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INSURANCE

Insurance Generally: Authorize Use of Preexisting Conditions Exclusions or Limitations in Group Policies or Contracts of Disability Income Insurance

CODE SECTIONS: O.C.G.A. §§ 33-24-26 (amended), -26.1 (new)
BILL NUMBER: SB 23
ACT NUMBER: 448
GEORGIA LAWS: 1995 Ga. Laws 1009
SUMMARY: The Act permits the use of preexisting conditions exclusions in group disability income insurance policies. Specifically, the Act provides a definition of preexisting condition and prohibits the use in group disability income insurance policies of any definition that is more restrictive than the statutory standard. The Act requires policies that exclude benefits for preexisting conditions to disclose such exclusions. Finally, the Act mandates that benefits will not be denied based on a preexisting condition if the resulting disability occurs more than two years after the commencement of coverage.

EFFECTIVE DATE: July 1, 1995

History

In 1978, the Georgia General Assembly approved limitations on the use of preexisting conditions exclusions to deny benefits under group accident and sickness insurance policies.¹ The statute prohibited insurers from issuing any group accident and sickness insurance policy which excluded benefits for preexisting conditions after twelve months from the issuance of the

1. 1978 Ga. Laws 2036 (formerly found at O.C.G.A. § 33-24-26 (1990)). Group accident and sickness insurance refers to coverage provided for a number of people, typically employed by the same employer or affiliated by a common association. O.C.G.A. § 33-30-1 (Supp. 1995) (providing for minimum required employees and members).

certificate of insurance.² The statute excepted credit accident and sickness insurance,³ as well as qualified self-insurers' policies,⁴ from this prohibition.⁵ However, under the prior law, confusion existed among both consumers and the insurance industry as to what constituted a preexisting condition with respect to disability income insurance policies.⁶ In addition, insurance benefits were sometimes denied based on a preexisting condition even though the claims arose many years after the commencement of insurance coverage.⁷ SB 23 was introduced to clarify the law regarding preexisting conditions exclusions and to protect insurance policyholders from prior abusive practices by insurers.⁸

SB 23

The Act amends Code section 33-24-26 by specifically excepting disability income insurance, in addition to credit accident and sickness insurance, and qualified self-insurers' policies, from the twelve-month limitation on the effect of preexisting conditions exclusions.⁹

2. 1978 Ga. Laws 2036 (formerly found at O.C.G.A. § 33-24-26 (1990)).

3. *Id.* Credit insurance is insurance that indemnifies a debtor for payments on a loan in the event the debtor is injured and unable to pay, or insures the debtor's life pursuant to a specific credit transaction. 1960 Ga. Laws 289 (codified at O.C.G.A. § 33-31-1(1) to (2) (1990)).

4. 1978 Ga. Laws 2036 (formerly found at O.C.G.A. § 33-24-26 (1990)). A self-insured health plan is one established to provide insurance benefits to employees when some portion of the benefits payable to employees are not guaranteed by an insurer authorized to do business in Georgia. O.C.G.A. § 33-50-1 (Supp. 1994).

5. *See* 1978 Ga. Laws 2036, § 1 (formerly found at O.C.G.A. § 33-24-26 (1990)).

6. Telephone Interview with Sen. Johnny Isakson, Senate District No. 21 (Apr. 26, 1995) [hereinafter Isakson Interview]. The insurance industry was particularly concerned and sought clarification of permissible preexisting conditions limitations in different types of insurance policies. *Id.*

7. *Id.*

8. *Lawmakers '95* (GPTV broadcast, Jan. 26, 1995) (videotape available in Georgia State University College of Law Library). Sen. Johnny Isakson, a co-sponsor of the Act, spoke about the purpose of the Act on the Senate floor. *Id.*

9. O.C.G.A. § 33-24-26(a) (Supp. 1995). The Act is not intended to prohibit insurers from excluding any condition which could lawfully be excluded from insurance policies prior to the Act provided the basis for the

The Act further amends chapter 24 of title 33 by adding Code section 33-24-26.1 to provide a definition of "preexisting condition" for disability income insurance policies.¹⁰ The Act prohibits the use of a definition of preexisting condition in any group policy or contract for disability income insurance that is more restrictive than that provided by the Act.¹¹ The Act is intended to incorporate the same definition used in federal Medicare regulations.¹²

Under the Act, any group policy or contract of disability income insurance which contains a preexisting conditions limitation or exclusion must also contain a notice of that limitation or exclusion.¹³ Finally, the Act requires that the payment of benefits not be limited or excluded by a preexisting conditions exclusion if the claim is filed more than twenty-four months after the effective date of the policy.¹⁴

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exclusion is not a preexisting condition. Isakson Interview, *supra* note 6.

10. O.C.G.A. § 33-24-26.1(a) (Supp. 1995).

Preexisting condition means the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or a condition for which medical advice or treatment was recommended by or received from a provider of health care services, within 12 months preceding the effective date of coverage of the insured.

Id.

11. *Id.* Since there was no confusion as to preexisting conditions exclusions in credit accident and sickness insurance policies, O.C.G.A. § 33-24-26.1 addresses only disability income insurance. Isakson Interview, *supra* note 6.

12. *Lawmakers '95* (GPTV broadcast, Jan. 26, 1995) (floor discussion by Sen. Johnny Isakson) (videotape available in Georgia State University College of Law Library).

13. O.C.G.A. § 33-24-26.1(b) (Supp. 1995). "The notice shall be entitled 'Preexisting Conditions Limitations or Exclusions,' shall appear as a separate paragraph of the policy or contract, shall appear in boldface type, and shall provide an appropriate definition or description of the term 'preexisting condition' for the purposes of the policy." *Id.*

14. *Id.* § 33-24-26.1(c).