

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 587*

Short Title: Recodify Service Agreements Laws.-AB

(Public)

Sponsors: Representatives Goforth and Holliman (Primary Sponsors).

Referred to: Judiciary I.

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE LAWS COVERING SERVICE AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes of North Carolina is amended by adding a new Article 43 entitled "Service Agreements.", which shall comprise G.S. 66-370, 66-371, 66-372, 66-373, and 66-374.

SECTION 2. G.S. 58-1-25 is recodified as G.S. 66-370.

SECTION 3. G.S. 58-1-30 is recodified as G.S. 66-371.

SECTION 4. G.S. 58-1-35 is recodified as G.S. 66-372.

SECTION 5. G.S. 58-1-36 is recodified as G.S. 66-373.

SECTION 6. G.S. 58-1-42 is recodified as G.S. 66-374.

SECTION 7. G.S. 58-1-15(b) reads as rewritten:

"(b) Any warranty made solely by a manufacturer, distributor, or seller of goods or services without charge, or an extended warranty offered as an option and made solely by a manufacturer, distributor, or seller of goods or services for charge, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or any other remedial measure, including replacement of goods or repetition of services, shall not be a contract of insurance under Articles 1 through 64 of this Chapter; however, service agreements on motor vehicles are governed by ~~G.S. 58-1-25, 58-1-35, and 58-1-36.~~ G.S. 66-370, 66-372, and 66-373. Service agreements on home appliances are governed by ~~G.S. 58-1-30, 58-1-35, and 58-1-36.~~ G.S. 66-371, 66-372, and 66-373."

SECTION 8. G.S. 58-1-20(c) reads as rewritten:

"(c) Persons issuing real property warranties shall comply with the requirements of ~~G.S. 58-1-36.~~ G.S. 66-373."

SECTION 9. G.S. 66-370, as recodified by Section 2 of this act, reads as rewritten:

"§ 66-370. Motor vehicle service agreement companies.

1 (a) This section applies to all motor vehicle service agreement companies
2 soliciting business in this State, but it does not apply to performance guarantees,
3 warranties, or motor vehicle service agreements made by

4 (1) A manufacturer,

5 (2) A distributor, or

6 (3) A subsidiary or affiliate of a manufacturer or a distributor, where
7 fifty-one percent (51%) or more of the subsidiary or affiliate is owned
8 directly or indirectly by

9 a. The manufacturer,

10 b. The distributor, or

11 c. The common owner of fifty-one percent (51%) or more of the
12 manufacturer or distributor

13 in connection with the sale of motor vehicles. This section does not apply to any motor
14 vehicle dealer licensed to do business in this State (i) whose primary business is the
15 retail sale and service of motor vehicles; (ii) who makes and administers its own service
16 agreements with or without association with a third-party administrator or who makes
17 its own service agreements in association with a manufacturer, distributor, or their
18 subsidiaries or affiliates; and (iii) whose service agreements cover only vehicles sold by
19 the dealer to its retail customer; provided that the dealer complies with ~~G.S. 58-1-35 and~~
20 ~~G.S. 58-1-36~~. G.S. 66-372 and G.S. 66-373. A motor vehicle dealer who sells a motor
21 vehicle service agreement to a consumer, as defined in 15 U.S.C. § 2301(3), is not
22 deemed to have made a written warranty to the consumer with respect to the motor
23 vehicle sold or to have entered into a service contract with the consumer that applies to
24 the motor vehicle, as provided in 15 U.S.C. § 2308(a), if: (i) the motor vehicle dealer
25 acts as a mere agent of a third party in selling the motor vehicle service agreement; and
26 (ii) the motor vehicle dealer would, after the sale of the motor vehicle service
27 agreement, have no further obligation under the motor vehicle service agreement to the
28 consumer to service or repair the vehicle sold to the consumer at or within 90 days
29 before the dealer sold the motor vehicle service agreement to the consumer.

30 (b) The following definitions apply in this section and in ~~G.S. 58-1-30, 58-1-35,~~
31 ~~and 58-1-36~~: G.S. 66-371, 66-372, and 66-373:

32 (1) Authorized insurer. – An insurance company authorized to write
33 liability insurance under Articles 7, 16, 21, or 22 of ~~this Chapter~~.
34 Chapter 58 of the General Statutes.

35 (2) Distributor. – Defined in G.S. 20-286(3).

36 (3) Licensed insurer. – An insurance company licensed to write liability
37 insurance under Article 7 or 16 of ~~this Chapter~~. Chapter 58 of the
38 General Statutes.

39 (4) Motor vehicle. – Defined in G.S. 20-4.01(23), but also including
40 mopeds as defined in G.S. 20-4.01(27)d1.

41 (5) Motor vehicle service agreement. – Any contract or agreement
42 indemnifying the motor vehicle service agreement holder against loss
43 caused by failure, arising out of the ownership, operation, or use of a
44 motor vehicle, of a mechanical or other component part of the motor

1 vehicle that is listed in the agreement. The term does not mean a
2 contract or agreement guaranteeing the performance of parts or
3 lubricants manufactured by the guarantor and sold for use in
4 connection with a motor vehicle where no additional consideration is
5 paid or given to the guarantor for the contract or agreement beyond the
6 price of the parts or lubricants.

7 (6) Motor vehicle service agreement company. – Any person that issues
8 motor vehicle service agreements and that is not a licensed insurer.

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

10 **SECTION 10.** G.S. 66-371, as recodified by Section 3 of this act, reads as
11 rewritten:

12 **"§ 66-371. Home appliance service agreement companies.**

13 (a) This section applies to all home appliance service agreement companies
14 soliciting business in this State, but it does not apply to performance guarantees or
15 warranties made by manufacturers in connection with the sale of new home appliances.
16 This section does not apply to any home appliance dealer licensed to do business in this
17 State (i) whose primary business is the retail sale and service of home appliances; (ii)
18 who makes and administers its own service agreements without association with any
19 other entity; and (iii) whose service agreements cover primarily appliances sold by the
20 dealer to its retail customers, provided that the dealer complies with ~~G.S. 58-1-35 and~~
21 ~~G.S. 58-1-36.~~ G.S. 66-372 and G.S. 66-373. This section does not apply to any warranty
22 made by a builder or seller of real property relating to home appliances that are sold
23 along with real property. This section does not apply to any issuer of credit cards or
24 charge cards that markets home appliance service agreements as an ancillary part of its
25 business; provided, however, that such issuer maintains insurance in accordance with
26 ~~G.S. 58-1-36.~~ G.S. 66-373.

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

28 (1) "Home appliance" means a clothes washing machine or dryer; kitchen
29 appliance; vacuum cleaner; sewing machine; home audio or video
30 electronic equipment; home electronic data processing equipment;
31 home exercise and fitness equipment; home health care equipment;
32 power tools; heater or air conditioner, other than a permanently
33 installed unit using internal ductwork; or other personal consumer
34 goods.

35 (2) "Home appliance service agreement" means any contract or agreement
36 indemnifying the home appliance service agreement holder against
37 loss caused by failure, arising out of the ownership, operation, or use
38 of a home appliance, of a mechanical or other component part of the
39 home appliance that is listed in the agreement.

40 (3) "Home appliance service agreement company" means any person that
41 issues home appliance service agreements and that is not a licensed
42 insurer.

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

1 **SECTION 11.** G.S. 66-372, as recodified by Section 4 of this act, reads as
2 rewritten:

3 "**§ 66-372. Miscellaneous requirements for motor vehicle and home appliance**
4 **service agreement companies.**

5 (a) The provisions of this section and ~~G.S. 58-1-36~~ G.S. 66-373 apply to
6 companies specified in ~~G.S. 58-1-25 and G.S. 58-1-30.~~ G.S. 66-370 and G.S. 66-371.

7 (b) The following definitions apply in this section and in ~~G.S. 58-1-36:~~
8 G.S. 66-373:

9 (1) Service agreement. – Includes motor vehicle service agreements and
10 home appliance service agreements.

11 (2) Service agreement company. – Includes motor vehicle service
12 agreement companies and home appliance service agreement
13 companies.

14 ...

15 (e) All service agreements used in this State by a service agreement company
16 shall:

17 (1) Not contain provisions that allow the company to cancel the agreement
18 in its discretion other than for nonpayment of premiums or for a direct
19 violation of the agreement by the consumer where the service
20 agreement states that violation of the agreement would subject the
21 agreement to cancellation;

22 (2) With respect to a motor vehicle service agreement as defined in
23 ~~G.S. 58-1-25(b)(1),~~ G.S. 66-370(b)(1), provide for a right of
24 assignability by the consumer to a subsequent purchaser before
25 expiration of coverage if the subsequent purchaser meets the same
26 criteria for motor vehicle service agreement acceptability as the
27 original purchaser; and

28 (3) Contain a cancellation provision allowing the consumer to cancel at
29 any time after purchase and receive a pro rata refund less any claims
30 paid on the agreement and a reasonable administrative fee, not to
31 exceed ten percent (10%) of the amount of the pro rata refund.

32 ...

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

38 **SECTION 12.** G.S. 66-373, as recodified by Section 5 of this act, reads as
39 rewritten:

40 "**§ 66-373. Insurance policy requirements.**

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

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

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

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

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

- 25 (1) If the company or person does not fulfill its obligations under service
26 agreements or warranties issued in this State for any reason, including
27 federal bankruptcy or state receivership proceedings, the insurer will
28 pay losses and unearned premium refunds directly to any person
29 making the claim under the service agreement.
- 30 (2) The insurer shall assume full responsibility for the administration of
31 claims if the company or person is unable to do so.
- 32 (3) The policy is subject to the cancellation, nonrenewal, and renewal
33 provisions of G.S. 58-41-15, 58-41-20, 58-41-25, and 58-41-40.
- 34 (4) The policy shall insure all service agreements and warranties that were
35 issued while the policy was in effect, regardless of whether the
36 premium was remitted to the insurer.
- 37 (5) If the insurer is fulfilling any service agreement covered by the policy
38 and if the service agreement holder cancels the service agreement, the
39 insurer shall make a full refund of the unearned premium to the
40 consumer pursuant to ~~G.S. 58-1-35(e)(3)~~. ~~G.S. 66-372(e)(3)~~. This
41 subdivision applies only to service agreement companies.

42 (d) The Commissioner of Insurance may adopt rules, in addition to the
43 requirements of this section, governing the terms and conditions of policy forms for the
44 insurance required 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 58-1-42~~ 66-370, 66-371, and 66-374 are subject to and shall comply with this
3 section. ~~The Commissioner may enforce compliance with this section using the~~
4 ~~provisions of Article 2 of this Chapter."~~

5 **SECTION 13.** G.S. 66-374, as recodified by Section 6 of this act, reads as
6 rewritten:

7 "**§ 66-374. Mechanical breakdown service agreements.**

8 (a) Except as provided in subsection (c) of this section, all mechanical
9 breakdown service agreement companies soliciting business in this State shall comply
10 with ~~G.S. 58-1-35 and G.S. 58-1-36.~~ G.S. 66-372 and G.S. 66-373.

11 (b) As used in this section, "mechanical breakdown service agreement
12 companies" include any person that issues mechanical breakdown service agreements
13 and is not a licensed insurer, and "mechanical breakdown service agreements" are
14 applicable to mechanized equipment, including automobiles, riding mowers, scooters,
15 generators, farm implements, logging equipment, road graders, bulldozers, and power
16 equipment not licensed for road use, whether mobile or not.

17 (c) This section does not apply to performance guarantees, warranties,
18 mechanical breakdown service agreements, or motor vehicle service agreements made
19 by:

- 20 (1) A manufacturer.
- 21 (2) A distributor.
- 22 (3) A subsidiary of a manufacturer or distributor."

23 **SECTION 14.** If any section or provision of this act is declared
24 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
25 validity of the act as a whole or any part other than the part so declared to be
26 unconstitutional, preempted, or otherwise invalid.

27 **SECTION 15.** This act becomes effective October 1, 2007.