

The Senate Insurance and Labor Committee offered the following substitute to HB 423:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia
2 Annotated, the "Fair Business Practices Act of 1975," so as to provide that certain acts by
3 residential roofing contractors as they relate to insurance claims shall be considered
4 violations of unfair trade practice; to provide for definitions; to provide for certain
5 contractual requirements; to provide for notice language; to amend Article 1 of Chapter 23
6 of Title 33, relating to agents, agencies, subagents, counselors, and adjusters, so as to prohibit
7 certain acts by public adjusters or persons acting as public adjusters to use rebates or other
8 compensation as inducement for an insured to enter into a contract; to provide for related
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 SECTION 1.

12 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, the
13 "Fair Business Practices Act of 1975," is amended by adding a new Code section to read as
14 follows:

15 "10-1-393.12.

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

17 (1) 'Residential real estate' means a new or existing building constructed for habitation
18 by one to four families, including detached garages.

19 (2) 'Residential roofing contractor' means a person or entity in the business of contracting
20 or offering to contract with an owner or possessor of residential real estate to repair or
21 replace roof systems.

22 (3) 'Roof system' means a roof covering, roof sheathing, roof weatherproofing, roof
23 framing, roof ventilation system, and insulation.

24 (b) A person who has entered into a written contract with a residential roofing contractor
25 to provide goods or services to be paid from the proceeds of a property and casualty
26 insurance policy may cancel the contract prior to midnight on the fifth business day after

27 the insured has received written notice from the insurer that all or any part of the claim or
 28 contract is not a covered loss under such insurance policy. Cancellation shall be evidenced
 29 by the insured giving written notice of cancellation to the residential roofing contractor at
 30 the address stated in the contract. Notice of cancellation, if given by mail, shall be effective
 31 upon deposit into the United States mail, postage prepaid and properly addressed to the
 32 residential roofing contractor. Notice of cancellation need not take a particular form and
 33 shall be sufficient if it indicates, by any form of written expression, the intention of the
 34 insured not to be bound by the contract.

35 (c) Before entering a contract as provided in subsection (b) of this Code section, the
 36 residential roofing contractor shall:

37 (1) Furnish the insured a statement in boldface type of a minimum size of ten points, in
 38 substantially the following form:

39 'You may cancel this contract at any time before midnight on the fifth business day after
 40 you have received written notification from your insurer that all or any part of the claim
 41 or contract is not a covered loss under the insurance policy. This right to cancel is in
 42 addition to any other rights of cancellation which may be found in state or federal law
 43 or regulation. See attached notice of cancellation form for an explanation of this right';
 44 and

45 (2) Furnish each insured a fully completed form in duplicate, captioned 'NOTICE OF
 46 CANCELLATION,' which shall be attached to the contract but easily detachable, and
 47 which shall contain in boldface type of a minimum size of ten points the following
 48 statement:

49 'NOTICE OF CANCELLATION'
 50 If you are notified by your insurer that all or any part of the claim or contract is not a
 51 covered loss under the insurance policy, you may cancel the contract by mailing or
 52 delivering a signed and dated copy of this cancellation notice or any other written
 53 notice to (name of contractor) at (address of contractor's place of business) at any time
 54 prior to midnight on the fifth business day after you have received such notice from
 55 your insurer.

56 I HEREBY CANCEL THIS TRANSACTION

57 _____

58 (date)

59 _____

60 (insured's signature).

61 (d) In circumstances in which payment may be made from the proceeds of a property and
 62 casualty insurance policy, a residential roofing contractor shall not require any payments
 63 from an insured until the five-day cancellation period has expired. If, however, the

64 residential roofing contractor has performed any emergency services, acknowledged by the
 65 insured in writing to be necessary to prevent damage to the premises, the residential roofing
 66 contractor shall be entitled to collect the amount due for the emergency services at the time
 67 they are rendered. Any provision in a contract as provided in subsection (b) of this Code
 68 section that requires the payment of any fee for anything except emergency services shall
 69 not be enforceable against any insured who has canceled a contract under this Code section.
 70 (e) A residential roofing contractor shall not represent or negotiate, or offer or advertise
 71 to represent or negotiate, on behalf of an owner or possessor of residential real estate on
 72 any insurance claim in connection with the repair or replacement of roof systems. This
 73 subsection shall not apply to a public adjuster licensed under Chapter 23 of Title 33."

74

SECTION 2.

75 Article 1 of Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to
 76 agents, agencies, subagents, counselors, and adjusters, is amended by revising Code Section
 77 33-23-43, relating to authority of adjusters and penalty for violation, as follows:

78 "33-23-43.

79 (a) An adjuster licensed as both an independent and a public adjuster shall not represent
 80 both the insurer and the insured in the same transaction.

81 (b) An adjuster shall have authority under his or her license only to investigate, settle, or
 82 adjust and report to his or her principal upon claims arising under insurance contracts on
 83 behalf of insurers only if licensed as an independent adjuster or on behalf of insureds only
 84 if licensed as a public adjuster.

85 (c) No public adjuster, at any time, shall knowingly:

86 (1) Suggest or advise the employment of or name for employment a specific attorney or
 87 attorneys to represent a person in any matter relating to a person's potential claims,
 88 including any motor vehicle accident claims for personal injury, loss of consortium,
 89 property damages, or other special damages;

90 (2) Accept or agree to accept any money or other compensation from an attorney or any
 91 person acting on behalf of an attorney which the adjuster knows or should reasonably
 92 know is payment for the suggestion or advice by the adjuster to seek the services of the
 93 attorney or for the referral of any portion of a person's claim to the attorney; ~~or~~

94 (3) Hire or procure another to do any act prohibited by this subsection; ~~or~~

95 (4) Advertise or promise to pay or rebate all or any portion of any insurance deductible
 96 as an inducement to the sale of goods or services. As used in this subsection, the term
 97 'promise to pay or rebate' includes (A) granting any allowance or offering any discount
 98 against the fees to be charged, including, but not limited to, an allowance or discount in
 99 return for displaying a sign or other advertisement at the insured's premises, or (B) paying

100 the insured or any person directly or indirectly associated with the property any form of
101 compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary
102 value for any reason.

103 (d) For purposes of subsection (c) of this Code section, the term 'public adjuster' shall
104 include licensed public adjusters as defined by Code Section 33-23-1, ~~and~~ persons
105 representing themselves to be public adjusters who are not properly licensed by the
106 Commissioner, and persons committing any act under paragraph (4) of subsection (c) of
107 this Code section.

108 (e) Any person who violates any provision of subsection (c) of this Code section shall be
109 guilty of a misdemeanor and such violation shall be grounds for suspension or revocation
110 of licenses under this chapter."

111 **SECTION 3.**

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