House Bill 241 (AS PASSED HOUSE AND SENATE)
By: Representatives Gambill of the 15th, Lumsden of the 12th, Williams of the 148th, Gaines of the 117th, and Smith of the 133rd

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"33-7-6.

(a) Property insurance is insurance on real or personal property of every kind and interest therein against loss or damage from any or all hazards or causes and against loss consequential upon such loss or damage other than noncontractual legal liability for any such loss or damage. Property insurance shall also include miscellaneous insurance as

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defined in paragraph (10) of Code Section 33-7-3, except as to any noncontractual liability coverage includable therein.

(b) Property insurance also includes:

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

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

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

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

(ii) The removal of small windshield chips and cracks without replacement of the entire windshield;

(iii) The repair of rips, burns, tears, holes, and punctures to interior fabric or carpet;

(iv) Cosmetic repair of minor scuffs, scratches, scrapes, or rash on exterior plastic surfaces, including, but not limited to, bumpers;

(v) Cosmetic repair to aluminum or painted wheels when the normal appearance of the wheel is altered with minor curb scuffs, scratches, scrapes, or rash; or The repair or replacement of wheels on a motor vehicle damaged as a result of coming into contact with road hazards which may include, but are not limited to, potholes, rocks, wood debris, metal parts, plastic, curbs, or composite scraps;

(vi) Exterior reconditioning of foggy or yellowed headlights to restore clarity and luster,

(vii) The repair or replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen; or

(viii) The repair, replacement, or maintenance of a motor vehicle, or indemnification for the repair, replacement, or maintenance for excess wear to the motor vehicle, resulting in lease-end excess wear and use charges assessed by a lessor pursuant to a
motor vehicle lease agreement, provided that the value of any benefits under such contract, agreement, or instrument shall not exceed the purchase price of the vehicle; provided, further, that a person offering a cancellation or waiver of excess wear and use charges in connection with a lease as described in paragraph (6) of Code Section 33-63-3 is not subject to this Code section.

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

(2) Any contract, agreement, or instrument whereby a person assumes the risk of and the expense or portion of such expense for the structural or mechanical breakdown, loss of, or damage to a one-family or two-family residential building structure or any part thereof from any cause, including loss of or damage to or loss of use of the building structure or major components thereof which are attached to and become a part of said structure, if made by a person other than the constructing contractor or manufacturer of the building structure or part thereof in exchange for a separately stated charge or the cost of the contract or contracts is included on a nonidentifiable basis in the cost of such building structure sold in conjunction therewith, except that this provision shall not apply to an agreement underwritten by an insurer licensed to transact insurance in this state, either directly or through a reinsurance contract or underwritten by a surplus line insurer.
insurer approved by the Commissioner nor shall this provision apply to an agreement: (A) the performance of which is guaranteed by a surety bond executed by an authorized corporate surety insurer in favor of and approved by the Commissioner in an amount of not less than $1.5 million; provided further that a surety bond of an additional $100,000.00 shall be required for every additional $500,000.00 in written premium above $2 million in written premium. Any company relying upon one or more bonds pursuant to this subsection shall keep such bonds or equivalent coverage in place until the expiration of the contract, agreement, or instrument contemplated in this paragraph; or (B) notwithstanding with a duration of 13 months or less covering damage to or loss of use of the major appliances located in an existing or resold home where the performance of any covered repair is guaranteed by a surety bond executed by a corporate surety insurer authorized to offer surety insurance in this state in favor of the Commissioner and in an amount which in the discretion of the Commissioner will provide adequate protection to all the residents of this state who are covered by such agreements, provided that such amount shall not be less than $100,000.00; or

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

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

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

(D) A contract, agreement, or instrument whereby a retailer in the business of selling consumer products or a wholly owned subsidiary of such retailer assumes the risk of and the expense or portion thereof for the cost of repair or replacement of consumer products where such contract, agreement, or instrument is guaranteed by a surety bond executed by a corporate surety insurer authorized to offer surety insurance in this state in favor of and approved by the Commissioner in an amount of not less than $100,000.00; or

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

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

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

(3)(A) The regulated contract, agreement, or instrument shall be cancelable by the
holder for a full refund minus any claims paid if the holder cancels within 20 days of
the date that the contract, agreement, or instrument was mailed to the last known
address of the holder or within ten days of delivery if delivered to the holder at the time
of sale, or within a longer time period permitted under the contract, agreement, or
instrument. Such cancellation shall be effective upon return of the contract, agreement,
or instrument to the issuer within the applicable time period. If no claim has been made
prior to its return to the issuer, the contract, agreement, or instrument is void by
operation of law upon its receipt by the issuer, and such issuer shall refund to the
holder, or credit the account of the holder, the full purchase price. The right to void the
contract, agreement, or instrument provided in this paragraph is not transferable and
shall apply only to the original purchaser, and shall apply only if no claim has been
made prior to its return to the issuer. A 10 percent penalty per month shall be added to
a refund that is not paid or credited within 45 days after the return of the contract,
agreement, or instrument to the issuer.

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

(3)(4) The regulated contract, agreement, or instrument shall be noncancelable by the
issuer except for fraud, material misrepresentation, or failure to pay the consideration due
therefor. Notice of such cancellation stating the reason for and effective date of the

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

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

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

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

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

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 2.

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