

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-290
HOUSE BILL 283**

AN ACT TO REQUIRE REAL PROPERTY WARRANTY COMPANIES TO CARRY CONTRACTUAL LIABILITY POLICIES; ESTABLISH GREATER UNIFORMITY AND FLEXIBILITY FOR REQUIREMENTS IMPOSED UPON SERVICE AGREEMENT COMPANIES AND PERSONS THAT ISSUE WARRANTIES UNDER ARTICLE 1 OF CHAPTER 58; EXPAND THE DEFINITION OF HOME APPLIANCE WITHIN THE HOME APPLIANCE SERVICE AGREEMENT COMPANIES STATUTE; ENHANCE ENFORCEMENT OF ARTICLE 1 OF CHAPTER 58; REQUIRE MOTOR VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES TO USE A SPECIFIC FORMAT ON ALL WRITTEN MATERIALS SUBMITTED; MANDATE ALL REQUIRED INSURER SUBMISSIONS TO THE DEPARTMENT OF INSURANCE TO BE IN A SPECIFIC FORMAT IF IN WRITING; DEFINE MECHANICAL BREAKDOWN SERVICE AGREEMENTS AND REQUIRE ALL MECHANICAL BREAKDOWN SERVICE AGREEMENT COMPANIES TO COMPLY WITH ARTICLE 1 OF CHAPTER 58 OF THE GENERAL STATUTES AND WITH THE RULES REGARDING MOTOR VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES; AND AUTHORIZE THE ISSUANCE OF LIMITED LICENSES FOR THE SALE OF INSURANCE COVERAGE ON PERSONAL PROPERTY STORED IN SELF-SERVICE STORAGE UNITS.

The General Assembly of North Carolina enacts:

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

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

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

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

(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 primarily appliances sold by the dealer to its retail customers, provided that the dealer complies with G.S. 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 insurance in accordance with G.S. 58-1-36.

(b) The following definitions apply in this section:

- (1) ~~Home appliance. Includes~~ 'Home appliance' means a clothes washing machine or dryer; kitchen appliance; vacuum cleaner; sewing machine; home audio or video electronic equipment; home electronic data processing equipment; home exercise and fitness equipment; home health care equipment; power tools; or heater or air conditioner, other than a permanently installed unit using internal ductwork. ductwork; or other personal consumer goods.
- (2) ~~Home appliance service agreement. Any~~ 'Home appliance service agreement' means any contract or agreement indemnifying the home appliance service agreement holder against loss caused by failure, arising out of the ownership, operation, or use of a home appliance, of a mechanical or other component part of the home appliance that is listed in the agreement.
- (3) ~~Home appliance service agreement company. Any~~ 'Home appliance service agreement company' means any person that issues home appliance service agreements and that is not a licensed insurer.

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

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

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

(a) Each ~~service agreement~~ company or person subject to this section 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.~~ State unless the company or person:

- (1) Maintains an audited net worth of one hundred million dollars (\$100,000,000);
- (2) Has offered service agreement contracts or warranties, as applicable to the respective company, its parent company, or person, for at least the preceding 10 years; and
- (3) Either is required to file and has filed an SEC Form 10K or Form 20-F with the Securities and Exchange Commission (SEC) within the last calendar year or, if the company does not file with the SEC, can produce, upon request, a copy of the company's audited financial statements, which show a net worth of the company or person of at least one hundred million dollars (\$100,000,000). A company or person may utilize its parent company's Form 10-K, Form 20-F, or audited financial statements to satisfy this requirement if the parent company agrees to guarantee the obligations of the company or person relating to service agreement contracts or warranties, as applicable to the respective company or person, sold by the company or person 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 or person does not fulfill its obligations under service agreements or warranties 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 or person 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 and warranties 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). This subdivision applies only to service agreement companies.

(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.

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

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

(a) As used in this section:

- (1) 'Limited licensee' means a person authorized to sell certain coverages relating to the rental of self-service storage units pursuant to the

provisions of this section and Article 39 of Chapter 66 of the General Statutes.

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

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

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

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

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

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

(e) The self-service storage company or franchisee licensed pursuant to subsection (b) of this section may act as agent for an authorized insurer only in connection with the rental of storage units and only with respect to the following kinds of insurance:

- (1) Personal effects insurance that provides coverage to renters of storage units at the same facility for the loss of, or damage to, personal effects that occurs at the same facility during the rental period; or
- (2) Any other coverage that the Commissioner may approve as meaningful and appropriate in connection with the rental of storage units.

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

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

- (2) At every self-service storage location where self-service storage agreements are executed, brochures or other written materials are readily available to the prospective renter that:
- a. Summarize, clearly and correctly, the material terms of insurance coverage, including the identity of the insurer, offered to renters;
 - b. Disclose that these policies offered by the self-service storage company may provide a duplication of coverage already provided by a renter's homeowners' insurance policy, personal liability insurance policy, or other source of coverage;
 - c. State that the purchase by the renter of the kinds of insurance specified in this section is not required in order to rent a storage unit;
 - d. Describe the process for filing a claim in the event the renter elects to purchase coverage and in the event of a claim; and
 - e. Contain any additional information on the price, benefits, exclusions, conditions, or other limitations of such policies as the Commissioner may by regulation prescribe; and
- (3) Evidence of coverage is provided to every renter who elects to purchase such coverage.

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

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

- (1) Each trainee shall receive basic instruction about the kinds of insurance specified in this section offered for purchase by prospective renters of storage units;
- (2) Each trainee shall be instructed to acknowledge to a prospective renter of a storage unit that purchase of any such insurance specified in this section is not required in order for the renter to rent a storage unit; and
- (3) Each trainee shall be instructed to acknowledge to a prospective renter of a storage unit that the renter may have insurance policies that already provide the coverage being offered by the self-service storage company pursuant to this section.

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

- (1) The insurer represented by the limited licensee has consented in writing, signed by the insurer's officer, that premiums need not be segregated from funds received by the self-service storage company on account of storage unit rental; and
- (2) The charges for insurance coverage are itemized but not billed to the renter separately from the charges for storage units.

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

SECTION 6. Sections 1 through 4 of this act become effective October 1, 2003. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:34 p.m. this 4th day of July, 2003