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## INSURANCE

*Consumers' Insurance Advocate: Change Certain Provisions to  
Create the Consumers' Insurance Advocate and Deputy Advocate*

CODE SECTIONS:	O.C.G.A. §§ 33-9-3 (amended), 33-57-1 to -8 (new)
BILL NUMBER:	SB 200
ACT NUMBER:	279
GEORGIA LAWS:	1999 Ga. Laws 335
SUMMARY:	The Act provides new guidelines for insurance rate regulation. The Act adds provisions for implementing two new positions—a consumers' insurance advocate and a deputy advocate within the Governor's Office of Consumer Affairs.
EFFECTIVE DATE:	July 1, 1999

### *History*

The Georgia General Assembly passed the Act because members believed that Georgians should receive adequate insurance and healthcare products and services at the lowest reasonable cost, and that insurance and health management companies should remain able to furnish their products and services.<sup>1</sup> Members of the General Assembly reasoned that consumers should have reasonable choices among the products and services insurance and health management companies offer, and that such companies must be accountable to consumers.<sup>2</sup> The State Insurance Commissioner must already approve rate increases proposed for property and casualty insurance.<sup>3</sup>

Governor Roy Barnes wanted a five-person team in the Office of Consumer Affairs to argue for consumers in all disputes over insurance rates and claims.<sup>4</sup> The Act requires health insurers to file

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1. See Telephone Interview with Renay Blumenthal, Policy Director, State of Georgia (July 7, 1999) [hereinafter Blumenthal Interview].

2. See *id.*

3. Peter Mantius, *1999 Georgia Legislature: House Approves Insurance Advocate; New Proposal Eliminates Requirement of State Insurance Commissioner's Approval for Raising Health Insurance Rates*, ATLANTA J. & CONST., Mar. 24, 1999, at B8.

4. See Kathy Pruitt, *1999 Georgia Legislature: House Approves Consumer Advocate*, ATLANTA J. & CONST., Mar. 24, 1999 at B8.

quarterly reports disclosing officers' salaries, corporate financial statements, and basic rate and policy structures with the advocate and insurance commissioner.<sup>5</sup>

### *SB 200*

#### *Senate Insurance and Labor Committee*

The Senate Insurance and Labor Committee made several changes to the proposed Code sections.<sup>6</sup> Under the original version of the bill, Code section 33-57-2(4) would have defined the term "consumer" as a user of any "products," which fall under the authority of the state Insurance Commissioner or state Insurance Department.<sup>7</sup> However, the Senate Committee added an exclusion to the definition—"products" were not to include products and services of a domestic supplemental life and health insurer.<sup>8</sup> Under Code section 33-57-5(a), the Committee altered the advocate's authority by requiring service and notice of "any request for insurance rate filing . . . and . . . any other correspondence or paper filed with or issued by the department or by the Commissioner in connection with such rate filing."<sup>9</sup> The original version of the bill required parties to serve on the advocate "a copy of any application, complaint, pleading, notice or other document filed or issued by the department or by the Commissioner."<sup>10</sup> The Committee changed this affirmative duty to serve the advocate to a discretionary power on the part of the advocate to request such documents.<sup>11</sup> Some argued that under this section, the advocate

5. *See id.*

6. *Compare* SB 200, as introduced, 1999 Ga. Gen. Assem., *with* SB 200 (SCS), 1999 Ga. Gen. Assem.

7. *See* SB 200, as introduced, 1999 Ga. Gen. Assem.

8. *Compare* SB 200, as introduced, 1999 Ga. Gen. Assem., *with* SB 200 (SCS), 1999 Ga. Gen. Assem.

9. *Compare* SB 200, as introduced, 1999 Ga. Gen. Assem., *with* SB 200 (SCS), 1999 Ga. Gen. Assem.

10. SB 200, as introduced, 1999 Ga. Gen. Assem.

11. *Compare* SB 200, as introduced, 1999 Ga. Gen. Assem., *with* SB 200 (SCS), 1999 Ga. Gen. Assem. According to Charlie Harman, Vice President of Public Affairs for Blue Cross Blue Shield of Georgia, if these notice and service provisions had applied to health insurance providers, the Act would have been overly burdensome. *See* Telephone Interview with Charlie Harman, Vice President of Public Affairs, Blue Cross Blue Shield of Georgia (July 22, 1999). Time was limited, however, and the Governor felt that the language limiting health insurance providers was too restrictive, so he pushed for a compromise with the property and casualty insurers to take health insurance out of the prior approval requirement for a rate change and increase the flexibility of the requirement for property and casualty insurers to be approved for rate changes. *See id.*

should have the same discovery rights afforded to parties bringing action in state courts.<sup>12</sup> In subsection (b) of Code section 33-57-5, the Committee added language in reference to the advocate's deposition and discovery authorization, that "[c]opies of materials and information obtained through such discovery shall be made available to the [insurance] department."<sup>13</sup>

Under Code section 33-57-7, the Committee added the stipulation that any services of departmental personnel or personnel retained by the department would be available at the advocate's request, but "with the approval of the department."<sup>14</sup> Finally, under Code section 33-57-8, the Committee added the restriction that "nothing in this chapter shall apply to a domestic and supplemental life and health insurer."<sup>15</sup>

### *Senate Floor Amendment*

The Senate floor added Code section 33-57-4(f), which further expanded the advocate's power as follows: "The advocate shall be authorized to present and advocate positions affecting any insurance products and services afforded to state employees and may for this purpose appear before any officer or entity providing or administering such benefits."<sup>16</sup>

### *House Insurance Committee*

The House Insurance Committee offered substantial changes to the Act.<sup>17</sup> The Committee believed the bill should provide greater limitations on health insurance providers.<sup>18</sup> It wanted the bill to require all health insurance providers to get prior approval from the

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12. See Telephone Interview with Kirkland A. McGhee, Attorney, Long Aldridge & Norman, LLP, Atlanta, Ga. (July 26, 1999) [hereinafter McGhee Interview]. Mr. McGhee is also an insurance lobbyist representing health insurance companies doing business in Georgia. See *id.*

13. Compare SB 200, as introduced, 1999 Ga. Gen. Assem., with SB 200 (SCS), 1999 Ga. Gen. Assem.

14. Compare SB 200, as introduced, 1999 Ga. Gen. Assem., with SB 200 (SCS), 1999 Ga. Gen. Assem.

15. Compare SB 200, as introduced, 1999 Ga. Gen. Assem., with SB 200 (SCS), 1999 Ga. Gen. Assem.

16. Compare SB 200 (SCS), 1999 Ga. Gen. Assem., with SB 200 (SFA), 1999 Ga. Gen. Assem.

17. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem.

18. See Blumenthal Interview, *supra* note 1.

insurance department; the bill, as introduced, only required prior approval for property and casualty providers.<sup>19</sup>

Under the introductory paragraph of the Act, the House Committee added the language "to change certain provisions relating to applicability of rate regulation" among the other enumerations already set forth.<sup>20</sup> The Committee then inserted an entirely new section in the bill.<sup>21</sup> The original Section 1 was renamed Section 2.<sup>22</sup> In the amended Section 1, the House Committee altered Code section 33-9-3, which relates to the applicability of rate regulation.<sup>23</sup> The new Code section 33-9-3(a) sets forth that the chapter "shall apply to all insurance on risks or on operations in this state, except: (1) Reinsurance other than joint reinsurance to the extent stated in Code Section 33-9-19; (2) Life insurance; (3) Disability income, specified disease, or hospital indemnity policies;"<sup>24</sup> (4) Insurance commonly carried on marine crafts, cargoes, or other marine-oriented insurance, including inland marine insurance; (5) Aircraft insurance and that related to aircraft and equipment;<sup>25</sup> (6) "Title insurance; or (7) Annuities."<sup>26</sup>

The House Committee added subsection (a.1) that allows the Insurance Commissioner to exempt filing requirements of certain commercial risks.<sup>27</sup> Subsection (b)(1) identifies that the chapter applies to all insurers that write the type of insurance "to which this chapter applies."<sup>28</sup> Subsection (b)(2) identifies the entities to which the

19. *See id.* Health insurance rates are referred to as "file and use" rates. *See id.* This means that health insurers simply file rate increases with the state insurance department and put the new rates into effect without approval from the insurance department. *See id.* Other insurers, however, such as property and casualty insurance providers, must file proposed rate changes with the state insurance department and receive approval from the Insurance Commissioner prior to putting the proposed rate changes into effect. *See id.*

20. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem.

21. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem.

22. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem.

23. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem.

24. O.C.G.A. § 33-9-3(a) (Supp. 1999).

25. *See id.*

26. *Id.*

27. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-9-3(a.1) (Supp. 1999).

28. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-9-3(b)(1) (Supp. 1999).

provisions of this chapter shall apply.<sup>29</sup> The House Committee added subsection (c), which in the Committee substitute, would have stated the following:

Provisions of this chapter regarding rates shall apply only to a proposed rate for any insurance or health benefit plan: (1) [W]hich alone or in combination with any previous rate change for such insurance or plan would result in a rate increase of: (A) Five percent or more in any 12 month period; or (B) Nine percent or more in any 24 month period; or (2) Made within 36 months after any rate change described by paragraph (1) of this subsection.<sup>30</sup>

This last addition to the bill was the primary effort by the House Insurance Committee to liken the requirements of health insurance to the existing statutory requirements imposed on property and casualty insurers.<sup>31</sup>

The House adopted the Senate's proposed changes to Code sections 33-57-1 and -2.<sup>32</sup> Further, in section 33-57-3, the frequency requirement that the advocate submit a written report was changed from annually to quarterly, and the advocate is required to report on decisions and information obtained during the new period.<sup>33</sup> The House Insurance Committee also amended the reporting requirement to include a deadline for submission of "not less than 30 days after the end of each quarter of each calendar year."<sup>34</sup>

The House Committee amended proposed Code section 33-57-4(b) by adding a reference to subsection (a) of the Code regarding advocate appearance.<sup>35</sup> The Committee amended proposed Code section 33-57-4(c) by including a reference to subsection (a) again and adding a sentence regarding the Commissioner's obligation to respond to a

29. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-9-3(b)(2) (Supp. 1999).

30. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-9-3(c) (Supp. 1999). The Act, as passed, changed subsections (c)(1)(A) and (B) to read as follows: "(A) Any amount, but no decrease shall be subject to such provisions; provided, however, . . . (B) The provisions of this chapter shall not apply to accident and sickness insurance; or . . ." O.C.G.A. § 33-9-3(c)(1)(A) to (B) (Supp. 1999).

31. See Blumenthal Interview, *supra* note 1.

32. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. §§ 33-57-1 to -2 (Supp. 1999).

33. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-3 (Supp. 1999).

34. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-3 (Supp. 1999).

35. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-4(b) (Supp. 1999).

request filed by the advocate within forty-five days.<sup>36</sup> The Committee amended proposed Code section 33-57-4(e) by adding a provision recognizing that the advocate need not publish any information of a confidential or privileged nature or as provided by law.<sup>37</sup> Finally, the Committee amended Code section 33-57-4(f) to authorize the advocate to hear complaints and issues regarding rates or benefits for insurance goods or services for state employees.<sup>38</sup>

The House Committee amended proposed Code section 33-57-5(a) to mirror some of the proposed language added in Code section 33-9-3(c).<sup>39</sup> In Code section 33-57-5(b), the House Committee curtailed the advocate's power of discovery by limiting the exercise of such power to only those cases "of a rate filing which is subject to the provisions of" Code section 33-57-5(a).<sup>40</sup> The Senate version afforded the advocate broad power of discovery of "any matter which is not privileged and which is relevant to the subject matter involved in any proceeding or petition before the department . . . ."<sup>41</sup>

Code section 33-57-6 amended the administrator's hiring responsibilities.<sup>42</sup> The House Committee mandated that the administrator employ a full-time actuary, whereas the Senate had merely authorized such employment.<sup>43</sup> Additionally, the compensation for the advocate and the staff was identified to originate from the "funds appropriated to the Governor's Office of Consumer Affairs for such purposes."<sup>44</sup>

Further, the House Committee amended Code section 33-57-7 by allowing that assistants employed by the department "may" be made available to the advocate "upon the approval of the department;" the Senate version mandated that such assistance be made available.<sup>45</sup>

36. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-4(c) (Supp. 1999).

37. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-4(e) (Supp. 1999).

38. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-4(f) (Supp. 1999).

39. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem.

40. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-5(b) (Supp. 1999).

41. SB 200 (SFA), 1999 Ga. Gen. Assem.

42. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem.

43. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-6 (Supp. 1999).

44. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-6 (Supp. 1999).

45. Compare SB 200 (SFA), 1999 Ga. Gen. Assem., with SB 200 (HCS), 1999 Ga. Gen. Assem., and O.C.G.A. § 33-57-7 (Supp. 1999).

Finally, the advocate is required to submit a written report detailing the costs of all services provided for the advocate pursuant to Code section 33-57-7.<sup>46</sup>

In a final floor amendment to the House Committee substitute, Representative Lucas of the 124th District proposed one change to Code section 33-57-5(a).<sup>47</sup> The amendment requires the department or the Commissioner to notify the advocate of anything filed in connection with a rate filing by sending a notice of the filing to the advocate via certified mail with return receipt requested.<sup>48</sup>

### *Opposition to SB 200*

Property and casualty insurance providers mounted the strongest opposition to the bill.<sup>49</sup> A local newspaper article noted that Governor Barnes "initially proposed creating a five-person advocate staff under his Office of Consumer Affairs with a budget of about \$330,000."<sup>50</sup> Governor Barnes was required to compromise, however, to ensure that both chambers passed the bill before the end of the 1999 legislative session.<sup>51</sup>

According to the article, the bill, as introduced, "added the requirement that certain health insurers follow new rules before raising premium rates."<sup>52</sup> Representative Charlie Smith of the 175th District, Barnes's floor leader, argued that the proposed provisions requiring health insurers to follow new rules before raising premium rates went too far.<sup>53</sup> "This 'sea change' is just too much to do in the last few days of the session."<sup>54</sup> In a later compromise, the rate change approval requirements for property and casualty insurance providers were retained, though relaxed, and health insurance rate changes remained "file and use."<sup>55</sup>

Representative Jay Shaw of the 176th District "insisted that the proposed consumer advocate should be focusing on issues related to health insurance, rather than property/casualty insurance."<sup>56</sup>

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46. See O.C.G.A. § 33-57-7 (Supp. 1999).

47. Compare SB 200 (HCFSA), 1999 Ga. Gen. Assem., with SB 200 (HCA), 1999 Ga. Gen. Assem.

48. See O.C.G.A. § 33-57-5(a)(2) (Supp. 1999); SB 200 (HCSFA), 1999 Ga. Gen. Assem.

49. See Telephone Interview with Sen. Eddie Madden, Senate District No. 47 (July 7, 1999).

50. See Mantius, *supra* note 3.

51. See Blumenthal Interview, *supra* note 1.

52. Mantius, *supra* note 3.

53. See *id.*

54. *Id.* (quoting Rep. Charlie Smith, Jr.).

55. Blumenthal Interview, *supra* note 1.

56. Mantius, *supra* note 3.



Representative Shaw stated, “[t]he wrong people are going to the consumer advocate.”<sup>57</sup>

Some property and casualty insurance providers argued that the Department of Insurance already had an advocate.<sup>58</sup> Property and casualty insurers believe that the consumer advocate position is simply another level of bureaucracy.<sup>59</sup> Lobbyists for the insurance carriers claimed costs under the proposed bill would have been prohibitive.<sup>60</sup> They worried that some Georgia insurance providers would not remain profitable enough to conduct business in the state had the provisions remained so restrictive.<sup>61</sup> In one lobbyist’s opinion, had the original restrictions remained, the market place would have suffered and adversely affected Georgia’s economic climate.<sup>62</sup>

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57. *Id.*

58. *See* McGhee Interview, *supra* note 12.

59. *See id.*

60. *See id.*

61. *See id.* Pressure did not just come from the insurance carriers. Opposition to the restrictive nature of the bill came from the Georgia Chamber of Commerce and powerful business entities like Delta Airlines, Lockheed Martin, and Georgia Power. *See id.*

62. *See id.*