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INSURANCE

Consumer Warranties: Provide for Bond as Insurance Alternative

CODE SECTION:	O.C.G.A. § 33-7-6 (amended)
BILL NUMBER:	SB 589
ACT NUMBER:	1373
SUMMARY:	The Act amends the Code definition of property insurance, which includes consumer warranty agreements, to allow retailers of electronic consumer products to elect to purchase a \$100,000 bond in lieu of a warranty insurance policy.
EFFECTIVE DATE:	July 1, 1988

History

Manufacturers of electronic consumer goods, such as television sets and microwave ovens, often guarantee the performance of their products through written warranties. Retailers of such merchandise, to gain a competitive advantage, occasionally provide consumers with a warranty which extends the protection offered by the manufacturer.¹ The Code ensures that consumers receive the promised warranty protection by including retailers' extended warranties in its definition of property insurance.² Insurance guarantees that the retailer can and will meet its warranty obligations.³

1. Telephone interview with Senator Ed Perry, Senate District No. 7 (Apr. 7, 1988) [hereinafter Perry Interview].

2. O.C.G.A. § 33-7-6(b)(3) (Supp. 1988). Under this section, property insurance generally includes:

[a]ny contract, agreement, or instrument . . . whereby a person assumes the risk of . . . repair or replacement of a product if such contract, agreement, or instrument is made by a person other than the manufacturer in exchange for a separately stated charge or the cost of the contract . . . is included . . . in the cost of the product

Id. Under the Georgia law, only an insurer authorized by the Commissioner may offer insurance unless an exception applies. O.C.G.A. § 33-3-2 (1982).

3. The Code gives consumers a direct claim against the insurer if the retailer fails to meet its warranty obligation within a certain time. O.C.G.A. § 33-7-6(c)(2) (Supp. 1988). The retailer offering the extended warranty must disclose to the consumer the name and the address of the insurer. When the warranty is guaranteed by a bond, the retailer must disclose the name and the address of the surety insurer. O.C.G.A. § 33-7-6(c)(1) (Supp. 1988).

Prior to SB 589, consumer electronics retailers were required to procure insurance policies to guarantee their extended warranties because the warranties are considered a form of insurance.⁴ If a consumer item required repair or replacement under an extended warranty, retailers would provide the needed service and collect the cost of repair or replacement from the insurer.⁵

The retailers' concern with escalating insurance costs gave rise to SB 589.⁶ The Act permits these retailers to purchase a \$100,000 bond in lieu of insurance to guarantee that warranty obligations will be met.⁷

SB 589

The Act exempts extended warranty agreements offered by a retailer of small electronics from the Code definition of property insurance when that retailer guarantees the agreement with a surety bond.⁸ Previously, the inclusion of these agreements within the definition of insurance required consumer electronics retailers to purchase insurance unless they were exempted from the requirement.⁹ Specifically exempted from the previous Code definition of property insurance were agreements underwritten by state-licensed insurers, agreements furnished by an air carrier providing interstate transportation, and tire replacement agreements.¹⁰ The Act adds extended warranties offered by retailers of consumer electronic products to the listed exemptions. The amendment grants an option to purchase a \$100,000 bond in lieu of insurance.¹¹

Legislators believe that the surety bond alternative will adequately protect consumer interests.¹² The \$100,000 requirement is considered adequate to cover any consumer warranty claims that might arise against retailers of small electronic products.¹³

Retailers of small electronics can now gain competitive advantages by extending the retailers' warranties and guaranteeing their personal warranties with a \$100,000 bond.¹⁴ Exercising the bond option insulates retailers from rising insurance rates, while protecting consumer interests in

4. 1980 Ga. Laws 760 (formerly found at O.C.G.A. § 33-7-6 (1982)).

5. Perry Interview, *supra* note 1.

6. *Id.*

7. O.C.G.A. § 33-7-6(b)(3)(D) (Supp. 1988).

8. *Id.*

9. O.C.G.A. § 33-3-2 (1982).

10. 1986 Ga. Laws 1237. The providers of such services were exempted because they already had bond alternatives available to them. Perry Interview, *supra* note 1. The three exclusions survive in the amended Code section as O.C.G.A. § 33-7-6(b)(3)(A) —(C) (Supp. 1988).

11. O.C.G.A. § 33-7-6(b)(3)(D) (Supp. 1988). The bond must be executed in favor of the Insurance Commissioner by an authorized corporate surety insurer. *Id.*

12. Perry Interview, *supra* note 1.

13. *Id.*

14. *Id.*

guaranteed warranties.¹⁵

Insurance companies likely to suffer a loss of business as a result of the amendment put up a “token” lobbying effort, but the bill faced no other significant opposition.¹⁶ Thus, SB 589 progressed smoothly through both houses with only minor editorial revisions.¹⁷

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15. *Id.*

16. *Id.*

17. *Id.*