

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

Short Title: Service Agreement Changes.

(Public)

Sponsors:

Referred to:

May 10, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL CHANGES AND  
IMPROVEMENTS IN THE LAWS REGULATING SERVICE AGREEMENTS.

The General Assembly of North Carolina enacts:

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

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

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

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

(c) Each policy shall contain the following provisions:

(1) If the service agreement company does not fulfill its obligations under  
service agreements issued in this State for any reason, including  
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.