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SENATE BILL 721

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Short Title: MV/Home Appliance Service Agrmt. Act.

(Public)

Sponsors:

Referred to:

April 22, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REGISTRATION OF AND FINANCIAL STATEMENTS FROM COMPANIES OFFERING MOTOR VEHICLE SERVICE AGREEMENTS AND COMPANIES OFFERING HOME APPLIANCE SERVICE AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

§ 58-1-25. Motor vehicle service agreement companies.

(a) This section applies to all motor vehicle service agreement companies soliciting business in this State, but it shall not apply to the usual performance guarantees or warranties offered at no charge by manufacturers in connection with the sale of new 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 without association with any other entity; or (iii) whose service agreements cover only vehicles sold by the dealer to its retail customer.

(b) The following definitions apply in this section:

(1) Motor vehicle service agreement. Any contract or agreement indemnifying the motor vehicle service agreement holder against loss

1 caused by failure, arising out of the ownership, operation, or use of a
2 motor vehicle, of a mechanical or other component part of the motor
3 vehicle that is listed in the agreement. The term does not mean a
4 contract or agreement guaranteeing the performance of parts or
5 lubricants manufactured by the guarantor and sold for use in
6 connection with a motor vehicle where no additional consideration is
7 paid or given to the guarantor for the contract or agreement beyond the
8 price of the parts or lubricants.

9 (2) Motor vehicle service agreement company. Any person that issues
10 motor vehicle service agreements and that is not a licensed insurer.

11 (c) No motor vehicle service agreement company shall enter into a motor vehicle
12 service agreement or transact business in this State unless it has registered with the
13 Commissioner of Insurance. Any nonregistered motor vehicle service agreement
14 company transacting business in this State in violation of this section is subject to a civil
15 penalty or restitution, or both, as provided in G.S. 58-2-70. An insurer authorized to
16 transact property and casualty insurance in this State may also transact motor vehicle
17 service agreement business without additional registration under G.S. 58-1-40.

18 (d) Transacting motor vehicle service agreement business in this State includes
19 any of the following:

20 (1) Maintaining in this State an agency or office where any acts in
21 furtherance of a motor vehicle service agreement business are
22 transacted.

23 (2) Maintaining in this State files of motor vehicle service agreements.

24 (3) Receiving in this State payments of premiums for motor vehicle
25 service agreements, whether directly or through a sales representative
26 of the company.

27 (4) Issuing or delivering motor vehicle service agreements in this State.

28 (5) Soliciting applications for motor vehicle service agreements through
29 mail addressed to persons residing in this State, through media, or
30 through other means intended to reach persons in this State.

31 (6) Collecting in this State premiums, fees, assessments, or other
32 considerations for motor vehicle service agreements.

33 (7) Administering motor vehicle service agreements that have been issued
34 or delivered in this State.

35 (e) Every motor vehicle service agreement company shall complete a registration
36 form and file it with the Commissioner as provided in G.S. 58-1-40. The company shall
37 include a nonrefundable registration fee of five hundred dollars (\$500.00) with its
38 application. It is a misdemeanor offense for any company knowingly to make a
39 fraudulent statement or representation in its registration. The registration shall be
40 renewed annually by payment of a nonrefundable renewal fee of two hundred dollars
41 (\$200.00).

42 (f) Nothing in this section authorizes any motor vehicle service agreement
43 company to transact any business other than motor vehicle service agreement business
44 unless the company is authorized to engage in that other business as a licensed insurer.

1 (g) Each motor vehicle service agreement company issuing motor vehicle service
2 agreements shall file a financial statement as provided in G.S. 58-1-45. The
3 Commissioner shall impose on a company a late penalty of fifty dollars (\$50.00) for
4 each day that the company does not file its statement. The company shall not do
5 business in the State until it files its statement.

6 **"§ 58-1-30. Home appliance service agreement companies.**

7 (a) This section applies to all home appliance service agreement companies
8 soliciting business in this State, but it shall not apply to the usual performance
9 guarantees or warranties offered at no charge by manufacturers in connection with the
10 sale of new home appliances. This section does not apply to any home appliance dealer
11 licensed to do business in this State (i) whose primary business is the retail sale and
12 service of home appliances; (ii) who makes and administers its own service agreements
13 without association with any other entity; or (iii) whose service agreements cover only
14 appliances sold by the dealer to its retail customers.

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

16 (1) Home appliance. Includes a clothes washing machine or dryer;
17 kitchen appliance; vacuum cleaner; sewing machine; home audio or
18 video electronic equipment; home electronic data processing
19 equipment; or heater or air conditioner, other than a permanently
20 installed unit using internal ductwork.

21 (2) Home appliance service agreement. Any contract or agreement
22 indemnifying the home appliance service agreement holder against
23 loss caused by failure, arising out of the ownership, operation, or use
24 of a home appliance, of a mechanical or other component part of the
25 home appliance that is listed in the agreement.

26 (3) Home appliance service agreement company. Any person that issues
27 home appliance service agreements and that is not a licensed insurer.

28 (c) No home appliance service agreement company shall enter into a home
29 appliance service agreement or transact business in this State unless it has registered
30 with the Commissioner. Any nonregistered home appliance service agreement
31 company transacting business in this State in violation of this section is subject to a civil
32 penalty or restitution, or both, as provided in G.S. 58-2-70. An insurer authorized to
33 transact property and casualty insurance in this State may also transact home appliance
34 service agreement business without additional registration.

35 (d) Transacting home appliance service agreement business in this State includes
36 any of the following:

37 (1) Maintaining in this State an agency or office where any acts in
38 furtherance of a home appliance service agreement business are
39 transacted.

40 (2) Maintaining in this State files of home appliance service agreements.

41 (3) Receiving in this State payments of premiums for home appliance
42 service agreements, whether directly or through a sales representative
43 of the company.

44 (4) Issuing or delivering home appliance service agreements in this State.

1 (5) Soliciting applications for home appliance service agreements through
2 mail addressed to persons residing in this State, through media, or
3 through other means intended to reach persons in this State.

4 (6) Collecting in this State premiums, fees, assessments, or other
5 considerations for home appliance service agreements.

6 (7) Administering home appliance service agreements that have been
7 issued or delivered in this State.

8 (e) Every home appliance service agreement company shall complete a
9 registration form and file it with the Commissioner as provided in G.S. 58-1-40. The
10 company shall include a nonrefundable registration fee of five hundred dollars
11 (\$500.00) with its application. It is a misdemeanor offense for any service agreement
12 company knowingly to make a fraudulent statement or representation in its registration.
13 The registration shall be renewed annually by payment of a nonrefundable renewal fee
14 of two hundred dollars (\$200.00).

15 (f) Nothing in this section authorizes any home appliance service agreement
16 company to transact any business other than home appliance service agreement business
17 unless the company is authorized to engage in that other business as a licensed insurer.

18 (g) Each home appliance service agreement company issuing home appliance
19 service agreements shall file a financial statement as provided in G.S. 58-1-45. The
20 Commissioner shall impose on a company a late penalty of fifty dollars (\$50.00) for
21 each day that the company does not file its statement. The company shall not do
22 business in the State until it files its statement.

23 "**§ 58-1-35. Miscellaneous requirements for motor vehicle and home appliance**
24 **service agreement companies.**

25 (a) The provisions of this section and G.S. 58-1-40 through G.S. 58-1-50 apply to
26 companies specified in G.S. 58-1-25 and G.S. 58-1-30.

27 (b) The following definitions apply in this section and in G.S. 58-1-40 through
28 G.S. 58-1-50:

29 (1) Service agreement. Includes motor vehicle service agreements and
30 home appliance service agreements.

31 (2) Service agreement company. Includes motor vehicle service
32 agreement companies and home appliance service agreement
33 companies.

34 (c) Before the sale of any service agreement, the service agreement company
35 shall give written notice to the customer clearly disclosing that the purchase of the
36 agreement is not required either to purchase or to obtain financing for a motor vehicle or
37 home appliance, as the case may be.

38 (d) No service agreement may be used in this State by any service agreement
39 company if the agreement:

40 (1) In any respect violates, or does not comply with, the laws of this State;

41 (2) Contains, or incorporates by reference when incorporation is otherwise
42 permissible, any inconsistent, ambiguous, or misleading clauses or any
43 exceptions and conditions that deceptively affect the risk purported to
44 be assumed in the general coverage of the agreement;

- 1 (3) Has any title, heading, or other indication of its provisions that is
2 misleading; or
- 3 (4) Is printed or otherwise reproduced in a manner that renders any
4 material provision of the agreement substantially illegible.
- 5 (e) All service agreements used in this State by a service agreement company
6 shall:
- 7 (1) Not contain provisions that allow the company to cancel the agreement
8 in its discretion other than for nonpayment of premiums or for a direct
9 violation of the agreement by the consumer where the service
10 agreement states that violation of the agreement would subject the
11 agreement to cancellation;
- 12 (2) With respect to a motor vehicle service agreement as defined in G.S.
13 58-1-25(b)(1), provide for a right of assignability by the consumer to a
14 subsequent purchaser before expiration of coverage if the subsequent
15 purchaser meets the same criteria for motor vehicle service agreement
16 acceptability as the original purchaser; and
- 17 (3) Contain a cancellation provision allowing the consumer to cancel at
18 any time after purchase and receive a pro rata refund less any claims
19 paid on the agreement and a reasonable administrative fee, not to
20 exceed ten percent (10%) of the amount of the pro rata refund.
- 21 (f) Each service agreement company, as a minimum requirement for permanent
22 office records, shall maintain:
- 23 (1) A complete set of accounting records, including a general ledger, cash
24 receipts and disbursements journals, accounts receivable registers, and
25 accounts payable registers.
- 26 (2) Memorandum journals showing the service agreement forms issued to
27 the company salespersons and recording the delivery of the forms to
28 dealers.
- 29 (3) Memorandum journals showing the service agreement forms received
30 by dealers and indicating the disposition of the forms by the dealers.
- 31 (4) A detailed service agreement register, in numerical order by agreement
32 number, of agreements in force. The register shall include the
33 following: agreement number, date of issue, issuing dealer, name of
34 agreement holder, description of item covered, service agreement
35 period (and, if applicable, mileage), gross premium, total commission
36 paid, and net premium.
- 37 (5) A detailed claims register, in numerical order by service agreement
38 number. The register shall include the following information:
39 agreement number, date of issue, date claim paid, and, if applicable,
40 disposition other than payment and reason for the disposition.
- 41 (g) The Commissioner or the Commissioner's employees shall have the right to
42 examine periodically all service agreement companies pursuant to the Examination Law
43 for insurers. The Commissioner may contract, at reasonable fees for work performed,
44 with qualified, impartial, outside sources to perform, in whole or in part, audits or

1 examinations to determine the continued compliance with the requirements applicable
2 to service agreement companies. The contracts are not subject to Article 3C of Chapter
3 143 of the General Statutes. The audits or examinations shall be under the
4 Commissioner's direct supervision. The results of the audits or examinations are subject
5 to the Commissioner's review and approval, disapproval, or modification.

6 (h) No insurer or service agreement company shall act as a fronting company for
7 any unauthorized insurer or unregistered service agreement company. As used in this
8 subsection, 'fronting company' means a licensed insurer or registered service agreement
9 company that, by reinsurance or otherwise, generally transfers to one or more
10 unauthorized insurers or unregistered service agreement companies a substantial portion
11 of the risk of loss under agreements it writes in this State. Any insurer or service
12 agreement company acting in violation of this subsection is subject to immediate
13 suspension or revocation of its insurance license or service agreement registration.

14 (i) All funds belonging to insurers, companies, or others received by a
15 salesperson of a service agreement are trust funds received by the salesperson in a
16 fiduciary capacity; and the salesperson, in the applicable regular course of business,
17 shall account for and pay the funds to the person entitled to the funds. Any salesperson
18 who, not being entitled to the funds, diverts or appropriates the funds or any portion of
19 the funds, other than funds representing the salesperson's commission if authorized by
20 the salesperson agreement, to his or her own use, upon conviction is guilty of
21 embezzlement under G.S. 14-90.

22 (j) Any person who knowingly offers for sale or sells a service agreement for a
23 company that has failed to comply with the provisions of this section is guilty of a
24 misdemeanor. All service agreement companies and individuals selling service
25 agreements are subject to Article 63 of this Chapter and G.S. 75-1 through G.S. 75-19.
26 It is unlawful for any person to operate, maintain, or establish a service agreement
27 company unless the company has a valid registration issued by the Commissioner. Any
28 service agreement company operating in this State without a valid registration is an
29 unauthorized insurer.

30 (k) Each service agreement company shall maintain contractual liability
31 insurance with a licensed insurer for one hundred percent (100%) of claims exposure,
32 including reported and incurred but not reported claims and claims expenses, on
33 business written in this State.

34 (l) No service agreement company shall use in its name, contracts, literature,
35 advertising in any medium, or any other printed matter the words 'insurance', 'casualty',
36 'surety', 'mutual', or any other words descriptive of the insurance business or
37 deceptively similar to the name or description of any insurer doing business in this
38 State, except to indicate that the obligations of the contract are insured by an insurance
39 company.

40 **"§ 58-1-40. Registration of service agreement companies.**

41 Each service agreement company shall file with the Commissioner an application for
42 registration on a form prescribed by the Commissioner and signed under oath by
43 officers of the company. The application shall include or have attached the following:

- 1 (1) A copy of the company's articles of incorporation, constitution, and
2 bylaws.
- 3 (2) A list of the names, addresses, and official capacities with the
4 company of the individuals who will be responsible for the
5 management and conduct of the affairs of the company, including all
6 trustees, officers, and directors. Those individuals shall fully disclose
7 the extent and nature of any contracts or arrangements between them
8 and the company, including possible conflicts of interest.
- 9 (3) A copy of the service agreement, including a table of the rates and
10 premiums charged or proposed to be charged for each form of the
11 service agreement.
- 12 (4) The deposit required under G.S. 58-1-41.
- 13 (5) A copy of the company's contractual liability policy.
- 14 (6) A copy of the company's financial statement, certified by an
15 independent certified public accountant.
- 16 (7) Any additional information that the Commissioner requires.

17 **"§ 58-1-41. Required deposit.**

18 (a) To ensure the faithful performance of its obligations, each service agreement
19 company shall, prior to issuance of its license by the Department, deposit with the
20 Department securities of the type eligible for deposit by insurers, in accordance with
21 Article 5 of this Chapter, and having at all times a market value of not less than
22 \$200,000 and not more than \$500,000, in accordance with rules adopted by the
23 Commissioner commensurate with the risk assumed.

24 (b) Such deposit shall be maintained unimpaired as long as the company
25 continues in business in this State. Whenever the company ceases to transact business
26 in this State and furnishes to the Department proof, satisfactory to the Department, that
27 it has discharged or otherwise adequately provided for all its obligations to its
28 consumers or purchasers in this State, the Department shall release the deposited
29 securities to the parties entitled thereto, on presentation of the receipts of the
30 Department for such securities.

31 **"§ 58-1-45. Annual reports and quarterly reports of service agreement companies.**

32 (a) Every service agreement company shall, on or before March 1 of each year or
33 within any extension of time that the Commissioner grants for good cause, file a report
34 with the Commissioner, on forms prescribed by the Commissioner and verified by oath
35 of its chief executive or financial officer, showing its financial condition on the last day
36 of the preceding calendar year.

37 (b) In addition to the information called for and furnished in connection with the
38 annual report, the Commissioner may request information that summarizes paid and
39 incurred expenses and contributions or premiums received. The company shall provide
40 that information not later than 30 days after the request, unless the Commissioner
41 grants, for good cause, an extension.

42 (c) The Commissioner may require a service agreement company to file
43 quarterly, within 45 days after the end of each of its fiscal quarters, an unaudited
44 financial statement on a form prescribed by the Commissioner, verified by the oath of

1 the chief executive or financial officer, showing its financial condition on the last day of
2 the preceding quarter.

3 (d) Any service agreement company that fails to file a report required by this
4 section is subject to G.S. 58-2-70. After notice and opportunity for hearing, the
5 Commissioner may suspend the company's authority to do business in this State while
6 the failure continues.

7 **"§ 58-1-50. Denial, suspension, or revocation of registration of service agreement**
8 **companies.**

9 (a) The Commissioner shall deny, suspend, or revoke a service agreement
10 company's registration upon determining that the company:

11 (1) Is insolvent;

12 (2) Is using methods and practices in the conduct of its business that
13 render its further transaction of business in this State hazardous or
14 injurious to its customers or to the public;

15 (3) Has failed to pay any final judgment rendered against it in a court of
16 competent jurisdiction within 60 days after the judgment became final;
17 or

18 (4) Is or has been in violation of or threatens to violate applicable
19 provisions of the laws of this State.

20 (b) The Commissioner may deny, suspend, or revoke the registration of any
21 service agreement company upon determining that the company:

22 (1) Has violated any lawful order or rule of the Commissioner; or

23 (2) Has refused to be examined or to produce its accounts, records, or files
24 for examination; or through any of its officers has refused to give
25 information about its affairs or to perform any other legal obligation as
26 to the examination, when required by the Commissioner.

27 (c) Whenever the financial condition of a service agreement company is such
28 that, if not modified or corrected, its continued operation would result in impairment or
29 insolvency, in addition to any provisions in Article 30 of this Chapter, the
30 Commissioner may order the company to file with the Commissioner and implement a
31 corrective action plan designed to do one or more of the following:

32 (1) Reduce the total amount of present potential liability for benefits by
33 reinsurance or other means.

34 (2) Reduce the volume of new business being accepted.

35 (3) Reduce the expenses of the company by specified methods.

36 (4) Suspend or limit the writing of new business for a period of time.

37 If the service agreement company fails to submit a plan within the time specified by the
38 Commissioner or submits a plan that is insufficient to correct the company's financial
39 condition, the Commissioner may order the company to implement one or more of the
40 corrective actions listed in this subsection.

41 (d) The Commissioner shall, in the order suspending a service agreement
42 company's authority to write new business, specify the period during which the
43 suspension is to be in effect and the conditions, if any, that must be met before
44 reinstatement of its authority to write new business. The order of suspension is subject

1 to rescission or modification by further order of the Commissioner before the expiration
2 of the suspension period. The Commissioner shall reinstate the service agreement
3 company's authority to write new business only if the company requests reinstatement
4 and the Commissioner finds that the circumstances causing suspension no longer exist."

5 Sec. 2. G.S. 58-1-15(b) reads as rewritten:

6 "(b) Any warranty made solely by a manufacturer, distributor, or seller of goods
7 or services without charge, or an extended warranty offered as an option and made
8 solely by a manufacturer, distributor, or seller of goods or services for charge, that
9 guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or
10 any other remedial measure, including replacement of goods or repetition of services,
11 shall not be a contract of insurance under Articles 1 through 64 of this ~~Chapter~~.
12 Chapter; however, service agreements on motor vehicles are governed by G.S. 58-1-25 and G.S.
13 58-1-35 through G.S. 58-1-50. Service agreements on home appliances are governed by
14 G.S. 58-1-30 through G.S. 58-1-50."

15 Sec. 3. The fees collected under G.S. 58-1-25 and G.S. 58-1-30 shall be
16 credited to the General Fund as nontax revenue.

17 Sec. 4. G.S. 58-6-1 reads as rewritten:

18 "**§ 58-6-1. Commissioner to report taxes, fees, and civil penalties and pay monthly.**

19 On or before the 10th day of each month the Commissioner shall furnish to the
20 Auditor a statement in detail of the ~~taxes and license fees~~ taxes, fees, and civil penalties
21 received by him during the previous month, and shall pay the amounts received to the
22 ~~Treasurer the amount in full of such taxes and fees.~~ Treasurer. Except as otherwise
23 provided, the amounts shall be credited to the General Fund. The Auditor may examine
24 the accounts of the Commissioner and check them up with said statement."

25 Sec. 5. This act becomes effective January 1, 1993, and applies to service
26 agreements written to become effective on or after that date.