

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 283
Committee Substitute Favorable 4/17/03
Senate Commerce Committee Substitute Adopted 5/21/03

Short Title: Property and Casualty Insurance Omnibus.-AB

(Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE REAL PROPERTY WARRANTY COMPANIES TO CARRY
2 CONTRACTUAL LIABILITY POLICIES; ESTABLISH GREATER
3 UNIFORMITY AND FLEXIBILITY FOR REQUIREMENTS IMPOSED UPON
4 SERVICE AGREEMENT COMPANIES AND PERSONS THAT ISSUE
5 WARRANTIES UNDER ARTICLE 1 OF CHAPTER 58; EXPAND THE
6 DEFINITION OF HOME APPLIANCE WITHIN THE HOME APPLIANCE
7 SERVICE AGREEMENT COMPANIES STATUTE; ENHANCE
8 ENFORCEMENT OF ARTICLE 1 OF CHAPTER 58; REQUIRE MOTOR
9 VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES
10 TO USE A SPECIFIC FORMAT ON ALL WRITTEN MATERIALS
11 SUBMITTED; MANDATE ALL REQUIRED INSURER SUBMISSIONS TO THE
12 DEPARTMENT OF INSURANCE TO BE IN A SPECIFIC FORMAT IF IN
13 WRITING; DEFINE MECHANICAL BREAKDOWN SERVICE AGREEMENTS
14 AND REQUIRE ALL MECHANICAL BREAKDOWN SERVICE AGREEMENT
15 COMPANIES TO COMPLY WITH ARTICLE 1 OF CHAPTER 58 OF THE
16 GENERAL STATUTES AND WITH THE RULES REGARDING MOTOR
17 VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES;
18 PROVIDE THAT A BAD CHECK CONSTITUTES GROUNDS FOR
19 TERMINATION OF A MOTOR VEHICLE LIABILITY INSURANCE POLICY;
20 AND AUTHORIZE THE ISSUANCE OF LIMITED LICENSES FOR THE SALE
21 OF INSURANCE COVERAGE ON PERSONAL PROPERTY STORED IN
22 SELF-SERVICE STORAGE UNITS.
23

24 The General Assembly of North Carolina enacts:

25 **SECTION 1.(a)** G.S. 58-1-20 is amended by adding a new subsection to
26 read:

27 "(c) Persons issuing real property warranties shall comply with the requirements
28 of G.S. 58-1-36."

1 **SECTION 1.(b)** G.S. 58-1-30 reads as rewritten:

2 "**§ 58-1-30. Home appliance service agreement companies.**

3 (a) This section applies to all home appliance service agreement companies
4 soliciting business in this State, but it does not apply to performance guarantees or
5 warranties made by manufacturers in connection with the sale of new home appliances.
6 This section does not apply to any home appliance dealer licensed to do business in this
7 State (i) whose primary business is the retail sale and service of home appliances; (ii)
8 who makes and administers its own service agreements without association with any
9 other entity; and (iii) whose service agreements cover only appliances sold by the dealer
10 to its retail customers, provided that the dealer complies with G.S. 58-1-35 and G.S.
11 58-1-36. ~~Provided, however, that G.S. 58-1-36 does not apply to a service agreement~~
12 ~~contract offered by a person primarily engaged in the retail sale of goods and services~~
13 ~~who incidentally offers service agreement contracts and has a net worth of one hundred~~
14 ~~million dollars (\$100,000,000), has offered service agreement contracts for at least the~~
15 ~~preceding 10 years, and is required to file an SEC Form 10K.~~ This section does not
16 apply to any warranty made by a builder or seller of real property relating to home
17 appliances that are sold along with real property. This section does not apply to any
18 issuer of credit cards or charge cards that markets home appliance service agreements as
19 an ancillary part of its business; provided, however, that such issuer maintains insurance
20 in accordance with G.S. 58-1-36.

21 (b) The following definitions apply in this section:

22 (1) ~~Home appliance. Includes~~ 'Home appliance' means a clothes washing
23 machine or dryer; kitchen appliance; vacuum cleaner; sewing machine;
24 home audio or video electronic equipment; home electronic data
25 processing equipment; home exercise and fitness equipment; home
26 health care equipment; power tools; or heater or air conditioner, other
27 than a permanently installed unit using internal ~~ductwork~~ ductwork; or
28 other personal consumer goods.

29 (2) ~~Home appliance service agreement. Any~~ 'Home appliance service
30 agreement' means any contract or agreement indemnifying the home
31 appliance service agreement holder against loss caused by failure,
32 arising out of the ownership, operation, or use of a home appliance, of
33 a mechanical or other component part of the home appliance that is
34 listed in the agreement.

35 (3) ~~Home appliance service agreement company. Any~~ 'Home appliance
36 service agreement company' means any person that issues home
37 appliance service agreements and that is not a licensed insurer.

38 (c) through (g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 730, s. 3."

39 **SECTION 1.(c)** G.S. 58-1-36 reads as rewritten:

40 "**§ 58-1-36. Insurance policy requirements.**

41 (a) Each ~~service agreement~~ company or person subject to this section shall
42 maintain contractual liability insurance or service agreement reimbursement insurance
43 with an authorized insurer for one hundred percent (100%) of claims exposure,

1 including reported and incurred but not reported claims and claims expenses, on
2 business written in this State. ~~State~~ unless the company or person:

- 3 (1) Maintains a net worth of one hundred million dollars (\$100,000,000);
- 4 (2) Has offered service agreement contracts or warranties, as applicable to
5 the respective company or person, for at least the preceding 10 years;
6 and
- 7 (3) Either is required to file and has filed an SEC Form 10K or Form 20-F
8 with the Securities and Exchange Commission (SEC) within the last
9 calendar year or, if the company does not file with the SEC, can
10 produce, upon request, a copy of the company's audited financial
11 statements, which show a net worth of the company or person of at
12 least one hundred million dollars (\$100,000,000). A company or
13 person may utilize its parent company's Form 10-K, Form 20-F, or
14 audited financial statements to satisfy this requirement if the parent
15 company agrees to guarantee the obligations of the company or person
16 relating to service agreement contracts or warranties, as applicable to
17 the respective company or person, sold by the company or person in
18 this State.

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

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

- 24 (1) If the ~~service agreement~~ company or person does not fulfill its
25 obligations under service agreements or warranties issued in this State
26 for any reason, including federal bankruptcy or state receivership
27 proceedings, the insurer will pay losses and unearned premium refunds
28 directly to any person making the claim under the service agreement.
- 29 (2) The insurer shall assume full responsibility for the administration of
30 claims if the ~~service agreement~~ company or person is unable to do so.
- 31 (3) The policy is subject to the cancellation, nonrenewal, and renewal
32 provisions of G.S. 58-41-15, 58-41-20, 58-41-25, and 58-41-40.
- 33 (4) The policy shall insure all service agreements and warranties that were
34 issued while the policy was in effect, regardless of whether the
35 premium was remitted to the insurer.
- 36 (5) If the insurer is fulfilling any service agreement covered by the policy
37 and if the service agreement holder cancels the service agreement, the
38 insurer shall make a full refund of the unearned premium to the
39 consumer pursuant to G.S. 58-1-35(e)(3). This subdivision applies
40 only to service agreement companies.

41 (d) The Commissioner may adopt rules, in addition to the requirements of this
42 section, governing the terms and conditions of policy forms for the insurance required
43 by this section.

1 (e) Persons and companies subject to G.S. 58-1-15, 58-1-20, 58-1-25, 58-1-30,
2 and 58-1-40 are subject to and shall comply with this section. The Commissioner may
3 enforce compliance with this section using the provisions of Article 2 of this Chapter."

4 **SECTION 2.** G.S. 58-1-35 is amended by adding a new subsection to read:

5 "(m) If not submitted electronically, all contracts, literature, advertising materials,
6 letters, and other documents submitted to the Department to comply with the filing
7 requirements of this Chapter or an administrative rule adopted pursuant to this Chapter
8 shall be submitted on paper eight and one-half inches by eleven inches. Brochures and
9 pamphlets shall not be stapled or bound."

10 **SECTION 3.** G.S. 58-3-150 is amended by adding a new subsection to read:

11 "(c) If not submitted electronically, all contracts, literature, advertising materials,
12 letters, and other documents submitted to the Department to comply with the filing
13 requirements of this Chapter or an administrative rule adopted pursuant to this Chapter
14 shall be submitted on paper eight and one-half inches by eleven inches. Brochures and
15 pamphlets shall not be stapled or bound."

16 **SECTION 4.** Article 1 of Chapter 58 of the General Statutes is amended by
17 adding a new section to read:

18 "§ 58-1-40. Mechanical breakdown service agreements.

19 (a) Except as provided in subsection (c) of this section, all mechanical
20 breakdown service agreement companies soliciting business in this State shall comply
21 with G.S. 58-1-35 and G.S. 58-1-36.

22 (b) As used in this section, 'mechanical breakdown service agreement companies'
23 include any person that issues mechanical breakdown service agreements and is not a
24 licensed insurer, and 'mechanical breakdown service agreements' are applicable to
25 mechanized equipment, including automobiles, riding mowers, scooters, generators,
26 farm implements, logging equipment, road graders, bulldozers, and power equipment
27 not licensed for road use, whether mobile or not.

28 (c) This section does not apply to performance guarantees, warranties,
29 mechanical breakdown service agreements, or motor vehicle service agreements made
30 by:

31 (1) A manufacturer.

32 (2) A distributor.

33 (3) A subsidiary of a manufacturer or distributor."

34 **SECTION 5.(a)** G.S. 58-37-50 reads as rewritten:

35 "§ 58-37-50. Termination of insurance.

36 (a) No member may terminate insurance to the extent that cession of a particular
37 type of coverage and limits is available under the provisions of this Article except for
38 the following reasons:

39 (1) Nonpayment of premium when due to the insurer or producing agent.

40 (2) The named insured has become a nonresident of this State and would
41 not otherwise be entitled to insurance on submission of new
42 application under this Article.

43 (3) A member company has terminated an agency contract for reasons
44 other than the quality of the agent's insureds or the agent has

1 terminated the contract and such agent represented the company in
2 taking the original application for insurance.

3 (4) When the insurance contract has been cancelled pursuant to a power of
4 attorney given a company licensed pursuant to the provisions of G.S.
5 58-35-5.

6 (5) The named insured, at the time of renewal, fails to meet the
7 requirements contained in the corporate charter, articles of
8 incorporation, and/or bylaws of the insurer, when the insurer is a
9 company organized for the sole purpose of providing members of an
10 organization with insurance policies in North Carolina.

11 (b) Notwithstanding subsection (a) of this section, a member may terminate
12 insurance when payment is due and payment of premium is dishonored by the financial
13 institution because the account on which the payment is drawn contains insufficient
14 funds or is a closed or nonexistent account."

15 **SECTION 5.(b)** G.S. 58-36-85(b) reads as rewritten:

16 "(b) Termination Restrictions. – An insurer shall not terminate a policy for a
17 reason that is not specified in ~~G.S. 58-37-50(1) through (5)~~ G.S. 58-37-50(a)(1) through
18 (a)(5), 58-37-50(b); or ~~G.S. 58-36-65(g)~~. A termination of a policy is not effective
19 unless the insurer either has notified a named insured of the termination by sending a
20 written termination notice by first class mail to the insured's last known address or is not
21 required by this subsection to send a written termination notice. Proof of mailing of a
22 written termination notice is proof that the notice was sent.

23 An insurer is not required to send a written termination notice if any of the following
24 applies:

- 25 (1) The insurer has manifested its willingness to renew the policy by
26 issuing or offering to issue a renewal policy, a certificate, or other
27 evidence of renewal.
- 28 (2) The insurer has manifested its willingness to renew the policy by any
29 means not described in subdivision (1) of this subsection, including
30 mailing a premium notice or expiration notice by first class mail to the
31 named insured and the failure of the insured to pay the required
32 premium on or before the premium due date.
- 33 (3) A named insured has given written notification to the insurer or its
34 agent that the named insured wants the policy to be terminated.
- 35 (4) The insurer has terminated coverage or a policy pursuant to G.S.
36 58-37-50(b)."

37 **SECTION 6.** Article 33 of Chapter 58 of the General Statutes is amended by
38 adding a new section to read:

39 **"§ 58-33-18. Limited license for self-service storage companies.**

40 (a) As used in this section:

- 41 (1) 'Limited licensee' means a person authorized to sell certain coverages
42 relating to the rental of self-service storage units pursuant to the
43 provisions of this section and Article 39 of Chapter 66 of the General
44 Statutes.

- 1 (2) 'Rental agreement' means any written agreement setting forth the terms
2 and conditions governing the use of a storage unit provided by the
3 owner of a self-service storage facility company.
4 (3) 'Self-service storage company' means any person in the business of
5 renting storage units to the public.
6 (4) 'Renter' or 'occupant' means any person obtaining the use of a storage
7 unit from a self-service storage company under the terms of a rental
8 agreement.
9 (5) 'Storage unit' means a semienclosed or fully enclosed area, room, or
10 space that is primarily intended for the storage of personal property
11 and which shall be accessible by the renter of the unit pursuant to the
12 terms of the rental agreement.

13 (b) The Commissioner may issue to a self-service storage company, or to a
14 franchisee of a self-service storage company, that has complied with the requirements of
15 this section a limited license authorizing the licensee, known as a 'limited licensee' for
16 the purpose of this Article, to act as agent, with reference to the kinds of insurance
17 specified in this section of any insurer authorized to write such kinds of insurance in this
18 State.

19 (c) The prerequisites for issuance of a limited license under this section are the
20 filing with the Commissioner of the following:

- 21 (1) A written application, signed by an officer of the applicant, for the
22 limited license in such form or forms, and supplements thereto, and
23 containing such information as the Commissioner may prescribe; and
24 (2) A certificate by the insurer that is to be named in such limited license,
25 stating that it has satisfied itself that the named applicant is trustworthy
26 and competent to act as its insurance agent for this limited purpose and
27 that the insurer will appoint such applicant to act as the agent in
28 reference to the doing of such kind or kinds of insurance as are
29 permitted by this section if the limited license applied for is issued by
30 the Commissioner. Such certificate shall be subscribed by an officer or
31 managing agent of such insurer and affirmed as true under the
32 penalties of perjury.

33 (d) In the event that any provision of this section is violated by a limited licensee,
34 the Commissioner may:

- 35 (1) Revoke or suspend a limited license issued under this section in
36 accordance with the provisions of G.S. 58-33-46; or
37 (2) After notice and hearing, impose such other penalties, including
38 suspending the transaction of insurance at specific rental locations
39 where violations of this Article have occurred, as the Commissioner
40 deems to be necessary or convenient to carry out the purposes of this
41 section.

42 (e) The self-service storage company or franchisee licensed pursuant to
43 subsection (b) of this section may act as agent for an authorized insurer only in

1 connection with the rental of storage units and only with respect to the following kinds
2 of insurance:

3 (1) Personal effects insurance that provides coverage to renters of storage
4 units at the same facility for the loss of, or damage to, personal effects
5 that occurs at the same facility during the rental period; or

6 (2) Any other coverage that the Commissioner may approve as meaningful
7 and appropriate in connection with the rental of storage units.

8 (f) No insurance may be issued pursuant to this section unless:

9 (1) The rental period of the rental agreement does not exceed two years;
10 and

11 (2) At every self-service storage location where self-service storage
12 agreements are executed, brochures or other written materials are
13 readily available to the prospective renter that:

14 a. Summarize, clearly and correctly, the material terms of
15 insurance coverage, including the identity of the insurer, offered
16 to renters;

17 b. Disclose that these policies offered by the self-service storage
18 company may provide a duplication of coverage already
19 provided by a renter's homeowners' insurance policy, personal
20 liability insurance policy, or other source of coverage;

21 c. State that the purchase by the renter of the kinds of insurance
22 specified in this section is not required in order to rent a storage
23 unit;

24 d. Describe the process for filing a claim in the event the renter
25 elects to purchase coverage and in the event of a claim; and

26 e. Contain any additional information on the price, benefits,
27 exclusions, conditions, or other limitations of such policies as
28 the Commissioner may by regulation prescribe; and

29 (3) Evidence of coverage is provided to every renter who elects to
30 purchase such coverage.

31 (g) Any limited license issued under this section shall also authorize any
32 employee of the licensee who is trained, pursuant to subsection (h) of this section, to act
33 individually on behalf, and under the supervision, of the licensee with respect to the
34 kinds of insurance specified in this section.

35 (h) Each self-service storage company or franchisee licensed pursuant to this
36 section shall conduct a training program which shall be submitted to the Commissioner
37 for approval prior to use and which shall meet the following minimum standards:

38 (1) Each trainee shall receive basic instruction about the kinds of
39 insurance specified in this section offered for purchase by prospective
40 renters of storage units;

41 (2) Each trainee shall be instructed to acknowledge to a prospective renter
42 of a storage unit that purchase of any such insurance specified in this
43 section is not required in order for the renter to rent a storage unit; and

1 (3) Each trainee shall be instructed to acknowledge to a prospective renter
2 of a storage unit that the renter may have insurance policies that
3 already provide the coverage being offered by the self-service storage
4 company pursuant to this section.

5 (i) Limited licensees acting pursuant to and under the authority of this section
6 shall comply with all applicable provisions of this Article, except that notwithstanding
7 any other provision of this Article, or any rule adopted by the Commissioner, a limited
8 licensee pursuant to this section shall not be required to treat premiums collected from
9 renters purchasing such insurance when renting storage units as funds received in a
10 fiduciary capacity, provided that:

11 (1) The insurer represented by the limited licensee has consented in
12 writing, signed by the insurer's officer, that premiums need not be
13 segregated from funds received by the self-service storage company on
14 account of storage unit rental; and

15 (2) The charges for insurance coverage are itemized but not billed to the
16 renter separately from the charges for storage units.

17 (j) No limited licensee under this section shall advertise, represent, or otherwise
18 hold itself or any of its employees out as licensed insurance agents or brokers. No renter
19 or occupant may be required to obtain insurance under this section as a condition of
20 obtaining a rental agreement for a storage unit. The renter shall be informed that the
21 insurance offered under this section is not required as a condition for obtaining a rental
22 agreement for a storage unit."

23 **SECTION 7.** Sections 1 through 4 of this act become effective October 1,
24 2003. The remainder of this act is effective when it becomes law.