

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 730
SENATE BILL 1084

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 pay losses and unearned premium refunds directly to any person making the claim under the service agreement.

(2) The insurer shall assume full responsibility for the administration of claims if the service agreement company is unable to do so.

(3) The policy is subject to the cancellation, nonrenewal, and renewal provisions of G.S. 58-41-15, 58-41-20, 58-41-25, and 58-41-40.

(4) The policy shall insure all service agreements that were issued while the policy was in effect, regardless of whether the premium was remitted to the insurer.

(5) If the insurer is fulfilling any service agreement covered by the policy and if the service agreement holder cancels the service agreement, the insurer shall make a full refund of the unearned premium to the consumer pursuant to G.S. 58-1-35(e)(3).

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

Sec. 2. G.S. 58-1-35(k) is repealed.

Sec. 3. G.S. 58-1-25(c) through (g), 58-1-30(c) through (g), 58-1-35(g), 58-1-40, 58-1-41, 58-1-45, 58-1-50, and Section 52 of Chapter 504 of the Session Laws of 1993 are repealed.

Sec. 4. G.S. 58-1-25(e) and G.S. 58-1-30(e), which become effective October 1, 1994, are repealed.

Sec. 5. G.S. 58-1-35(h) reads as rewritten:

"(h) No insurer or service agreement company shall act as a fronting company for any unauthorized insurer or ~~unregistered~~-service agreement ~~company~~. company that is not in compliance with this section. As used in this subsection, 'fronting company' means a licensed insurer or ~~registered~~-service agreement company that, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or ~~unregistered~~ service agreement companies that are not in compliance with this section a substantial portion of the risk of loss under agreements it writes in this State. ~~Any insurer or service agreement company acting in violation of this subsection is subject to immediate suspension or revocation of its insurance license or service agreement registration."~~

Sec. 6. G.S. 58-1-30(a) reads as rewritten:

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

Sec. 7. Section 1 of this act becomes effective October 1, 1994, and applies to insurance policies that have inception or renewal dates on or after October 1, 1994. Sections 2, 4, and 6 of this act become effective October 1, 1994. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives