

The Senate Insurance and Labor Committee offered the following substitute to HB 1067:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to
2 agents, agencies, subagents, counselors, and adjustors, so as to provide for the
3 comprehensive revision of provisions regarding the issuance and regulation of limited
4 licenses to sell portable electronics insurance; to provide for changes to license requirements
5 for certain resident independent adjusters; to add certain nonresident independent adjuster
6 license requirements; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

9 Chapter 23 of Title 33 of the Official Code of Georgia Annotated, relating to agents,
10 agencies, subagents, counselors, and adjustors, is amended by revising subsection (a) of Code
11 Section 33-23-12, relating to limited licenses for insurance agents, agencies, subagents,
12 counselors, and adjustors, as follows:

13
14 "(a) Except as provided in subsection (b) of this Code section for credit insurance licenses,
15 subsection (c) of this Code section for rental companies, and subsection (d) of this Code
16 section for ~~communications equipment~~ portable electronics, the Commissioner may
17 provide by rule or regulation for licenses which are limited in scope to specific lines or
18 sublines of insurance."

SECTION 2.

19 Said chapter is further amended by revising subsection (d) of said Code Section 33-23-12,
20 relating to limited licenses for insurance agents, agencies, subagents, counselors, and
21 adjuster, as follows:

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

23 (A) 'Customer' means a person who purchases portable electronics or services.
24

25 (B) 'Enrolled customer' means a customer who elects coverage under a portable
 26 electronics insurance policy issued to a vendor of portable electronics.

27 (C) 'Location' means any physical location in the State of Georgia or any website, call
 28 center site, or similar location directed to residents of the State of Georgia.

29 (D) 'Portable electronics' ~~'communications equipment'~~ means handsets, pagers,
 30 personal digital assistants, portable computers, automatic answering devices, cellular
 31 telephones, batteries, and other similar devices ~~or and~~ their accessories ~~used to originate~~
 32 ~~or receive communications signals or service for individual customer use only~~ and
 33 includes services related to the use of such devices, including, but not limited to,
 34 individual customer access to a wireless network.

35 (E) 'Portable electronics insurance' means insurance providing coverage for the repair
 36 or replacement of portable electronics which may provide coverage for portable
 37 electronics against any one or more of the following causes of loss: loss, theft,
 38 inoperability due to mechanical failure, malfunction, damage, or other similar causes
 39 of loss. Such term shall not include a service contract or extended warranty providing
 40 coverage limited to the repair, replacement, or maintenance of property in cases of
 41 operational or structural failure due to a defect in materials, workmanship, accidental
 42 damage from handling power surges, or normal wear and tear.

43 (F) 'Portable electronics transaction' means the sale or lease of portable electronics by
 44 a vendor to a customer or the sale of a service related to the use of portable electronics
 45 by a vendor to a customer.

46 (G) 'Supervising entity' means a business entity that is a licensed insurer, or insurance
 47 producer that is authorized by licensed insurer, to supervise the administration of a
 48 portable electronics insurance program.

49 (H) 'Vendor' means a person in the business of engaging in portable electronics
 50 transactions directly or indirectly.

51 (2) ~~The Commissioner~~ commissioner may issue to a retail vendor of ~~communications~~
 52 ~~equipment~~ portable electronics that has complied with the requirements of this subsection
 53 a limited license authorizing the limited licensee to offer or sell ~~insurance policies~~
 54 ~~covering only the loss, theft, mechanical failure, or malfunction of or damage to~~
 55 ~~communications equipment~~ portable electronics insurance policies.

56 (3) A limited license issued under this subsection shall authorize any employee or
 57 authorized representative of the vendor to sell or offer coverage under a policy of portable
 58 electronics insurance to customers at each location where the vendor engages in portable
 59 electronics transactions.

60 (4) The supervising entity shall maintain a registry of vendor locations that are
 61 authorized to sell or solicit portable electronics insurance coverage in this state. Upon

62 request by the commissioner and with ten days notice to the supervising entity, the
63 registry shall be open to inspection and examination by the commissioner during regular
64 business hours of the supervising entity.

65 ~~(3)~~(5) The sale of such insurance policies shall be limited to sales in connection with the
66 sale of or provision of service for ~~communications equipment~~ portable electronics by the
67 retail vendor.

68 (6) At every location where portable electronics insurance is offered to customers,
69 brochures or other written materials shall be made available to a prospective customer
70 which:

71 (A) State that the enrollment by the customer in a portable electronics insurance
72 program is not required in order to purchase or lease portable electronics or services;

73 (B) Summarize the material terms of the insurance coverage, including:

74 (i) The identity of the insurer;

75 (ii) The identity of the supervising entity;

76 (iii) The amount of any applicable deductible and how it is to be paid;

77 (iv) Benefits of the coverage; and

78 (v) Key terms and conditions of coverage such as whether portable electronics may
79 be repaired or replaced with a similar make and model or with reconditioned or
80 nonoriginal manufacturer parts or equipment;

81 (C) Summarize the process for filing a claim, including a description of how to return
82 portable electronics and the maximum fee applicable in the event the customer fails to
83 comply with any equipment return requirements; and

84 (D) State that an enrolled customer may cancel enrollment for coverage under a
85 portable electronics insurance policy at any time and the person paying the premium
86 shall receive a refund of any applicable unearned premium.

87 (7) Portable electronics insurance may be offered on a month-to-month or other periodic
88 basis as a group or master commercial inland marine policy issued to a vendor of portable
89 electronics for its enrolled customers. Coverage under portable electronics insurance
90 shall be primary to any other insurance.

91 (8) Eligibility and underwriting standards for customers electing to enroll in coverage
92 shall be established for each portable electronics insurance program.

93 (9) Notwithstanding any other provision of law, employees or authorized representatives
94 of a vendor of portable electronics shall not be compensated based primarily on the
95 number of customers enrolled for portable electronics insurance coverage but may
96 receive compensation for activities under the limited license which are incidental to their
97 overall compensation.

98 (10) The charges for portable electronics insurance coverage may be billed and collected
 99 by the vendor of portable electronics. Any charge to the enrolled customer for coverage
 100 that is not included in the cost associated with the purchase or lease of portable
 101 electronics or related services, shall be separately itemized on the enrolled customer's bill.
 102 If the portable electronics insurance coverage is included with the purchase or lease of
 103 portable electronics or related services, the vendor shall clearly and conspicuously
 104 disclose to the enrolled customer that the portable electronics insurance coverage is
 105 included with the portable electronics or related services. Vendors billing and collecting
 106 such charges shall not be required to maintain such funds in a segregated account,
 107 provided that the vendor is authorized by the insurer to hold such funds in an alternative
 108 manner and remits such amounts to the supervising entity within 60 days of receipt. All
 109 funds received by a vendor from an enrolled customer for the sale of portable electronics
 110 insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for
 111 the benefit of the insurer. Vendors may receive compensation for billing and collection
 112 services.

113 ~~(4)~~(11) As a prerequisite for issuance of a limited license under this subsection, there
 114 shall be filed with the Commissioner an application for such limited license or licenses
 115 in a form and manner prescribed by the Commissioner. The application shall provide:

116 (A) The name, residence address, and other information required by the Commissioner
 117 of an employee or officer of the vendor that is designated by the applicant as the person
 118 responsible for the vendor's compliance with the requirements of this subsection;

119 (B) If the vendor derives more than 50 percent of its revenue from the sale of portable
 120 electronics insurance, the information required by subparagraph (A) of this paragraph
 121 for all officers, directors, and shareholders of record having beneficial ownership of 10
 122 percent or more of any class of securities registered under the federal securities law;
 123 and

124 (C) The location of the applicant's home office.

125 (12) The employees and authorized representatives of vendors may sell or offer portable
 126 electronics insurance to customers and shall not be subject to licensure as an insurance
 127 producer under this Code section, provided that the supervising entity supervises the
 128 administration of ~~(5) Each retail vendor licensed pursuant to this subsection shall provide~~
 129 a training program in which employees and authorized representatives of such retail a
 130 vendor shall be trained by a licensed instructor and receive basic insurance instruction
 131 about the kind of coverage authorized in this subsection and offered for purchase by
 132 prospective purchasers of communications equipment or service. The training required
 133 by this subsection may be provided in electronic form. However, if provided in
 134 electronic form, the supervising entity shall implement a supplemental education program

135 regarding the portable electronics insurance that is conducted and overseen by a licensed
136 instructor.

137 ~~(6)~~(13) No prelicensing examination shall be required for issuance of such license.

138 (14) If a vendor or its employee or authorized representative violates any provision of
139 this subsection, the commissioner may impose any of the following penalties:

140 (A) After notice and hearing, fines not to exceed \$500.00 per violation or \$5,000.00 in
141 the aggregate for such conduct;

142 (B) After notice and hearing, other penalties that the commissioner deems necessary
143 and reasonable to carry out the purpose of this article, including:

144 (i) Suspending the privilege of transacting portable electronics insurance pursuant to
145 this subsection at specific business locations where violations have occurred; and

146 (ii) Suspending or revoking the ability of individual employees or authorized
147 representatives to act under the license;

148 (15) Notwithstanding any other provision of law:

149 (A) An insurer may terminate or otherwise change the terms and conditions of a policy
150 of portable electronics insurance only upon providing the policyholder and enrolled
151 customers with at least 60 days notice;

152 (B) If the insurer changes the terms and conditions, then the insurer shall provide the
153 vendor with a revised policy or endorsement and each enrolled customer with a revised
154 certificate, endorsement, updated brochure, or other evidence indicating a change in the
155 terms and conditions has occurred and a summary of material changes;

156 (C) Notwithstanding paragraph (15) of subsection (a) of this Code section, an insurer
157 may terminate an enrolled customer's enrollment under a portable electronics insurance
158 policy upon 15 days notice for discovery of fraud or material misrepresentation in
159 obtaining coverage or in the presentation of a claim;

160 (D) Notwithstanding paragraph (15) of subsection (a) of this Code section, an insurer
161 may immediately terminate an enrolled customer's enrollment under a portable
162 electronics insurance policy:

163 (i) For nonpayment of premium;

164 (ii) If the enrolled customer ceases to have an active service with the vendor of
165 portable electronics; or

166 (iii) If the enrolled customer exhausts the aggregate limit of liability, if any, under the
167 terms of the portable electronics insurance policy and the insurer sends notice of
168 termination to the enrolled customer within 30 calendar days after exhaustion of the
169 limit. However, if notice is not timely sent, enrollment shall continue notwithstanding
170 the aggregate limit of liability until the insurer sends notice of termination to the
171 enrolled customer; and

172 (E) Where a portable electronics insurance policy is terminated by a policyholder, the
 173 vendor shall mail or deliver written notice to each enrolled customer advising the
 174 enrolled customer of the termination of the policy and the effective date of termination.
 175 The written notice shall be mailed or delivered to the enrolled customer at least 30 days
 176 prior to the termination.

177 (16) Whenever notice or correspondence with respect to a policy of portable electronics
 178 insurance is required pursuant to this subsection or is otherwise required by law, it shall
 179 be in writing and sent within the notice period, if any, specified within the statute or
 180 regulation requiring the notice or correspondence. Notwithstanding any other provision
 181 of law, notices and correspondence may be sent either by mail or by electronic means as
 182 set forth in this subparagraph. If the notice or correspondence is mailed, it shall be sent
 183 to the vendor of portable electronics at the vendor's mailing address specified for such
 184 purpose and to its affected enrolled customers' last known mailing addresses on file with
 185 the insurer. The insurer or vendor of portable electronics, as the case may be, shall
 186 maintain proof of mailing in a form authorized or accepted by the United States Postal
 187 Service or other commercial mail delivery service. If the notice or correspondence is
 188 sent by electronic means, it shall be sent to the vendor of portable electronics at the
 189 vendor's electronic mail address specified for such purpose and to its affected enrolled
 190 customers' last known electronic mail address as provided by each enrolled customer to
 191 the insurer or vendor of portable electronics, as the case may be. For purposes of this
 192 paragraph, an enrolled customer's provision of an electronic mail address to the insurer
 193 or vendor of portable electronics, as the case may be, shall be deemed as consent to
 194 receive notices and correspondence by electronic means. The insurer or vendor of
 195 portable electronics, as the case may be, shall maintain proof that the notice or
 196 correspondence was sent.

197 (17) Notice or correspondence required by this subsection or otherwise required by law
 198 may be sent on behalf of an insurer or vendor, as the case may be, by the supervising
 199 entity appointed by the insurer."

200 **SECTION 3.**

201 Said chapter is further amended by adding a new paragraph to subsection (a) of Code Section
 202 33-23-1, relating to definitions, as follows:

203 "(3.1) 'Automated claims adjudication system' means a preprogrammed computer system
 204 designed for the collection, data entry, calculation, and final resolution of property
 205 insurance claims used only for portable electronics as defined in paragraph (1) of
 206 subsection (d) of Code Section 33-23-12 which:

207 (A) May only be utilized by a licensed independent adjuster, licensed agent, or
 208 supervised individuals operating pursuant to this paragraph;

209 (B) Shall comply with all claims payment requirements of the Georgia Insurance Code;
 210 and

211 (C) Shall be certified as compliant with this Code section by a licensed independent
 212 adjuster that is an officer of a business entity licensed under this chapter."

213 **SECTION 4.**

214 Said chapter is further amended by revising paragraph (7) of subsection (a) of Code Section
 215 33-23-1, relating to definitions, as follows:

216 "(7) 'Home state' means Canada, the District of Columbia, and any state or territory of
 217 the United States in which an insurance producer or adjuster maintains his or her
 218 principal place of residence or principal place of business and is licensed to act as an
 219 insurance producer or adjuster."

220 **SECTION 5.**

221 Said chapter is further amended by deleting "or" at the end of paragraph (6) of subsection (b)
 222 of Code Section 33-23-1, relating to definitions; by deleting the period at the end of
 223 paragraph (7) of such subsection and inserting "; or"; and by adding a new paragraph at the
 224 end of such subsection to read as follows:

225 "(8) An individual who collects claim information from, or furnishes claim information
 226 to, insureds or claimants, who conducts data entry, and who enters data into an automated
 227 claims adjudication system, provided that the individual is an employee of a licensed
 228 independent adjuster or its affiliate where no more than 25 such persons are under the
 229 supervision of one licensed independent adjuster or licensed agent."

230 **SECTION 6.**

231 Said chapter is further amended by adding a new subsection to Code Section 33-23-5,
 232 relating to the qualifications and requirements for a license, to read as follows:

233 "(d) Notwithstanding paragraph (1) of subsection (a) of this Code section, no resident of
 234 Canada may be licensed as an independent adjuster pursuant to this Code section or
 235 designate Georgia as his or her home state unless such person has successfully passed the
 236 adjuster examination and has complied with other applicable portions of this Code section."

237 **SECTION 7.**

238 Said chapter is further amended by revising subsection (h) of Code Section 33-23-16, relating
 239 to licensing of nonresidents, as follows:

240 "(h) Applicants whose home state does not require a license to transact business may be
241 licensed in this state, provided that the applicant takes the examination issued by the
242 Commissioner where required pursuant to this chapter and the applicant submits written
243 documentation from his or her resident state demonstrating the lack of licensing
244 requirement and the state's reciprocity with residents from this state. If the resident state
245 does not license independent adjusters, the independent adjuster shall designate as his or
246 her home state any state in which the independent adjuster is licensed and in good
247 standing."

248 **SECTION 8.**

249 Said chapter is further amended by adding a new subsection to Code Section 33-23-29,
250 relating to nonresident adjusters, to read as follows:

251 "(f) No resident of Canada may be licensed as a nonresident independent adjuster unless
252 such person has obtained a resident or home state independent adjuster license."

253 **SECTION 9.**

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