

House Bill 645 (COMMITTEE SUBSTITUTE)

By: Representatives Dollar of the 45th, Taylor of the 173rd, Shaw of the 176th, Rogers of the 29th, Murphy of the 127th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to provide that Chapter 12 of Title 10, the "Uniform Electronic Transactions Act," shall be applicable to such title; to provide that the Commissioner of Insurance shall not penalize an insurer for complying with such Act; to define a certain term; to provide for the delivery of policies of insurance electronically; to provide for requirements; to provide that any mailing required by a provision of such title may be transmitted electronically if certain conditions are met; to provide that certain notices may be transmitted pursuant to Chapter 12 of Title 10, the "Uniform Electronic Transactions Act"; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in Code Section 33-2-24, relating to enforcement of title and rules, regulations, and orders, issuance of orders without hearings, civil actions, criminal violations, and penalties, by adding a new subsection to read as follows:

"(h) The Commissioner may not institute any action or impose any penalty against an insurer because an insurer engages in transactions consistent with the provisions of Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act,' or Code Section 33-24-14."

SECTION 2.

Said title is further amended in Code Section 33-22-13, relating to mandatory notice of cancellation, by revising subsection (c) as follows:

"(c)(1) After expiration of such ten-day period, the premium finance company may thereafter in the name of the insured cancel such insurance contract or contracts by mailing or delivering to the insurer a notice of cancellation; and the insurance contract shall be canceled as if the notice of cancellation had been submitted by the insured, but

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without requiring the return of the insurance contract or contracts. The premium finance company, when mailing or delivering notice to the insurance company to cancel the policy, shall mail notice to the insured notifying him or her of the action taken. Such notice to the insured shall contain the date and time the policy is to be canceled, which date shall be after the date of mailing of such notice, and shall inform the insured that any payment received after the mailing or delivery of notice to the insurance company to cancel the policy will not reinstate the policy. The notice may contain information to the effect that the premium finance company will make a request to the insurance company to reinstate the policy. Language sufficiently clear and specific so that a person of average intelligence can understand the action being taken by the premium finance company shall be used. The notice to the insured required by this subsection shall be delivered as provided in subsection (d) of Code Section 33-24-14 or mailed to the last address of record of the insured and shall be dispatched by at least first-class mail and receiving the receipt provided by the United States Postal Service or such other evidence of mailing as prescribed or accepted by the United States Postal Service."

SECTION 3.

Said title is further amended in Code Section 33-24-1, relating to definitions, by adding a new paragraph to read as follows:

"(3) 'Uniform Electronic Transactions Act' means Chapter 12 of Title 10."

SECTION 4.

Said title is further amended by revising Code Section 33-24-14, relating to delivery of policies, as follows:

"33-24-14.

(a)(1) Subject to the insurer's requirement as to payment of premiums, every policy shall be mailed or delivered to the insured or to the person entitled to the policy within a reasonable period of time after its issuance except where a condition required by the insurer has not been met by the insured.

(2) A policy required to be delivered under this subsection may be delivered by electronic transmittal in accordance with Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act,' or by electronic posting if that policy is posted electronically, provided that:

(A) The insured has agreed to accept delivery by electronic posting;

(B) The insurer makes the policy accessible as long as the policy is in force;

(C) After the expiration of the policy, the insurer archives its expired policies for a period of five years and makes them available upon request;

(D) The insurer provides the following information in or simultaneously with each declarations page provided at the time of issuance of the initial policy and any renewals of that policy:

(i) A description of the exact policy and endorsement forms purchased by the insured;

(ii) A method by which the insured may obtain, upon request and without charge, a paper copy of such insured's policy; and

(iii) The Internet address where the insured's policy and endorsement are posted; and

(E) The insurer provides notice, in the manner in which the insurer customarily communicates with the insured, of any changes to the forms or endorsements, the insured's right to obtain, upon request and without charge, a paper copy of such forms or endorsements, and the Internet address where such forms or endorsements are posted.

(b) In the event the original policy is delivered or is required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft, in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to the vehicle or aircraft is insured, a duplicate of the policy setting forth the name and address of the insurer, the insurance classification of the vehicle or aircraft, the type of coverage, the limits of liability, the premiums for the respective coverages, and the duration of the policy or memorandum of the policy containing the same information shall be delivered by the vendor, mortgagee, or pledgee to each vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of the duplicate policy or memorandum.

(c) The provisions of Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act,' applies to this title, and nothing in this Code section shall be construed to limit its applicability.

(d) In addition to any mailing which may be legally accomplished pursuant to Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act,' any other required mailing may be performed electronically if the following conditions are met:

(1) The Code section which requires a mailing specifically notes that mailing may be accomplished pursuant to this subsection;

(2) The insured agrees to receive mailings electronically by signing a statement which reads:

'I AGREE TO RECEIVE ALL MAILINGS AND COMMUNICATIONS ELECTRONICALLY. SUCH ELECTRONIC MAILING OR COMMUNICATIONS MAY EVEN INCLUDE CANCELLATION OR NONRENEWAL NOTICES';

provided, however, that the Commissioner may approve the use of substantially similar language;

(3) If the statement in paragraph (2) of this subsection is physically signed by the insured, then the statement must be in a separate document and written in all capital letters in at least 12 point font, or on a substantially similar form approved by the Commissioner. If the statement is signed electronically, then it must be signed according to a procedure which has been approved by the Commissioner; provided, however, that the Commissioner shall approve a procedure for obtaining a signature only if that procedure is designed to ensure that the statement is not presented in a misleading or confusing manner;

(4) If the insurer becomes aware that the insured's electronic mail address at which such party has consented to receive notices or documents is no longer valid, the insurer shall send the notice or document as required by other applicable law;

(5) The insurer must retain a record pursuant to Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act,' of the mailing, including proof of the date of mailing and the address to which the mailing was sent. Such record must be retrievable for a period of five years after the date of such mailing and, if requested, must be transmitted to the Commissioner in a reasonable time;

(6) The insured may withdraw his or her consent to receive mailings electronically;

(7) All conditions have been met under Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act,' so that the mailing could be accomplished electronically, unless the law requiring the mailing imposes a specific type of delivery method;

(8) All conditions have been met under the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq. This Code section shall not modify, limit, or supersede Section 101(c) of such Act or authorize electronic delivery of any of the notices described in Section 103(b) of such Act; and

(9) No insurance company shall cancel, refuse to issue, or refuse to renew any policy because the applicant or insured refuses to agree to receive mailings electronically pursuant to this subsection."

SECTION 5.

Said title is further amended in Code Section 33-24-44, relating to cancellation of policies generally, by revising subsection (b) as follows:

"(b) Written notice stating the time when the cancellation will be effective, which shall not be less than 30 days from the date of mailing or delivery in person of such notice of cancellation or such other specific longer period as may be provided in the contract or by statute, shall be delivered as provided in subsection (d) of Code Section 33-24-14 in person or by depositing the notice in the United States mails to be dispatched by at least first-class mail to the last address of record of the insured and of any lienholder, where applicable, and receiving the receipt provided by the United States Postal Service or such other evidence of mailing as prescribed or accepted by the United States Postal Service. For the purposes of this subsection, notice to the lienholder shall be considered delivered or mailed if, with the lienholder's consent, it is delivered by electronic transmittal or facsimile. Any irregularity in the notice to the lienholder shall not invalidate an otherwise valid cancellation as to the insured."

SECTION 6.

Said title is further amended in Code Section 33-24-44.1, relating to procedure for cancellation by insured and notice, by revising subsection (b) as follows:

"(b) Notices required by this Code section shall be delivered as provided in subsection (d) of Code Section 33-24-14 in person or by depositing the notice in the United States mail to be dispatched by at least first-class mail to the last address of record of the named insured, governmental agency, mortgagee, or other third party, where applicable, and receiving the receipt provided by the United States Postal Service or such other evidence of mailing as prescribed or accepted by the United States Postal Service."

SECTION 7.

Said title is further amended in Code Section 33-24-45, relating to cancellation or nonrenewal of automobile or motorcycle policies and procedure for review by Commissioner, by revising paragraph (1) of subsection (e) as follows:

"(e)(1) No insurer shall refuse to renew a policy to which this Code section applies unless a written notice of nonrenewal is mailed or delivered in person to the named insured. Such notice stating the time when nonrenewal will be effective, which shall not be less than 30 days from the date of mailing or delivery of such notice of nonrenewal or such longer period as may be provided in the contract or by statute, shall be delivered as provided in subsection (d) of Code Section 33-24-14 in person or by depositing the notice in the United States mails to be dispatched by at least first-class mail to the last address of record of the insured and of the lienholder, where applicable, and receiving the receipt provided by the United States Postal Service or such other evidence of mailing as prescribed or accepted by the United States Postal Service."

SECTION 8.

Said title is further amended in such Code section by revising subsection (m) as follows:

"(m) Notice to the insured shall not be required by this Code section when a policy is canceled by an insurance premium finance company under a power of attorney contained in an insurance premium finance agreement if notification of the existence of the premium finance agreement has been given to the insurer in accordance with the provisions of Chapter 22 of this title. However, the insurer shall comply with the provisions of subsection (d) of Code Section 33-22-13 pertaining to notice to a governmental agency, mortgagee, or other third party. Such notice shall be delivered as provided in subsection (d) of Code Section 33-24-14 in person or by depositing the notice in the United States mails to be dispatched by at least first-class mail to the last address of record of such governmental agency, mortgagee, or other third party and receiving the receipt provided by the United States Postal Service or such other evidence of mailing as prescribed or accepted by the United States Postal Service."

SECTION 9.

Said title is further amended in Code Section 33-24-46, relating to cancellation or nonrenewal of certain property insurance policies, by revising subsection (d) as follows:

"(d) No insurer shall refuse to renew a policy to which this Code section applies unless a written notice of nonrenewal is mailed or delivered in person to the named insured. Such notice stating the time when nonrenewal will be effective, which shall not be less than 30 days from the date of mailing or delivery of such notice of nonrenewal or such longer period as may be provided in the contract or by statute, shall be delivered as provided in subsection (d) of Code Section 33-24-14 in person or by depositing the notice in the United States mails to be dispatched by at least first-class mail to the last address of record of the insured and of the lienholder, where applicable, and receiving the receipt provided by the United States Postal Service or such other evidence of mailing as prescribed or accepted by the United States Postal Service. The insurer shall provide the reason or reasons for nonrenewal as required by Chapter 39 of this title."

SECTION 10.

Said title is further amended in such Code section by revising subsection (h) as follows:

"(h) Notice to the insured shall not be required by this Code section when a policy is canceled by an insurance premium finance company under a power of attorney contained in an insurance premium finance agreement if notification of the existence of the premium finance agreement has been given to the insurer in accordance with the provisions of Chapter 22 of this title. However, the insurer shall comply with the provisions of

subsection (d) of Code Section 33-22-13 pertaining to notice to a governmental agency, mortgagee, or other third party. Such notice shall be delivered as provided in subsection (d) of Code Section 33-24-14 in person or by depositing the notice in the United States mails to be dispatched by at least first-class mail to the last address of record of such governmental agency, mortgagee, or other third party and receiving the receipt provided by the United States Postal Service or such other evidence of mailing as prescribed or accepted by the United States Postal Service."

SECTION 11.

Said title is further amended in Code Section 33-24-47, relating to notice required of termination or nonrenewal, increase in premium rates, or change restricting coverage and failure to comply, by revising subsection (b) as follows:

"(b) A notice of termination, including a notice of cancellation or nonrenewal, by the insurer, a notice of an increase in premiums, other than an increase in premiums due to a change in risk or exposure, including a change in experience modification or resulting from an audit of auditable coverages, which exceeds 15 percent of the current policy's premium, or a notice of change in any policy provision which limits or restricts coverage shall be delivered to the insured as provided in subsection (d) of Code Section 33-24-14 in person or by depositing the notice in the United States mail, to be dispatched by at least first-class mail to the last address of record of the insured, at least 45 days prior to the termination date of such policy; provided, however, that a notice of cancellation or nonrenewal of a policy of workers' compensation insurance shall be controlled by the provisions of subsection (f) of this Code section. In those instances where an increase in premium exceeds 15 percent, the notice to the insured shall indicate the dollar amount of the increase. The insurer may obtain a receipt provided by the United States Postal Service as evidence of mailing such notice or such other evidence of mailing as prescribed or accepted by the United States Postal Service."

SECTION 12.

Said title is further amended in such Code section by revising subsection (f) as follows:

"(f) A notice of cancellation or nonrenewal of a policy of workers' compensation insurance shall be dispatched to the insured as provided in subsection (d) of Code Section 33-24-14 by certified mail or statutory overnight delivery, return receipt requested, to the last address of record of the insured at least 75 days prior to the termination date of such policy. The workers' compensation insurer shall retain the receipt of mailing provided by the United States Postal Service as evidence of mailing unless such mailing was accomplished as provided in subsection (d) of Code Section 33-24-14."

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SECTION 13.

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