

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

**AS PASSED SENATE**

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 unearned pro rata purchase price.

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. Notice of such cancellation stating the reason for and effective date of the  
 151 cancellation shall be given to the holder in writing no less than 30 days before the  
 152 effective date of such cancellation. The cancellation shall be in writing and shall conform  
 153 to the requirements of Code Section 33-24-44. The holder may cancel at any time upon  
 154 demand and surrender of the contract, agreement, or instrument whereupon the issuer  
 155 shall refund the excess of the consideration paid for the contract, agreement, or  
 156 instrument above the customary short rate for the expired term of the contract, agreement,  
 157 or instrument. Following an issuer cancellation, the holder shall be refunded 100 percent  
 158 of the unearned pro rata purchase, less any claims paid. A reasonable administrative fee  
 159 may be charged by the issuer not to exceed 10 percent of the unearned pro rata purchase  
 160 price.

161 ~~(4)(5)~~ Any contract, agreement, or instrument exempt under subparagraph (b)(3)(D)  
 162 or (b)(3)(E) of this Code section shall state clearly and conspicuously substantially the  
 163 following: 'This is not a contract of insurance.'

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

171 (e)(1) As used in this subsection, the term 'heavy equipment dealer' means a person, firm,  
 172 or corporation which is primarily engaged in the business of selling, renting, leasing, and  
 173 servicing heavy equipment, engines, power generation equipment, and parts and

174 attachments to such heavy equipment which is primarily used for construction, industrial,  
175 maritime, mining, agriculture, or similar purposes and who is not required to be licensed.

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

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

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

186 (2) Complies with the registration requirement prescribed by the Commissioner through  
187 regulation;

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

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

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

204 **SECTION 2.**

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