

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-95
SENATE BILL 611**

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.

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

- (1) A manufacturer,
- (2) A distributor, or
- (3) A subsidiary or affiliate of a manufacturer or a distributor, where fifty-one percent (51%) or more of the subsidiary or affiliate is owned directly or indirectly by
 - a. The manufacturer,
 - b. The distributor, or
 - c. The common owner of fifty-one percent (51%) or more of the manufacturer or distributor

in connection with the sale of motor vehicles. This section does not apply to any motor vehicle dealer licensed to do business in this State (i) whose primary business is the retail sale and service of motor vehicles; (ii) who makes and administers its own service agreements with or without association with a third-party administrator or who makes its own service agreements in association with a manufacturer, distributor, or their subsidiaries or affiliates; and (iii) whose service agreements cover only vehicles sold by

the dealer to its retail customer; provided that the dealer complies with ~~G.S. 58-1-35 and G.S. 58-1-36.~~ G.S. 66-372 and G.S. 66-373. A motor vehicle dealer who sells a motor vehicle service agreement to a consumer, as defined in 15 U.S.C. § 2301(3), is not deemed to have made a written warranty to the consumer with respect to the motor vehicle sold or to have entered into a service contract with the consumer that applies to the motor vehicle, as provided in 15 U.S.C. § 2308(a), if: (i) the motor vehicle dealer acts as a mere agent of a third party in selling the motor vehicle service agreement; and (ii) the motor vehicle dealer would, after the sale of the motor vehicle service agreement, have no further obligation under the motor vehicle service agreement to the consumer to service or repair the vehicle sold to the consumer at or within 90 days before the dealer sold the motor vehicle service agreement to the consumer.

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

- (1) Authorized insurer. – An insurance company authorized to write liability insurance under Articles 7, 16, 21, or 22 of ~~this Chapter.~~ Chapter 58 of the General Statutes.
- (2) Distributor. – Defined in G.S. 20-286(3).
- (3) Licensed insurer. – An insurance company licensed to write liability insurance under Article 7 or 16 of ~~this Chapter.~~ Chapter 58 of the General Statutes.
- (4) Motor vehicle. – Defined in G.S. 20-4.01(23), but also including mopeds as defined in G.S. 20-4.01(27)d1.
- (5) Motor vehicle service agreement. – Any contract or agreement indemnifying the motor vehicle service agreement holder against loss caused by failure, arising out of the ownership, operation, or use of a motor vehicle, of a mechanical or other component part of the motor vehicle that is listed in the agreement. The term does not mean a contract or agreement guaranteeing the performance of parts or lubricants manufactured by the guarantor and sold for use in connection with a motor vehicle where no additional consideration is paid or given to the guarantor for the contract or agreement beyond the price of the parts or lubricants.
- (6) Motor vehicle service agreement company. – Any person that issues motor vehicle 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 10. G.S. 66-371, as recodified by Section 3 of this act, reads as

rewritten:

"§ 66-371. 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 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.~~ G.S. 66-372 and G.S. 66-373. 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.~~ G.S. 66-373.

(b) The following definitions apply in this section:

- (1) "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; heater or air conditioner, other than a permanently installed unit using internal ductwork; or other personal consumer goods.

- (2) "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" 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 11. G.S. 66-372, as recodified by Section 4 of this act, reads as rewritten:

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

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

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

- (1) Service agreement. – Includes motor vehicle service agreements and home appliance service agreements.
- (2) Service agreement company. – Includes motor vehicle service agreement companies and home appliance service agreement companies.

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

- (1) Not contain provisions that allow the company to cancel the agreement in its discretion other than for nonpayment of premiums or for a direct violation of the agreement by the consumer where the service agreement states that violation of the agreement would subject the agreement to cancellation;
- (2) With respect to a motor vehicle service agreement as defined in ~~G.S. 58-1-25(b)(1)~~, G.S. 66-370(b)(1), provide for a right of assignability by the consumer to a subsequent purchaser before expiration of coverage if the subsequent purchaser meets the same criteria for motor vehicle service agreement acceptability as the original purchaser; and
- (3) Contain a cancellation provision allowing the consumer to cancel at any time after purchase and receive a pro rata refund less any claims paid on the agreement and a reasonable administrative fee, not to exceed ten percent (10%) of the amount of the pro rata refund.

...
(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 12. G.S. 66-373, as recodified by Section 5 of this act, reads as rewritten:

"§ 66-373. Insurance policy requirements.

(a) Each 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 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 of Insurance 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 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 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)~~. G.S. 66-372(e)(3). This subdivision applies only to service agreement companies.

(d) The Commissioner of Insurance 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 58-1-42- 66-370, 66-371, and 66-374 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 13. G.S. 66-374, as recodified by Section 6 of this act, reads as rewritten:

"§ 66-374. 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.~~ G.S. 66-372 and G.S. 66-373.

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

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

In the General Assembly read three times and ratified this the 14th day of June, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 7:10 p.m. this 20th day of June, 2007