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## INSURANCE Insurance Regulation: Revise Agent Licensing Requirements

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**INSURANCE*****Insurance Regulation: Revise Agent Licensing Requirements***

**CODE SECTIONS:** O.C.G.A. §§ 33-23-13(a) (amended), 33-23-23 to -24 (new), 33-23-52 (amended), 33-23-62 (amended), 33-23-71(b) (amended)

**BILL NUMBER:** HB 175

**ACT NUMBER:** 499

**SUMMARY:** The Act revises license regulations for insurance agents, solicitors, brokers, counselors, and adjusters and provides for fiduciary and record keeping duties for life and accident and sickness insurance agents.

**EFFECTIVE DATE:** July 1, 1989

*History*

Prior law regarding the renewal, suspension, or revocation of the license of an insurance agent, solicitor, broker, counselor, or adjuster differed among the insurance lines of life, accident and sickness, and property and casualty.<sup>1</sup> The Code provided the Insurance Commissioner with two sets of criteria: one for regulating the licenses of life or accident and sickness insurance agents, and another set for regulating the licenses of property and casualty agents.<sup>2</sup> Property and casualty license renewal, suspension, or revocation decisions took into account whether the licensee: was convicted of a felony involving moral turpitude,<sup>3</sup> issued substantial over insurance of a property,<sup>4</sup> failed to pass an insurance examination,<sup>5</sup> failed to comply with an order of the Insurance Commissioner,<sup>6</sup> or failed to pay monies belonging to an insurer.<sup>7</sup> Code distinctions between life and accident and sickness agent licensing regulations and property and casualty agent licensing regulations were largely historical double standards and not necessary for modern

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1. O.C.G.A. § 33-23-13(a) (1982) (regulating the license requirements for life and accident and sickness insurance classes); O.C.G.A. § 33-23-62 (1982) (regulating the license requirements for property and casualty lines).

2. O.C.G.A. § 33-23-13(a) (1982); O.C.G.A. § 33-23-62 (1982).

3. O.C.G.A. § 33-23-62(7) (1982).

4. O.C.G.A. § 33-23-62(8) (1982).

5. O.C.G.A. § 33-23-62(9) (1982).

6. O.C.G.A. § 33-23-62(10) (1982).

7. O.C.G.A. § 33-23-62(11) (1982).

insurance agent regulation.<sup>8</sup> Therefore, the Insurance Commissioner requested that the Legislature standardize sections 33-23-13(a) and 33-23-62.<sup>9</sup> HB 175 standardized the grounds and procedures for the State's suspending, revoking, or refusing to renew the holder's licenses for these insurance lines, except for a property and casualty insurance related licensing ground covering the issuing of substantial overinsurance of a property risk.<sup>10</sup>

HB 175 also added insurer representative fiduciary and record keeping duties for life and accident and sickness insurance agents.<sup>11</sup> These duties were found in prior law applicable to property and casualty insurance agents.<sup>12</sup> The bill also clarified the standard for issuance of a broker's license and the authority for the payment of commissions to a broker outside the state.<sup>13</sup>

### HB 175

The Act amends Code sections 33-23-13(a) and 33-23-62 by standardizing the grounds for the State's refusing, suspending, or revoking licenses for insurance representatives in the life, accident and sickness, and the property and casualty lines of insurance.<sup>14</sup> Licensing amendments included the deletion of regulations, the slight revision of regulatory language, and the addition of new grounds.<sup>15</sup> Under the Act, Code section 33-23-62 is similar to Code section 33-23-13(a) except that section 33-23-62 contains an additional regulation for property and casualty agents which proscribes the "issuance of substantial overinsurance of any property insurance risk."<sup>16</sup>

Section 33-23-13(a)(1) no longer requires the intentional violation of the State's insurance laws to permit the State to refuse, suspend, or revoke a license. Any violation of an insurance related law provides proper grounds for the State to refuse, suspend, or revoke the holder's license.<sup>17</sup> The Act amends subsection 2 by including misrepresentation or concealment of material information on a license application.<sup>18</sup> Similarly,

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8. Telephone interview with Representative Harry Dixon, Insurance Committee Chairman, House District No. 77 (Apr. 19, 1989) [hereinafter Dixon Interview]; telephone interview with Marty Wilson, Deputy Commissioner, State of Georgia, Department of Insurance (Apr. 19, 1989) [hereinafter Wilson Interview].

9. Dixon Interview, *supra* note 8; Wilson Interview, *supra* note 8.

10. O.C.G.A. § 33-23-62 (Supp. 1989).

11. O.C.G.A. §§ 33-23-23 to -24 (Supp. 1989).

12. *Id.*

13. O.C.G.A. § 33-23-71(b) (Supp. 1989).

14. O.C.G.A. § 33-23-13(a) (Supp. 1989); O.C.G.A. § 33-23-62 (1982).

15. O.C.G.A. § 33-23-13(a) (Supp. 1989).

16. O.C.G.A. § 33-23-62(8) (Supp. 1989).

17. O.C.G.A. § 33-23-13(a)(1) (Supp. 1989).

18. O.C.G.A. § 33-23-13(a)(2) (Supp. 1989).

the Act amends subsection 3 by adding the ground of concealment to the already regulated acts of misrepresentation or fraud in obtaining an insurance license.<sup>19</sup> Sections 4, 5, and 6 contain grounds similar to those contained in the prior law.<sup>20</sup>

The Act also amends section 33-23-13(a), adding criteria for the State's refusing, revoking, or suspending a life, accident and sickness, or property and casualty agent's license. These criteria previously applied only to property and casualty insurance agents.<sup>21</sup> Subsection 7 adds the ground of failure on a license holder's examination for life and accident and sickness insurance agents.<sup>22</sup> Paragraph 8 deletes prior law and adds the ground of failure to comply with, or the violation of, the Commissioner's orders, rules, or regulations.<sup>23</sup> Paragraph 9 deletes the prior law and adds a good faith requirement for carrying on a licensed business.<sup>24</sup>

In addition, the Act amends the criteria contained in section 62, as applied to property and casualty license holders, to be similar to the grounds for revoking or refusing an insurance license in amended subsection 13(a).<sup>25</sup> Two grounds are deleted: conviction of a felony involving moral turpitude and failure to pay monies belonging to an insurer.<sup>26</sup> The language of two other grounds is slightly modified for clarity.<sup>27</sup> Amended subsection 4 not only covers the illegal withholding of money belonging to an insurer or an insured, but also covers money belonging to a beneficiary.<sup>28</sup> Subsection 6 is clarified by substituting "terms and conditions" for "provisions" in the ground of material misrepresentation of an insurance policy.<sup>29</sup>

The Act adds two new sections, 33-23-23 and 33-23-24, which increase the scope of fiduciary duties for license holders of life and accident and sickness lines to match the duties of property and casualty agents.<sup>30</sup> Section 33-23-23(a) requires the insuring agent to report the premium gained in an insurance transaction and makes any willful violation of

19. O.C.G.A. § 33-23-13(a)(3) (Supp. 1989).

20. O.C.G.A. § 33-23-13(a)(4)–(6) (Supp. 1989) (subsection 4 provides the licensing ground covering the misappropriation, conversion, or illegal withholding of monies belonging to an insurer, insured, or beneficiary; subsection 5 provides the licensing ground covering the commission of "fraudulent or dishonest practices"; subsection 6 provides the licensing ground covering the material misrepresentation of insurance policy terms and conditions).

21. O.C.G.A. § 33-23-13(a) (Supp. 1989).

22. O.C.G.A. § 33-23-13(a)(7) (Supp. 1989).

23. O.C.G.A. § 33-23-13(a)(8) (Supp. 1989).

24. O.C.G.A. § 33-23-13(a)(9) (Supp. 1989).

25. O.C.G.A. § 33-23-62 (Supp. 1989).

26. O.C.G.A. § 33-23-62(7), (11) (1982).

27. O.C.G.A. § 33-23-62(4)–(5) (Supp. 1989).

28. O.C.G.A. § 33-23-62(4) (Supp. 1989).

29. O.C.G.A. § 33-23-62(5)–(6) (Supp. 1989).

30. O.C.G.A. §§ 33-23-23 to -24 (Supp. 1989).

this requirement a misdemeanor.<sup>31</sup> In addition, subsection (b) requires the insurance agent to properly account for all premiums received from or due to the insured by avoiding the commingling of such funds with the agent's personal funds and by keeping reasonable account books and records.<sup>32</sup> Section 33-23-24 outlines the format and organization of the account books and records required by section 23.<sup>33</sup> These fiduciary responsibility and record keeping requirements already exist for property and casualty insurance agents.<sup>34</sup>

The Act amends section 33-23-52 by clarifying the scope of an insurance broker's license to include all kinds of insurance, "as such term is defined in this article."<sup>35</sup> The Act deletes language about brokers' licenses relating to life insurance because a life insurance license for insurance brokers is not required by the Code.<sup>36</sup> Through the Act, the Legislature created the possibility of eventually licensing brokers of life insurance.<sup>37</sup> Also, the Act amends section 33-23-71(b) by restricting the insurer's right to pay a commission to only brokers licensed under this article, which excludes such payments to brokers licensed under the laws of other states.<sup>38</sup> However, a broker outside the state may still participate in transactions in Georgia by the receipt of commissions if the broker first obtains a nonresident license.<sup>39</sup>

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31. O.C.G.A. § 33-23-23(a) (Supp. 1989).

32. O.C.G.A. § 33-23-23(b) (Supp. 1989).

33. O.C.G.A. § 33-23-24 (Supp. 1989).

34. Synopsis of HB 175 issued by Representative Crawford Ware, Chairman, Insurance Committee, House District No. 77 (1989 Ga. Gen. Assem.) (available in Georgia State University College of Law Library) [hereinafter Synopsis].

35. O.C.G.A. § 33-23-52 (Supp. 1989).

36. *Id.*

37. Wilson Interview, *supra* note 8.

38. O.C.G.A. § 33-23-71(b) (Supp. 1989); *see* Synopsis, *supra* note 34.

39. O.C.G.A. § 33-23-71(b) (Supp. 1989); *see* Synopsis, *supra* note 34.