

The Senate Insurance and Labor Committee offered the following substitute to SB 407:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 29A of Title 33 of the Official Code of Georgia Annotated, relating to
2 individual health insurance coverage, so as to provide for legislative intent; to provide
3 definitions; to authorize the Commissioner of Insurance to authorize insurers to offer
4 individual medical and surgical health insurance policies in Georgia that have been approved
5 for issuance in selected other states; to authorize the Commissioner of Insurance to initiate
6 a multi-state consortium for the establishment of reciprocity agreements allowing the sale of
7 individual medical and surgical health insurance policies among the participating states as
8 a single entity; to provide for minimum standards for such policies; to provide for certain
9 notices; to provide for examinations of such insurers; to authorize the Commissioner of
10 Insurance to adopt rules and regulations; to provide for related matters; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

13 Chapter 29A of Title 33 of the Official Code of Georgia Annotated, relating to individual
14 health insurance coverage, is amended by adding a new article to read as follows:
15

"ARTICLE 3

16 33-29A-40.

17 The General Assembly recognizes the high number of uninsureds in the state and the need
18 of individuals seeking medical and surgical health insurance coverage in this state to have
19 the opportunity to choose among competitive medical and surgical health insurance plans
20 that are affordable and flexible. Therefore, the General Assembly seeks to increase the
21 competitive availability of medical and surgical health insurance coverage by allowing
22 insurers authorized to engage in the business of insurance in this state who are also
23 authorized to engage in the business of insurance in selected other states to issue individual
24

25 medical and surgical health policies in Georgia based upon their policy approval in the
26 other selected states. In addition, the General Assembly seeks to initiate cooperation of
27 like-minded states to create a multi-state consortium with reciprocity agreements for
28 approval; offer; sale; rating, including medical underwriting; renewal; and issuance of
29 individual medical and surgical health insurance policies. Under the current state-by-state
30 approval process, it may take years before an insurer introduces a new lower cost product
31 in Georgia. By creating a consortium of states with reciprocity agreements, the larger
32 population of several states with a single approval for sale in multiple states will be
33 attractive to insurers to develop and rapidly introduce lower cost effective products to
34 Georgians.

35 33-29A-41.

36 As used in this article, the term:

37 (1) 'Comprehensive individual medical and surgical insurance policy' shall have the same
38 meaning as 'accident and sickness insurance policy' as that term is defined in Code
39 Section 33-29-1 including, at a minimum, comprehensive major medical coverage for
40 medical and surgical benefits.

41 (2) 'High deductible health plan' means accident and sickness insurance plans sold or
42 maintained under the applicable provisions of Section 223 of the Internal Revenue Code.

43 (3) 'Primary state' means the state designated by the issuer as the state whose covered
44 laws shall govern the health insurance issuer in the sale of such coverage.

45 (4) 'Secondary state' means any state that is not the primary state.

46 33-29A-42.

47 In accordance with the provisions of this article, the Commissioner shall identify at least
48 five states with insurance laws sufficiently consistent with Georgia laws and regulations.

49 For those states so identified, the Commissioner shall approve for sale in Georgia selected
50 comprehensive individual medical and surgical insurance policies that have been approved
51 for issuance in those other states where the insurer is authorized to engage in the business
52 of insurance so long as the insurer is also authorized to engage in the business of insurance
53 in this state and provided that any such policy meets the requirements set forth in this
54 article. High deductible health plans that meet national standards for comprehensive
55 medical and surgical coverage should be among the policies automatically approved in
56 Georgia if approved in the states identified as acceptable by the Commissioner.

57 33-29A-43.

58 (a) Any insurer selling an insurance policy pursuant to this article, and any plan approved
 59 under this article, shall satisfy actuarial standards and insurer solvency requirements set
 60 forth by the National Association of Insurance Commissioners (NAIC) and adopted by
 61 regulation promulgated by the Commissioner or as otherwise prescribed by regulation
 62 promulgated by the Commissioner so long as any such regulation is not inconsistent with
 63 such NAIC standards.

64 (b) Any policy sold in Georgia under the coverage and administrative laws and regulations
 65 of another state that are not covered by a guarantee association or similar association of that
 66 state will be protected under the Georgia Life and Health Insurance Guaranty Association
 67 under Chapter 38 of this title.

68 (c) The Commissioner shall have the authority to determine whether an insurer satisfies
 69 the standards required by this Code section and may not approve a policy or plan that he
 70 or she finds lacking in compliance with this Code section. The Commissioner shall have
 71 the authority to determine whether the policies sold pursuant to this article continue to
 72 satisfy the requirements set forth in this Code section in the same manner as he or she does
 73 with an individual accident and sickness insurance policy approved pursuant to this title.
 74 The Commissioner shall have the authority to suspend or revoke new sales of out-of-state
 75 policies if the laws and regulations of those states are determined to substantially harm
 76 Georgians. Upon such suspension or revocation, the issuers of the out-of-state policies
 77 shall be required to notify in writing all affected Georgia policyholders of such
 78 determination by the Commissioner.

79 33-29A-44.

80 (a) Each written application for participation in an out-of-state health benefit plan shall
 81 contain the following language in boldface type at the beginning of the document:

82 'This policy is primarily governed by the laws of (insert state where the master policy is
 83 filed); therefore, all of the rating laws applicable to policies filed in this state do not apply
 84 to this policy, which may result in increases in your premium at renewal that would not
 85 be permissible in a Georgia-approved policy. Any purchase of individual health
 86 insurance should be considered carefully since future medical conditions may make it
 87 impossible to qualify for another individual health policy. FOR INFORMATION
 88 CONCERNING INDIVIDUAL HEALTH COVERAGE UNDER A
 89 GEORGIA-APPROVED POLICY, PLEASE CONSULT YOUR INSURANCE AGENT
 90 OR THE INSURANCE DEPARTMENT.'

91 (b) Each out-of-state health benefit policy shall contain the following language in boldface
 92 type at the beginning of the document:

93 'The benefits of this policy providing your coverage are governed primarily by the laws
 94 of a state OTHER than Georgia. While this health benefit plan may provide you a more
 95 affordable health insurance policy, it may also provide fewer health benefits than those
 96 normally included as state-mandated health benefits in policies in Georgia. PLEASE
 97 CONSULT YOUR INSURANCE AGENT TO DETERMINE WHICH
 98 STATE-MANDATED HEALTH BENEFITS ARE EXCLUDED UNDER THIS
 99 POLICY.'

100 33-29A-45.

101 (a) The Commissioner shall take the lead in creating a consortium of like-minded states
 102 in establishing rules of reciprocity for the approval of comprehensive individual medical
 103 and surgical health insurance policies among the participating states.

104 (b) At a minimum, the rules of approval reciprocity shall include terms and conditions to
 105 protect Georgians similar to the following:

106 (1) An issuer, with respect to a particular policy, may only designate one state as its
 107 primary state with respect to all such coverage it offers. Such an issuer may not change
 108 the designated primary state with respect to individual health insurance coverage once the
 109 policy is issued; provided, however, that such a change may be made upon renewal of the
 110 policy with approval of the policyholder. With respect to such designated primary state,
 111 the issuer must be licensed and approved to be doing business in that state;

112 (2) In the case of a health insurance issuer that is selling a policy in, or to a resident of,
 113 a secondary state, the issuer must be licensed and approved to be doing business in that
 114 secondary state; and

115 (3) The covered laws of the primary state shall apply to individual health insurance
 116 coverage offered by a health insurance issuer in the primary state and policies sold in any
 117 secondary state. The coverage and issuer shall comply with the terms and conditions
 118 with respect to the offering of coverage in Georgia.

119 (c) Except as provided in this Code section, a health insurance issuer with respect to its
 120 offer; sale; rating, including medical underwriting; renewal; and issuance of comprehensive
 121 individual medical and surgical health insurance coverage in Georgia is exempt from any
 122 covered laws of Georgia as the secondary state and any rules, regulations, agreements, or
 123 orders sought or issued by Georgia under or related to such covered laws to the extent that
 124 such laws would:

125 (1) Make unlawful or regulate, directly or indirectly, the operation of the health
 126 insurance issuer operating in the Georgia as a secondary state, except that any Georgia
 127 may require such an issuer:

- 128 (A) To pay on a nondiscriminatory basis applicable premium and other taxes, including
129 high risk pool assessments, which are levied on insurers and surplus lines insurers,
130 brokers, or policyholders under the laws of the State of Georgia;
131 (B) To register with and designate the Commissioner as its agent solely for the purpose
132 of receiving service of legal documents or process;
133 (C) To submit to an examination of its financial condition by a state insurance
134 commissioner in any state in which the issuer is doing business to determine the issuer's
135 financial condition, if the state insurance commissioner of the primary state has not
136 done an examination within the period recommended by the National Association of
137 Insurance Commissioners; and any such examination is conducted in accordance with
138 the examiners' handbook of the National Association of Insurance Commissioners and
139 is coordinated to avoid unjustified duplication and unjustified repetition;
140 (D) To comply with a lawful order issued in a delinquency proceeding commenced by
141 the Commissioner if there has been a finding of financial impairment under
142 subparagraph or in a voluntary dissolution proceeding;
143 (E) To comply with an injunction issued by a court of competent jurisdiction, upon a
144 petition by the Commissioner alleging that the issuer is in hazardous financial
145 condition;
146 (F) To participate, on a nondiscriminatory basis, in any insurance insolvency guaranty
147 association or similar association to which a health insurance issuer in the state is
148 required to belong;
149 (G) To comply with any state law regarding fraud and abuse, except that if the state
150 seeks an injunction regarding the conduct described in this subparagraph, such
151 injunction must be obtained from a court of competent jurisdiction;
152 (H) To comply with any state law regarding unfair claims settlement practices; and
153 (I) To comply with the applicable requirements for independent review with respect
154 to coverage offered in the state;
155 (2) Require any individual health insurance coverage issued by the issuer to be
156 countersigned by an insurance agent or broker residing in that secondary state; or
157 (3) Otherwise discriminate against the issuer issuing insurance in both the primary state
158 and in any secondary state.
159 (d) A health insurance issuer shall provide the following notice, in 12-point bold type, in
160 any insurance coverage offered in Georgia by such a health insurance issuer and at any
161 renewal of the policy, with the blank spaces being appropriately filled with the name of the
162 health insurance issuer, the name of the primary state, and the name of the secondary state,
163 respectively, for the coverage concerned:

164 'Notice: This policy is issued by [insert state name] and is governed by the laws and
 165 regulations of the State of [insert state name], and it has met all the laws of that state as
 166 determined by that state's Department of Insurance. This policy may be less expensive
 167 than others because it is NOT subject to all of the insurance laws and regulations of
 168 Georgia, including coverage of some services or benefits mandated by the law of the
 169 State of Georgia. Additionally, this policy is NOT subject to all of the consumer
 170 protection laws or restrictions on rate changes of the State of Georgia. As with all
 171 insurance products, before purchasing this policy, you should carefully review the policy
 172 and determine what health care services the policy covers and what benefits it provides,
 173 including any exclusions, limitations, or conditions for such services or benefits.'

174 (e) A health insurance issuer that provides individual health insurance coverage in a
 175 primary or secondary state shall not upon renewal:

176 (1) Move or reclassify the individual insured under the health insurance coverage from
 177 the class such individual is in at the time of issue of the contract based on the
 178 health-status related factors of the individual;

179 (2) Increase the premiums assessed the individual for such coverage based on a health
 180 status-related factor or change of a health status-related factors not defined at the issuance
 181 of the policy; or

182 (3) Increase premiums assessed the individual for past or prospective claims experience
 183 of the insured individual.

184 (f) Nothing in this Code section shall be construed to prohibit a health insurance issuer:

185 (1) From terminating or discontinuing coverage or a class of coverage in accordance with
 186 the laws of the primary state;

187 (2) From raising premium rates for all policy holders within a class based on claims
 188 experience in accordance with the laws of the primary state;

189 (3) From changing premiums or offering discounted premiums to individuals who
 190 engage in wellness activities at intervals prescribed by the issuer, if such premium
 191 changes or incentives in accordance with the laws of the primary state:

192 (A) Are disclosed to the consumer in the insurance contract;

193 (B) Are based on specific wellness activities that are not applicable to all individuals;
 194 and

195 (C) Are not obtainable by all individuals to whom coverage is offered;

196 (4) From reinstating lapsed coverage; or

197 (5) From retroactively adjusting the rates charged an insured individual if the initial rates
 198 were set based on material misrepresentation by the individual at the time of issue.

199 (g) A health insurance issuer may not offer for sale individual health insurance coverage
 200 in Georgia unless that coverage is currently offered for sale in the primary state.

201 (h) A person acting, or offering to act, as an agent or broker for a health insurance issuer
 202 with respect to the offering of individual health insurance coverage must obtain a license
 203 from Georgia, with commissions or other compensation subject to the provisions of the
 204 laws of Georgia, except that Georgia may not impose any qualification or requirement
 205 which discriminates against a nonresident agent or broker.

206 (i) Each health insurance issuer issuing individual health insurance coverage in both
 207 primary and secondary states shall submit to the insurance commissioner of each state in
 208 which it intends to offer such coverage before it may offer individual health insurance
 209 coverage in such state:

210 (1) A copy of the plan of operation or feasibility study or any similar statement of the
 211 policy being offered and its coverage which shall include the name of its primary state
 212 and its principal place of business;

213 (2) Written notice of any change in its designation of its primary state; and

214 (3) Written notice from the issuer of the issuer's compliance with all the laws of the
 215 primary state; and

216 (4) To the insurance commissioner of each secondary state in which it offers individual
 217 health insurance coverage, a copy of the issuer's quarterly financial statement submitted
 218 to the primary state, which statement shall be certified by an independent public
 219 accountant and contain a statement of opinion on loss and loss adjustment expense
 220 reserves made by a member of the American Academy of Actuaries; or a qualified loss
 221 reserve specialist.

222 (j) Nothing in this Code section shall be construed to affect the authority of any federal or
 223 state court to enjoin:

224 (1) The solicitation or sale of individual health insurance coverage by a health insurance
 225 issuer to any person or group who is not eligible for such insurance; or

226 (2) The solicitation or sale of individual health insurance coverage that violates the
 227 requirements of the law of a secondary state.

228 (k) Nothing in this Code section shall be construed to affect the authority of any state to
 229 enjoin conduct in violation of that state's laws.

230 33-29A-46.

231 (a) If a policy holder exhausts the primary state's policy holder's rights and privileges, then
 232 all claims under health benefit plans sold to Georgia residents by out-of-state companies
 233 shall be subject to the provisions of Article 2 of Chapter 20A of this title, and no
 234 out-of-state company seeking to offer health benefit plans in this state shall receive
 235 approval to offer health benefit plans in this state unless such company agrees to comply
 236 with this Code section.

237 (b) Out-of-state companies offering health benefit plans under this article shall be subject
238 to regulation by the Commissioner with regard to enforcement of the contractual benefits
239 under the health benefit plan, including the requirements regarding prompt payment of
240 claims for benefits pursuant to Code Section 33-24-59.5.

241 (c) Nothing in this article shall be construed to limit the ability of the Commissioner to
242 establish requirements for consumer protection beyond those otherwise available to the
243 policy holder in the primary state.

244 33-29A-47.

245 (a) The Commissioner shall adopt rules and regulations necessary to implement this
246 article.

247 (b) Any dispute resolution mechanism or provision for notice and hearing in this title shall
248 apply to insurers issuing and delivering plans pursuant to this article."

249 **SECTION 2.**

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