

SENATE SUBSTITUTE TO HB 1067:

AS PASSED SENATE**A BILL TO BE ENTITLED****AN ACT**

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for the comprehensive revision of provisions regarding the issuance and regulation
3 of limited licenses to sell portable electronics insurance; to provide for changes to license
4 requirements for certain resident independent adjusters; to add certain nonresident
5 independent adjuster license requirements; to correct certain language relating to exhaustion
6 of rights by claimants against insolvent insurers to provide for internal consistency; to
7 provide for requirements of retail installment sellers to be exempted from reinsurance
8 requirements relating to vehicle service agreements or extended warranty agreements; to
9 provide for an exception to retail installment seller's requirement to insure its guaranteed
10 asset protection waiver obligations under a contractual liability policy or other such policy;
11 to amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general
12 provisions of insurance, so as to provide that in the event of a dispute or complaint arising
13 involving material not in English, the English version of the material shall control the
14 resolution of the dispute or complaint; to amend Code Section 50-5-67 of the Official Code
15 of Georgia Annotated, relating to state purchasing through competitive bidding, so as to
16 provide for certain state contracting and bidding requirements; to provide for related matters;
17 to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

19
20 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
21 revising subsection (a) of Code Section 33-23-12, relating to limited licenses for insurance
22 agents, agencies, subagents, counselors, and adjustors, as follows:

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

SECTION 2.

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

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

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

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

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

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

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

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

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

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

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

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

(4) The supervising entity shall maintain a registry of vendor locations that are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the commissioner and with ten days notice to the supervising entity, the registry shall be open to inspection and examination by the commissioner during regular business hours of the supervising entity.

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

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

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

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

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

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

(iv) Benefits of the coverage; and

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

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

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

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

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

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

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

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

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

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

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

(12) The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this Code section, provided that the supervising entity supervises the administration of ~~(5) Each retail vendor licensed pursuant to this subsection shall provide a training program in which employees and authorized representatives of such retail a~~

139 vendor shall be trained by a licensed instructor and receive basic insurance instruction
140 about the kind of coverage authorized in this subsection and offered for purchase by
141 prospective purchasers of communications equipment or service. The training required
142 by this subsection may be provided in electronic form. However, if provided in
143 electronic form, the supervising entity shall implement a supplemental education program
144 regarding the portable electronics insurance that is conducted and overseen by a licensed
145 instructor.

146 ~~(6)~~(13) No prelicensing examination shall be required for issuance of such license.

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

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

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

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

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

157 (15) Notwithstanding any other provision of law:

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

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

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

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

172 (i) For nonpayment of premium;

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

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

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

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

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

SECTION 3.

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

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

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

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

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

SECTION 4.

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

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

SECTION 5.

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

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

SECTION 6.

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

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

246 **SECTION 7.**

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

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

257 **SECTION 8.**

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

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

262 **SECTION 8A.**

263 Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general
264 provisions of insurance, is amended by adding a new Code section to read as follows:

265 "33-1-22.
266 In the event of a dispute or complaint wherein an insurer provided any material in a
267 language other than English, the English language version of the policy, as that term is
268 defined in Code Section 33-24-1, shall control the resolution of such dispute or
269 complaint; provided, however, that nothing contained in this Code section shall
270 abrogate or supersede the provisions set forth in Chapter 6 of this title, relating to unfair
271 trade practices."

SECTION 8B.

Code Section 50-5-67 of the Official Code of Georgia Annotated, relating to state purchasing through competitive bidding, is amended by revising subsection (b) as follows:

"(b)(1) Except as otherwise provided for in this part, all contracts for the purchases of supplies, materials, equipment, or services other than professional and personal employment services made under this part shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid and any other cost affecting the total cost of ownership during the life cycle of the supplies, materials, equipment, or services as specified in the solicitation document. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the commissioner of administrative services; ~~which rules and regulations shall~~ prescribe, among other things, the manner, time, and places for proper advertisement for the bids, indicating the time and place when the bids will be received; the article for which the bid shall be submitted and the specification prescribed for the article; the amount or number of the articles desired and for which the bids are to be made; and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids so received may be rejected.

(2)(A) As used in this paragraph, the term:

- (i) 'Commercial use applications' means self-propelled, self-powered, or pull-type equipment and machinery, including diesel engines. The term shall not include motor vehicles requiring registration and certificate of title or equipment that is considered consumer goods, as that term is defined in Code Section 11-9-102.
- (ii) 'Multiple award schedule contract' means a contract that allows multiple vendors to be awarded a state contract for goods or services by providing catalogues of equipment and attachments to eligible purchasers including state agencies, departments, institutions, public school districts, and political subdivisions. Multiple award schedule contract bids shall be evaluated based upon a variety of factors, including but not limited to discounts, total life costs, service, warranty, machine performance and durability, resale value, product support, and past vendor performance. Multiple award schedule contracts shall allow multiple vendors to bid and be awarded a contract based upon the value of their products

and demonstrated results in competitive pricing, product updates, transparency, administrative savings, expedited procurement, and flexibility for state purchasers.

(B) When the commissioner of administrative services determines it to be in the best interest of the state, a multiple award schedule contract may be let for the purchase of equipment used for commercial use applications. All bidders for contracts for the purchase of equipment for commercial use applications shall be required to submit a complete bid package and be the authorized dealer or vendor for a leading manufacturer of equipment used for commercial use applications. Bidders may add additional equipment with a guaranteed minimum discount off the manufacturer's suggested consumer list price in the bid in order to increase the options available to the state.

(C) Nothing in this paragraph shall limit multiple award schedule contracts to commercial use applications."

SECTION 9.

Said title is further amended by revising subsection (d) of Code Section 33-36-14, relating to exhaustion of rights by claimants against insolvent insurers, as follows:

"(d) Except as provided for in Code Section 33-36-20, the pool shall have the right to recover from ~~any person who is an affiliate of the insolvent insurer~~ the following persons all amounts paid by the pool on behalf of such person, whether for indemnity or defense or otherwise;

(1) Any insured whose net worth on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds \$25 million~~;~~₂ provided that an insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; and

(2) Any person who is an affiliate of the insolvent insurer."

SECTION 10.

Said title is further amended by adding a new subsection to Code Section 33-7-6 of the Official Code of Georgia Annotated, relating to property insurance, contact requirements, rules and regulations, and exemptions, to read as follows:

"(f) Property insurance does not include those agreements commonly known as vehicle service agreements or extended warranty agreements which are issued, sold, or offered for sale by a retail installment seller, as defined in Code Section 10-1-31 in connection with the sale of a motor vehicle by such retail installment seller, provided that such retail installment seller:

(1) Maintains, or has a parent company maintain, a net worth or stockholders' equity of at least \$50 million, provided the parent company guarantees the obligations of the retail installment seller arising from vehicle service agreements or extended warranty agreements underwritten pursuant to this subparagraph;
 (2) Complies with the registration requirement prescribed by the Commissioner through regulation;
 (3) Files with the Commissioner a true and correct copy of the vehicle service agreement or extended warranty agreement that has a term of and is no longer than nine months in a form that is consistent with the terms prescribed by the Commissioner through regulation;
 (4) Files a copy of its Form 10-K or Form 20-F disclosure statements, or if it does not file such statements with the United States Securities and Exchange Commission, a copy of its audited financial statements reported on a GAAP basis. If the retail installment seller's financial statements are consolidated with those of its parent company, then the retail installment seller may comply with this provision by filing the statements of its parent company. The statement shall be filed with the Commissioner 30 days prior to the retail installment seller's initial offering or delivering of a service agreement or extended warranty agreement, and thereafter, the statement shall be filed with the Commissioner annually; and
 (5) Upon the request of the Commissioner, posts a security deposit or surety bond in an amount not to exceed \$250,000.00 and in the manner prescribed by the Commissioner through regulation."

SECTION 11.

Said title is further amended by revising Code Section 33-63-4, relating to offering, selling, or providing to borrowers guaranteed asset protection waivers, by adding a new subsection to read as follows:

"(i) A retail installment seller that offers, provides, or sells a guaranteed asset protection waiver in connection with the sale of a motor vehicle shall not be required to insure its guaranteed asset protection waiver if the retail installment seller does both of the following:

(1) Maintains, or has a parent company that maintains, a net worth or stockholders' equity of at least \$50 million, provided the parent company guarantees the obligations of the retail installment seller arising from guaranteed asset protection waivers underwritten pursuant to this subsection; and
 (2) Files a copy of its Form 10-K or Form 20-F disclosure statements, or, if it does not file with the United States Securities and Exchange Commission, a copy of its

379 audited financial statements reported on generally accepted accounting principles. If
380 the retail installment seller's financial statements are consolidated with those of its
381 parent company, then the retail installment seller may comply with the provisions of
382 this paragraph by filing the statements of its parent company. The statement shall be
383 filed with the Commissioner at least 30 days prior to the retail installment seller's
384 initial offering or delivering a guaranteed asset protection waiver, and thereafter the
385 statement shall be filed with the Commissioner annually."

386 **SECTION 12.**

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