

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1084
Insurance Committee Substitute Adopted 5/27/93
Finance Committee Substitute Adopted 6/24/93
Fourth Edition Engrossed 7/21/93
House Committee Substitute Favorable 6/28/94
Sixth Edition Engrossed 7/6/94

Short Title: Service Agreement Changes.

(Public)

Sponsors:

Referred to:

May 10, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL CHANGES AND
3 IMPROVEMENTS IN THE LAWS REGULATING SERVICE AGREEMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Article 1 of Chapter 58 of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 58-1-36. Insurance policy requirements.**

8 (a) Each service agreement company shall maintain contractual liability
9 insurance or service agreement reimbursement insurance with an authorized insurer for
10 one hundred percent (100%) of claims exposure, including reported and incurred but not
11 reported claims and claims expenses, on business written in this State.

12 (b) All forms relating to insurance policies written by authorized insurers under
13 this section shall be filed with and approved by the Commissioner before they may be
14 used for any purpose in this State, irrespective of whether the insurers are licensed
15 insurers.

16 (c) Each policy shall contain the following provisions:

17 (1) If the service agreement company does not fulfill its obligations under
18 service agreements issued in this State for any reason, including
19 federal bankruptcy or state receivership proceedings, the insurer will

- 1 pay losses and unearned premium refunds directly to any person
2 making the claim under the service agreement.
- 3 (2) The insurer shall assume full responsibility for the administration of
4 claims if the service agreement company is unable to do so.
- 5 (3) The policy is subject to the cancellation, nonrenewal, and renewal
6 provisions of G.S. 58-41-15, 58-41-20, 58-41-25, and 58-41-40.
- 7 (4) The policy shall insure all service agreements that were issued while
8 the policy was in effect, regardless of whether the premium was
9 remitted to the insurer.
- 10 (5) If the insurer is fulfilling any service agreement covered by the policy
11 and if the service agreement holder cancels the service agreement, the
12 insurer shall make a full refund of the unearned premium to the
13 consumer pursuant to G.S. 58-1-35(e)(3).
- 14 (d) The Commissioner may adopt rules, in addition to the requirements of this
15 section, governing the terms and conditions of policy forms for the insurance required
16 by this section."
- 17 Sec. 2. G.S. 58-1-35(k) is repealed.
- 18 Sec. 3. G.S. 58-1-25(c) through (g), 58-1-30(c) through (g), 58-1-35(g), 58-
19 1-40, 58-1-41, 58-1-45, 58-1-50, and Section 52 of Chapter 504 of the Session Laws of
20 1993 are repealed.
- 21 Sec. 4. G.S. 58-1-25(e) and G.S. 58-1-30(e), which become effective October
22 1, 1994, are repealed.
- 23 Sec. 5. G.S. 58-1-35(h) reads as rewritten:
- 24 "(h) No insurer or service agreement company shall act as a fronting company for
25 any unauthorized insurer or ~~unregistered~~ service agreement ~~company~~ company that is not
26 in compliance with this section. As used in this subsection, 'fronting company' means a
27 licensed insurer or ~~registered~~ service agreement company that, by reinsurance or
28 otherwise, generally transfers to one or more unauthorized insurers or ~~unregistered~~
29 service agreement companies that are not in compliance with this section a substantial
30 portion of the risk of loss under agreements it writes in this State. ~~Any insurer or service~~
31 ~~agreement company acting in violation of this subsection is subject to immediate suspension or~~
32 ~~revocation of its insurance license or service agreement registration."~~
- 33 Sec. 6. G.S. 58-1-30(a) reads as rewritten:
- 34 "(a) This section applies to all home appliance service agreement companies
35 soliciting business in this State, but it does not apply to performance guarantees or
36 warranties made by manufacturers in connection with the sale of new home appliances.
37 This section does not apply to any home appliance dealer licensed to do business in this
38 State (i) whose primary business is the retail sale and service of home appliances; (ii)
39 who makes and administers its own service agreements without association with any
40 other entity; and (iii) whose service agreements cover only appliances sold by the dealer
41 to its retail customers, provided that the dealer complies with G.S. ~~58-1-35~~ 58-1-35 and
42 G.S. 58-1-36. Provided, however, that G.S. 58-1-36 does not apply to a service
43 agreement contract offered by a person primarily engaged in the retail sale of goods and
44 services who incidentally offers service agreement contracts and has a net worth of one

1 hundred million dollars (\$100,000,000), has offered service agreement contracts for at
2 least the preceding 10 years, and is required to file an SEC Form 10K. This section
3 does not apply to any warranty made by a builder or seller of real property relating to
4 home appliances that are sold along with real property. This section does not apply to
5 any issuer of credit cards or charge cards that markets home appliance service
6 agreements as an ancillary part of its business; provided, however, that such issuer
7 maintains contractual liability insurance in accordance with G.S. ~~58-1-35(k)~~ 58-1-36."
8 Sec. 7. Section 1 of this act becomes effective October 1, 1994, and applies
9 to insurance policies that have inception or renewal dates on or after October 1, 1994.
10 Sections 2, 4, and 6 of this act become effective October 1, 1994. The remainder of this
11 act is effective upon ratification.