

Senate Bill 412

By: Senators Robertson of the 29th, Wilkinson of the 50th, Gooch of the 51st, Harbison of the 15th, Payne of the 54th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 33-7-6 of the Official Code of Georgia Annotated, relating to
2 property insurance, contract requirements, rules and regulations, and exemptions, so as to
3 revise the meaning of property insurance; to change the parameters under which certain
4 contracts, agreements, or instruments may be canceled; to provide for penalties; to provide
5 for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 33-7-6 of the Official Code of Georgia Annotated, relating to property
9 insurance, contract requirements, rules and regulations, and exemptions, is amended as
10 follows:

11 "33-7-6.

12 (a) Property insurance is insurance on real or personal property of every kind and interest
13 therein against loss or damage from any or all hazards or causes and against loss
14 consequential upon such loss or damage other than noncontractual legal liability for any
15 such loss or damage. Property insurance shall also include miscellaneous insurance as
16 defined in paragraph (10) of Code Section 33-7-3, except as to any noncontractual liability
17 coverage includable therein.

18 (b) Property insurance also includes:

19 (1) Any contract, agreement, or instrument whereby a person assumes the risk of and the
20 expense or portion thereof for:

21 (A) The mechanical breakdown or mechanical failure of a motor vehicle; or

22 (B) The repair of certain reasonable motor vehicle wear and tear sustained in ordinary
23 use, such as:

24 (i) The removal of dents, dings, or creases in a motor vehicle without affecting the
25 existing paint finish using paintless dent repair techniques;

- 26 (ii) The removal of small windshield chips and cracks without replacement of the
 27 entire windshield;
- 28 (iii) The repair of rips, burns, tears, holes, and punctures to interior fabric or carpet;
- 29 (iv) Cosmetic repair of minor scuffs, scratches, scrapes, or rash on exterior plastic
 30 surfaces, including, but not limited to, bumpers;
- 31 ~~(v) Cosmetic repair to aluminum or painted wheels when the normal appearance of~~
 32 ~~the wheel is altered with minor curb scuffs, scratches, scrapes, or rash; or~~ The repair
 33 or replacement of wheels on a motor vehicle damaged as a result of coming into
 34 contact with road hazards which may include, but are not limited to, potholes, rocks,
 35 wood debris, metal parts, plastic, curbs, or composite scraps;
- 36 (vi) Exterior reconditioning of foggy or yellowed headlights to restore clarity and
 37 luster,
- 38 (vii) The repair or replacement of a motor vehicle key or key fob in the event that the
 39 key or key fob becomes inoperable or is lost or stolen; or
- 40 (viii) The repair, replacement, or maintenance of a motor vehicle, or indemnification
 41 for the repair, replacement, or maintenance for excess wear to the motor vehicle,
 42 resulting in lease-end excess wear and use charges assessed by a lessor pursuant to a
 43 motor vehicle lease agreement, provided that the value of any benefits under such
 44 contract, agreement, or instrument shall not exceed the purchase price of the vehicle;
 45 provided, further, that a person offering a cancellation or waiver of excess wear and
 46 use charges in connection with a lease as described in paragraph (6) of Code Section
 47 33-63-3 is not subject to this Code section.

48 and shall include those agreements commonly known as vehicle service agreements or
 49 extended warranty agreements, if made by a person other than the motor vehicle
 50 manufacturer or a subsidiary or affiliate of the motor vehicle manufacturer in exchange
 51 for a separately stated charge or the cost of the contract or contracts is included on a
 52 nonidentifiable basis in the cost of a motor vehicle sold in conjunction therewith, except
 53 that this provision shall not apply to an agreement underwritten by an insurer licensed to
 54 transact insurance in this state, either directly or through a reinsurance contract or,
 55 without regard to the requirement that the insurance cannot be obtained from an insurer
 56 authorized to do business in this state as required by Code Section 33-5-21, to an
 57 agreement underwritten by a surplus lines insurer which has not been rejected by the
 58 Commissioner for such purpose;

59 (2) Any contract, agreement, or instrument whereby a person assumes the risk of and the
 60 expense or portion of such expense for the structural or mechanical breakdown, loss of,
 61 or damage to a one-family or two-family residential building structure or any part thereof
 62 from any cause, including loss of or damage to or loss of use of the building structure or

63 major components thereof which are attached to and become a part of said structure, if
64 made by a person other than the constructing contractor or manufacturer of the building
65 structure or part thereof in exchange for a separately stated charge or the cost of the
66 contract or contracts is included on a nonidentifiable basis in the cost of such building
67 structure sold in conjunction therewith, except that this provision shall not apply to an
68 agreement underwritten by an insurer licensed to transact insurance in this state, either
69 directly or through a reinsurance contract or underwritten by a surplus line insurer
70 approved by the Commissioner nor shall this provision apply to an agreement: (A) the
71 performance of which is guaranteed by a surety bond executed by an authorized corporate
72 surety insurer in favor of and approved by the Commissioner in an amount of not less
73 than \$1.5 million; provided further that a surety bond of an additional \$100,000.00 shall
74 be required for every additional \$500,000.00 in written premium above \$2 million in
75 written premium. Any company relying upon one or more bonds pursuant to this
76 subsection shall keep such bonds or equivalent coverage in place until the expiration of
77 the contract, agreement, or instrument contemplated in this paragraph; or (B)
78 notwithstanding with a duration of 13 months or less covering damage to or loss of use
79 of the major appliances located in an existing or resold home where the performance of
80 any covered repair is guaranteed by a surety bond executed by a corporate surety insurer
81 authorized to offer surety insurance in this state in favor of the Commissioner and in an
82 amount which in the discretion of the Commissioner will provide adequate protection to
83 all the residents of this state who are covered by such agreements, provided that such
84 amount shall not be less than \$100,000.00; or

85 (3) Any contract, agreement, or instrument, other than an agreement, contract, or
86 instrument covered by paragraphs (1) and (2) of this subsection, whereby a person
87 assumes the risk of and the expense or portion thereof for the cost of repair or
88 replacement of a product if such contract, agreement, or instrument is made by a person
89 other than the manufacturer or a subsidiary or affiliate of the motor vehicle manufacturer
90 in exchange for a separately stated charge or the cost of the contract or contracts is
91 included on a nonidentifiable basis in the cost of the product sold in conjunction
92 therewith, except that this provision shall not apply to:

93 (A) An agreement underwritten by an insurer licensed to transact insurance in this
94 state, either directly or through a reinsurance contract;

95 (B) Any contract, agreement, or instrument relating to similar services furnished by
96 any air carrier that provides interstate air transportation;

97 (C) Any tire replacement contract, agreement, or instrument;

98 (D) A contract, agreement, or instrument whereby a retailer in the business of selling
99 consumer products or a wholly owned subsidiary of such retailer assumes the risk of

100 and the expense or portion thereof for the cost of repair or replacement of consumer
101 products where such contract, agreement, or instrument is guaranteed by a surety bond
102 executed by a corporate surety insurer authorized to offer surety insurance in this state
103 in favor of and approved by the Commissioner in an amount of not less
104 than \$100,000.00; or

105 (E) Any contract, agreement, or instrument whereby any person assumes the risk of
106 and the expense or portion of such expense for the breakdown, service, repair, or
107 replacement due to normal wear and tear or structural or inherent defect to the major
108 appliances, utility systems, and roofing system of any one-family or two-family
109 residential building structure in exchange for a separately stated consideration and does
110 not otherwise provide direct or consequential coverage under a property contract
111 defined in paragraph (1) or (2) of this subsection or the introductory language of this
112 paragraph and such contract, agreement, or instrument is guaranteed by a surety bond
113 executed by a corporate surety insurer authorized to offer surety insurance in this state
114 in favor of and approved by the Commissioner in an amount of not less
115 than \$100,000.00.

116 (c)(1) Any contract, agreement, or instrument, as regulated under paragraphs (1), (2),
117 and (3) of subsection (b) of this Code section, shall state clearly and conspicuously in the
118 contract the name and address of the insurer or surety which has guaranteed or
119 underwritten the contract, agreement, or instrument, either directly or through a
120 reinsurance contract.

121 (2) In the event a regulated contract, agreement, or instrument is issued by a party other
122 than an insurer so that the holder thereof, in the first instance, must make a claim or
123 request for refund pursuant to paragraph (3) of this subsection against a party other than
124 the insurer, the contract, agreement, or instrument shall provide that the holder shall be
125 entitled to make a direct claim against the insurer upon the failure of the issuer to pay any
126 claim or to refund the consideration paid by the holder for the contract, agreement, or
127 instrument within 60 days after proof of loss has been filed with the issuer.

128 (3)(A) The regulated contract, agreement, or instrument shall be cancelable by the
129 holder for a full refund minus any claims paid if the holder cancels within 20 days of
130 the date that the contract, agreement, or instrument was mailed to the last known
131 address of the holder or within ten days of delivery if delivered to the holder at the time
132 of sale, or within a longer time period permitted under the contract, agreement, or
133 instrument. Such cancellation shall be effective upon return of the contract, agreement,
134 or instrument to the issuer within the applicable time period. If no claim has been made
135 prior to its return to the issuer, the contract, agreement, or instrument is void by
136 operation of law upon its receipt by the issuer, and such issuer shall refund to the

137 holder, or credit the account of the holder, the full purchase price. The right to void the
 138 contract, agreement, or instrument provided in this paragraph is not transferable and
 139 shall apply only to the original purchaser, and shall apply only if no claim has been
 140 made prior to its return to the issuer. A 10 percent penalty per month shall be added to
 141 a refund that is not paid or credited within 45 days after the return of the contract,
 142 agreement, or instrument to the issuer.

143 (B) Subsequent to the expiration of the applicable time period specified in
 144 subparagraph (c)(3)(A), a holder may cancel and the issuer shall refund to the
 145 holder 100 percent of the unearned pro rata purchase price, less any claims paid. A
 146 reasonable administrative fee may be charged by the issuer not to exceed 10 percent of
 147 the purchase price paid by or on behalf of the holder.

148 ~~(3)(4)~~ The regulated contract, agreement, or instrument shall be noncancelable by the
 149 issuer except for fraud, material misrepresentation, or failure to pay the consideration due
 150 therefor. ~~The cancellation shall be in writing and shall conform to the requirements of~~
 151 ~~Code Section 33-24-44. The holder may cancel at any time upon demand and surrender~~
 152 ~~of the contract, agreement, or instrument whereupon the issuer shall refund the excess of~~
 153 ~~the consideration paid for the contract, agreement, or instrument above the customary~~
 154 ~~short rate for the expired term of the contract, agreement, or instrument~~ Following an
 155 issuer cancellation, the holder shall be refunded 100 percent of the unearned pro rata
 156 purchase, less any claims paid. A reasonable administrative fee may be charged by the
 157 issuer not to exceed 10 percent of the purchase price paid by or on behalf of the holder.

158 ~~(4)(5)~~ Any contract, agreement, or instrument exempt under subparagraph (b)(3)(D)
 159 or (b)(3)(E) of this Code section shall state clearly and conspicuously substantially the
 160 following: 'This is not a contract of insurance.'

161 (d) The Commissioner shall promulgate rules and regulations regarding vehicle service
 162 agreements or extended warranty agreements as described in paragraph (1) of
 163 subsection (b) of this Code section. Such rules and regulations shall include filing
 164 requirements, disclosures for the benefit of the agreement holder, record keeping, and
 165 procedures for public complaints. Such rules and regulations shall also include the
 166 conditions under which surplus lines insurers may be rejected for the purpose of
 167 underwriting vehicle service agreements and extended warranty agreements.

168 (e)(1) As used in this subsection, the term 'heavy equipment dealer' means a person, firm,
 169 or corporation which is primarily engaged in the business of selling, renting, leasing, and
 170 servicing heavy equipment, engines, power generation equipment, and parts and
 171 attachments to such heavy equipment which is primarily used for construction, industrial,
 172 maritime, mining, agriculture, or similar purposes and who is not required to be licensed.

173 (2) The provisions of this Code section shall not apply to heavy equipment dealers.

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

179 (1) Maintains, or has a parent company maintain, a net worth or stockholders' equity of
180 at least \$50 million, provided the parent company guarantees the obligations of the retail
181 installment seller arising from vehicle service agreements or extended warranty
182 agreements underwritten pursuant to this paragraph;

183 (2) Complies with the registration requirement prescribed by the Commissioner through
184 regulation;

185 (3) Files with the Commissioner a true and correct copy of the vehicle service agreement
186 or extended warranty agreement that has a term of and is no longer than nine months in
187 a form that is consistent with the terms prescribed by the Commissioner through
188 regulation;

189 (4) Files a copy of its Form 10-K or Form 20-F disclosure statements, or if it does not
190 file such statements with the United States Securities and Exchange Commission, a copy
191 of its audited financial statements reported on a GAAP basis. If the retail installment
192 seller's financial statements are consolidated with those of its parent company, then the
193 retail installment seller may comply with this provision by filing the statements of its
194 parent company. The statement shall be filed with the Commissioner 30 days prior to the
195 retail installment seller's initial offering or delivering of a service agreement or extended
196 warranty agreement, and thereafter, the statement shall be filed with the Commissioner
197 annually; and

198 (5) Upon the request of the Commissioner, posts a security deposit or surety bond in an
199 amount not to exceed \$250,000.00 and in the manner prescribed by the Commissioner
200 through regulation."

201 **SECTION 2.**

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