public under a rental agreement for a period not to exceed 90 days.

(D) 'Rental period' means the term of the rental agreement.

(E) 'Renter' means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed 90 days.

(F) 'Vehicle' or 'rental vehicle' means a motor vehicle of the private passenger type including passenger vans, minivans, and sport utility vehicles, and of the cargo type, including cargo vans, pick-up trucks, and trucks with a gross vehicle weight of less than 26,000 pounds and which do not require the operator to possess a commercial driver's license.

(2) The Commissioner may issue to a rental company that has complied with the requirements of this subsection a limited license authorizing the limited licensee to offer or sell insurance through a licensed insurer in connection with the rental of vehicles.

(3) As a prerequisite for issuance of a limited license under this subsection, there shall be filed with the Commissioner ~~a written~~ an application for a limited license, ~~signed by an officer of the applicant,~~ in such form or forms, and supplements thereto, and containing such information, as the Commissioner may prescribe.

(4) In the event that any provision of this subsection is violated by a limited licensee, the Commissioner may:

(A) After notice and a hearing, revoke or suspend a limited license issued under this subsection in accordance with the provisions of Code Sections 33-23-21 and 33-23-22; or

(B) After notice and a hearing, impose such other penalties, including suspending the transaction of insurance at specific rental locations where violations of this subsection have occurred, as the Commissioner deems to be necessary or convenient to carry out the purposes of this subsection.

1 (5) The rental company licensed pursuant to paragraph (2) of this subsection may offer
2 or sell insurance through licensed insurers only in connection with and incidental to the
3 rental of vehicles, whether at the rental office or by preselection of coverage in an
4 individual, master, corporate, or group rental agreement, in any of the following general
5 categories:

6 (A) Personal accident insurance covering the risks of travel, including but not limited
7 to accident and health insurance that provides coverage, as applicable, to renters and
8 other rental vehicle occupants for accidental death or dismemberment and
9 reimbursement for medical expenses resulting from an accident that occurs during the
10 rental period;

11 (B) Liability insurance, which, at the exclusive option of the rental company, may
12 include uninsured and underinsured motorist coverage whether offered separately or in
13 combination with other liability insurance, that provides coverage, as applicable, to
14 renters and other authorized drivers of rental vehicles for liability arising from the
15 operation of the rental vehicle;

16 (C) Personal effects insurance that provides coverage, as applicable, to renters and
17 other rental vehicle occupants for the loss of, or damage to, personal effects that occurs
18 during the rental period;

19 (D) Roadside assistance and emergency sickness protection programs; and

20 (E) Any other travel or vehicle related coverage that a rental company offers in
21 connection with and incidental to the rental of vehicles.

22 (6) No insurance may be offered by a limited licensee pursuant to this subsection unless:

23 (A) The rental period of the rental agreement does not exceed 90 consecutive days;

24 (B) At every rental location where rental agreements are executed, brochures or other
25 written materials are readily available to the prospective renter that:

26 (i) Summarize clearly and correctly the material terms of coverage offered to renters,
27 including the identity of the insurer;

28 (ii) Disclose that such policies offered by the rental company may provide a
29 duplication of coverage already provided by a renter's personal automobile insurance
30 policy, homeowner's insurance policy, personal liability insurance policy, or other
31 source of coverage;

32 (iii) State that the purchase by the renter of the kinds of coverage specified in this
33 subsection is not required in order to rent a vehicle; and

34 (iv) Describe the process for filing a claim in the event the renter elects to purchase
35 coverage and in the event of a claim;

36 (C) Evidence of coverage on the face of the rental agreement is disclosed to every
37 renter who elects to purchase such coverage.

1 (7) Any limited license issued under this subsection shall also authorize any employee
2 of the limited licensee to act individually on behalf, and under the supervision, of the
3 limited licensee with respect to the kinds of coverage specified in this subsection.

4 (8) Each rental company licensed pursuant to this subsection shall provide a training
5 program in which employees being trained by a licensed instructor receive basic
6 insurance instruction about the kinds of coverage specified in this subsection and offered
7 for purchase by prospective renters of rental vehicles. Additionally, each rental company
8 shall provide for such employees two hours of continuing education courses annually to
9 be taught by a licensed instructor. A rental company shall certify that, prior to offering
10 such coverages, each employee has received such instruction.

11 (9) Notwithstanding any other provision of this subsection or any rule adopted by the
12 Commissioner, a limited licensee pursuant to this subsection shall not be required to treat
13 moneys collected from renters purchasing such insurance when renting vehicles as funds
14 received in a fiduciary capacity, provided that the charges for coverage shall be itemized
15 and be ancillary to a rental transaction. The sale of insurance not in conjunction with a
16 rental transaction shall not be permitted.

17 (10) No limited licensee under this subsection shall advertise, represent, or otherwise
18 hold itself or any of its employees out as licensed insurers, insurance agents, or insurance
19 brokers.

20 (d)(1) As used in this subsection, the term 'communications equipment' shall mean
21 handsets, pagers, personal digital assistants, portable computers, automatic answering
22 devices, cellular telephones, batteries, and other devices or their accessories used to
23 originate or receive communications signals or service for individual customer use only
24 and includes services related to the use of such devices including, but not limited to,
25 individual customer access to a wireless network.

26 (2) The Commissioner shall issue limited licenses to each business location of a retail
27 vendor of communications equipment which covers employees and authorized
28 representatives of such retail vendors for the sale and offer for sale of insurance policies
29 covering only the loss, theft, mechanical failure, or malfunction of or damage to
30 communications equipment.

31 (3) The sale of such insurance policies shall be limited to sales in connection with the
32 sale of or provision of service for communications equipment by the retail vendor.

33 (4) As a prerequisite for issuance of a limited license under this subsection, there shall
34 be filed with the Commissioner ~~a written~~ an application for such limited license or
35 licenses, in a form and manner prescribed by the Commissioner, signed by the applicant
36 ~~or an officer of the applicant, on such form or forms, and supplements thereto, and~~
37 ~~containing such information as the Commissioner may prescribe.~~

(5) Each retail vendor licensed pursuant to this subsection shall provide a training program in which employees and authorized representatives of the retail vendor are trained by a licensed instructor and receive basic insurance instruction about the kind of coverage authorized in this subsection and offered for purchase by prospective purchasers of communications equipment or service.

(6) No precensing examination shall be required for issuance of such license."

SECTION 4.

Said article is further amended by revising Code Section 33-23-13, relating to temporary licenses, by adding a new subsection (e) to read as follows:

"(e) As to any application for a temporary agent's license pursuant to subsection (b) of this Code section, the Commissioner shall require as part of the application a certificate of the insurer proposed to be represented. The certificate shall state, relative to the applicant's character, including criminal background, identity, residence, experience, and instruction as to the kinds of insurance to be transacted, that the insurer is satisfied that the applicant is trustworthy and qualified to act as its temporary agent and to hold himself or herself out in good faith to the general public as a temporary agent and the fact that the insurer desires that the applicant be licensed as a temporary agent to represent it in this state."

SECTION 5.

Said article is further amended by revising subsection (b) of Code Section 33-23-19, relating to placing of license on inactive status, as follows:

"(b) When a license is placed on inactive status under this Code section, the agent is prohibited from selling, soliciting, or negotiating insurance ~~has been in such status for two consecutive years without a certificate of authority having been filed with and accepted by the Commissioner, such license may be revoked without further notice or hearing.~~"

SECTION 6.

Said article is further amended by revising Code Section 33-23-26, relating to agent's certificate of authority, by adding a new subsection (i) to read as follows:

"(i) As to any application for an agent's certificate of authority, the Commissioner shall require as part of the application a certificate of the insurer proposed to be represented. The certificate shall state, relative to the applicant's character, including criminal background, identity, residence, experience, and instruction as to the kinds of insurance to be transacted, that the insurer or sponsoring agent is satisfied that the applicant is trustworthy and qualified to act as its agent."

SECTION 7.

Said article is further amended by revising subsection (b) of Code Section 33-23-29, relating to authority of agent to act as adjuster, as follows:

"(b) No license by this state shall be required:

(1) Of a nonresident independent adjuster for the adjustment in this state of a single loss or of losses arising out of a catastrophe common to all such losses; or

(2) Of a nonresident adjuster who regularly adjusts in another state and who is licensed in such other state, if such state requires a license, to act as adjuster in this state for emergency insurance adjustment work for a period not exceeding 60 days and performed for an employer who is an insurance adjuster licensed by this state or who is a regular employer of one or more insurance adjusters licensed by this state, provided that the employer shall furnish to the Commissioner a notice in writing immediately upon the beginning of the emergency insurance adjustment work. The Commissioner may by rule or regulation establish criteria and procedures for adjusters operating under this Code section."

SECTION 8.

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