

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS35143-LT-81 (3/16)

Short Title: Amend Warranty/Service Agreement Co. Laws.

(Public)

Sponsors: Senator Malone.

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO CLARIFY THAT MOTOR VEHICLE AND HOME APPLIANCE
3 SERVICE AGREEMENT COMPANIES MUST FILE ALL SERVICE
4 AGREEMENTS AND CONTRACTUAL LIABILITY POLICIES WITH THE
5 COMMISSIONER, AND IF SUBMITTED ON PAPER, BE IN A SPECIFIED
6 FORMAT; AUTHORIZE THE COMMISSIONER TO PROTECT CONSUMERS
7 OF WARRANTY AND SERVICE AGREEMENTS UNDER JURISDICTION OF
8 THE DEPARTMENT BY CEASE AND DESIST POWERS AND BY THE
9 POWER TO EXAMINE AND SEIZE WARRANTY AND SERVICE
10 AGREEMENT COMPANY VIOLATOR'S RECORDS; AND REORGANIZE
11 AND ADD CLARIFYING DEFINITIONS REGARDING MECHANICAL
12 SERVICE BREAKDOWN AGREEMENTS.

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** G.S. 58-1-35(m) reads as rewritten:

15 "(m) ~~If not submitted electronically, all~~ All service agreements and contractual
16 liability policies shall be filed with the Commissioner of Insurance. All contracts,
17 literature, advertising materials, letters, and other documents submitted to the
18 Department to comply with the filing requirements of this Chapter or an administrative
19 rule adopted pursuant to this Chapter ~~shall~~ shall, if submitted on paper, be submitted on
20 paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be
21 stapled or bound."

22 **SECTION 2.** G.S. 58-1-36 is amended by adding two new subsections to
23 read:

24 "(f) In addition to the penalties and other enforcement provisions provided herein,
25 if any person violates this section or any rule implementing this section, the
26 Commissioner may seek an injunction in a court of competent jurisdiction and may

1 apply for temporary and permanent orders that the Commissioner determines are
2 necessary to restrain the person from committing the violation.

3 The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and desist
4 order upon a person that violates any provision of this section, any rule or order adopted
5 by the Commissioner, or any written agreement entered into with the Commissioner.
6 The cease and desist order may be subject to judicial review under G.S. 58-63-35.

7 When the Commissioner finds that an activity in violation of this section presents an
8 immediate danger to the public that requires an immediate final order, the
9 Commissioner may issue an emergency cease and desist order reciting with particularity
10 the facts underlying the findings. The emergency cease and desist order is effective
11 immediately upon service of a copy of the order on the respondent and remains effective
12 for 90 days. If the Commissioner begins nonemergency cease and desist proceedings,
13 the emergency cease and desist order remains effective, absent an order by a court of
14 competent jurisdiction in accordance with G.S. 58-63-35.

15 The Commissioner is not required to post a bond for injunctive relief under this
16 subsection.

17 (g) If any person violates this section or any rule implementing this section, the
18 Commissioner may examine and seize the records of the violating person."

19 **SECTION 3.** G.S. 58-1-42 reads as rewritten:

20 **"§ 58-1-42. Mechanical breakdown service ~~agreements~~; agreements; applicability.**

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

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

30 (1) "Mechanical breakdown service agreement companies" include any
31 person that issues mechanical breakdown service agreements and is
32 not a licensed insurer.

33 (2) "Mechanical breakdown service agreements" are applicable to
34 mechanical equipment, including automobiles, riding mowers,
35 scooters, generators, farm implements, logging equipment, road
36 graders, bulldozers, and power equipment not licensed for road use,
37 whether mobile or not.

38 (3) "Parts" include all mechanical parts that are associated with the object
39 of this agreement.

40 (4) "Service" means work, labor, and other personal services.

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

44 (1) A manufacturer.

1 (2) A distributor.

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

3 **SECTION 4.** This act becomes effective October 1, 2005, and applies to

4 warranties and service agreements issued, renewed, or purchased on or after that date.