

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1084  
Insurance Committee Substitute Adopted 5/27/93

Short Title: Service Agreement Changes.

(Public)

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Sponsors:

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Referred to: Finance.

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May 10, 1993

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL CHANGES AND  
3 IMPROVEMENTS IN THE LAWS REGULATING SERVICE AGREEMENTS  
4 AND TO ENABLE THE DEPARTMENT OF INSURANCE TO PROPERLY  
5 ADMINISTER THOSE LAWS.

6 The General Assembly of North Carolina enacts:

7           Section 1. G.S. 58-1-25 reads as rewritten:

8 **"§ 58-1-25. Motor vehicle service agreement companies.**

9       (a) This section applies to all motor vehicle service agreement companies  
10 soliciting business in this State, but it shall not apply to ~~the usual performance guarantees~~  
11 ~~or warranties offered at no charge~~ performance guarantees, warranties, or motor vehicle  
12 service agreements made by manufacturers

13           (1) A manufacturer,

14           (2) A distributor, or

15           (3) A subsidiary or affiliate of a manufacturer or a distributor, where fifty-  
16 one percent (51%) or more of the subsidiary or affiliate is owned  
17 directly or indirectly by

18                   a. The manufacturer,

19                   b. The distributor, or

20                   c. The common owner of fifty-one percent (51%) or more of the  
21 manufacturer or distributor

22 in connection with the sale of ~~new~~ motor vehicles. This section does not apply to any  
23 motor vehicle dealer licensed to do business in this State (i) whose primary business is

1 the retail sale and service of motor vehicles; (ii) who makes and administers its own  
2 service agreements without association with any other ~~entity~~; entity or who makes its  
3 own service agreements in association with a manufacturer, distributor, or their  
4 subsidiaries or affiliates; ~~or and~~ (iii) whose service agreements cover only vehicles sold  
5 by the dealer to its retail customer.

6 (b) The following definitions apply in this ~~section~~; section and in G.S. 58-1-30  
7 through G.S. 58-1-50:

8 (1) Authorized insurer. – An insurance company authorized to write  
9 liability insurance under Articles 7, 16, 21, or 22 of this Chapter.

10 (2) Distributor. – Defined in G.S. 20-286(3).

11 (3) Motor vehicle. – Defined in G.S. 20-4.01(23), but also including  
12 mopeds as defined in G.S. 20-4.01(27)d1.

13 ~~(4)~~(4) Motor vehicle service agreement. – Any contract or agreement  
14 indemnifying the motor vehicle service agreement holder against loss  
15 caused by failure, arising out of the ownership, operation, or use of a  
16 motor vehicle, of a mechanical or other component part of the motor  
17 vehicle that is listed in the agreement. The term does not mean a  
18 contract or agreement guaranteeing the performance of parts or  
19 lubricants manufactured by the guarantor and sold for use in  
20 connection with a motor vehicle where no additional consideration is  
21 paid or given to the guarantor for the contract or agreement beyond the  
22 price of the parts or lubricants.

23 ~~(2)~~(5) Motor vehicle service agreement company. – Any person that issues  
24 motor vehicle service agreements and that is not a ~~licensed~~ an  
25 authorized insurer.

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

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

35 ~~(1) Maintaining in this State an agency or office where any acts in~~  
36 ~~furtherance of a motor vehicle service agreement business are~~  
37 ~~transacted.~~

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

39 ~~(3) Receiving in this State payments of premiums for motor vehicle~~  
40 ~~service agreements, whether directly or through a sales representative~~  
41 ~~of the company.~~

42 ~~(4)~~(1) Issuing or delivering motor vehicle service agreements to persons  
43 residing in this State.

1           ~~(5)~~(2) Soliciting applications for motor vehicle 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)~~(3) Collecting from residents in this State premiums, fees, assessments, or  
5           other considerations for motor vehicle service agreements.

6           ~~(7)~~(4) Administering motor vehicle service agreements that have been issued  
7           or delivered to persons residing in this State.

8           (e) Every motor vehicle service agreement company shall complete a registration  
9           form and file it with the Commissioner as provided in G.S. 58-1-40. The company shall  
10          include a nonrefundable registration fee of ~~five hundred dollars (\$500.00)~~ two hundred  
11          fifty dollars (\$250.00) with its application. It is a misdemeanor ~~offense~~ for any company  
12          knowingly to make a fraudulent statement or representation in its registration. The  
13          registration shall be renewed annually by payment of a nonrefundable renewal fee of  
14          ~~two five hundred dollars (\$200.00)~~ (\$500.00).

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

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

24          (h) A motor vehicle dealer who sells a motor vehicle service agreement to a  
25          consumer, as defined in 15 U.S.C. § 2301(3), shall not be deemed to have made a  
26          written warranty, as defined in 15 U.S.C. § 2301(6), to the consumer with respect to the  
27          motor vehicle sold or to have entered into a service contract with the consumer that  
28          applies to the motor vehicle, as provided in 15 U.S.C. § 2308(a), if:

29                 (1) The motor vehicle dealer acts as a mere agent of a third party in selling  
30                 the motor vehicle service agreement, and

31                 (2) The motor vehicle dealer would, after the sale of the motor vehicle  
32                 service agreement, have no further obligation under the motor vehicle  
33                 service agreement to the consumer to service or repair the vehicle sold  
34                 to the consumer at or within 90 days before the dealer sold the motor  
35                 vehicle service agreement to the consumer."

36          Sec. 2. G.S. 58-1-30 reads as rewritten:

37          "**§ 58-1-30. Home appliance service agreement companies.**

38          (a) This section applies to all home appliance service agreement companies  
39          soliciting business in this State, but it shall not apply to ~~the usual~~ performance  
40          guarantees or warranties ~~offered at no charge~~ made by manufacturers in connection with  
41          the sale of new home appliances. This section does not apply to any home appliance  
42          dealer licensed to do business in this State (i) whose primary business is the retail sale  
43          and service of home appliances; (ii) who makes and administers its own service  
44          agreements without association with any other entity; ~~or~~ and (iii) whose service

1 agreements cover only appliances sold by the dealer to its retail customers. This section  
2 does not apply to any warranty made by a builder or seller of real property relating to  
3 home appliances that are sold along with real property.

4 (b) The following definitions apply in this ~~section~~-section and in G.S. 58-1-35  
5 through G.S. 58-1-50:

6 (1) Home appliance. —Includes a clothes washing machine or dryer;  
7 kitchen appliance; vacuum cleaner; sewing machine; home audio or  
8 video electronic equipment; home electronic data processing  
9 equipment; or heater or air conditioner, other than a permanently  
10 installed unit using internal ductwork.

11 (2) Home appliance service agreement. —Any contract or agreement  
12 indemnifying the home appliance service agreement holder against  
13 loss caused by failure, arising out of the ownership, operation, or use  
14 of a home appliance, of a mechanical or other component part of the  
15 home appliance that is listed in the agreement.

16 (3) Home appliance service agreement company. —Any person that issues  
17 home appliance service agreements and that is not a ~~licensed~~-an  
18 authorized insurer.

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

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

28 (1) ~~Maintaining in this State an agency or office where any acts in~~  
29 ~~furtherance of a home appliance service agreement business are~~  
30 ~~transacted.~~

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

32 (3) ~~Receiving in this State payments of premiums for home appliance~~  
33 ~~service agreements, whether directly or through a sales representative~~  
34 ~~of the company.~~

35 (4)(1) Issuing or delivering home appliance service agreements to persons  
36 residing in this State.

37 (5)(2) Soliciting applications for home appliance service agreements through  
38 mail addressed to persons residing in this State, through media, or  
39 through other means intended to reach persons in this State.

40 (6)(3) Collecting from residents in this State premiums, fees, assessments, or  
41 other considerations for home appliance service agreements.

42 (7)(4) Administering home appliance service agreements that have been  
43 issued or delivered to persons residing in this State.

1 (e) Every home appliance service agreement company shall complete a  
 2 registration form and file it with the Commissioner as provided in G.S. 58-1-40. The  
 3 company shall include a nonrefundable registration fee of ~~five hundred dollars (\$500.00)~~  
 4 two hundred fifty dollars (\$250.00) with its application. It is a misdemeanor offense for  
 5 any service agreement company knowingly to make a fraudulent statement or  
 6 representation in its registration. The registration shall be renewed annually by payment  
 7 of a nonrefundable renewal fee of ~~two five hundred dollars (\$200.00)-(\$500.00).~~

8 (f) Nothing in this section authorizes any home appliance service agreement  
 9 company to transact any business other than home appliance service agreement ~~business~~  
 10 ~~unless the company is authorized to engage in that other business as a licensed insurer.~~  
 11 business.

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

17 Sec. 3. G.S. 58-1-35(b) reads as rewritten:

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

- 20 (1) Service agreement. ~~Includes A motor vehicle service agreements and~~  
 21 agreement or a home appliance service agreements-agreement.  
 22 (2) Service agreement company. ~~Includes A motor vehicle service~~  
 23 agreement companies-and company or a home appliance service  
 24 agreement companies-company."

25 Sec. 4. G.S. 58-1-35(e) reads as rewritten:

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

- 28 (1) Not contain provisions that allow the company to cancel the agreement  
 29 in its discretion other than for nonpayment of premiums or for a direct  
 30 violation of the agreement by the consumer where the service  
 31 agreement states that violation of the agreement would subject the  
 32 agreement to cancellation;  
 33 (2) With respect to a motor vehicle service ~~agreement as defined in G.S. 58-~~  
 34 ~~1-25(b)(1),-agreement,~~ provide for a right of assignability by the  
 35 consumer to a subsequent purchaser before expiration of coverage if  
 36 the subsequent purchaser meets the same criteria for motor vehicle  
 37 service agreement acceptability as the original purchaser; and  
 38 (3) Contain a cancellation provision allowing the consumer to cancel at  
 39 any time after purchase and receive a pro rata refund less any claims  
 40 paid on the agreement and a reasonable administrative fee, not to  
 41 exceed ten percent (10%) of the amount of the pro rata refund."

42 Sec. 5. G.S. 58-1-35(j) reads as rewritten:

43 "(j) Any person who knowingly offers for sale or sells a service agreement for a  
 44 company that has failed to comply with the provisions of this section is guilty of a

1 misdemeanor. All service agreement companies and individuals selling service  
2 agreements are subject to ~~Article 63 of this Chapter and~~ G.S. 75-1 through G.S. 75-19. ~~It~~  
3 ~~is unlawful for any person to operate, maintain, or establish a service agreement company~~  
4 ~~unless the company has a valid registration issued by the Commissioner.~~ Any service  
5 agreement company operating in this State without a valid registration is an  
6 unauthorized insurer."

7 Sec. 6. G.S. 58-1-35(k) is repealed.

8 Sec. 7. Article 1 of Chapter 58 of the General Statutes is amended by adding  
9 a new section to read:

10 **"§ 58-1-36. Contractual liability insurance policy requirements.**

11 (a) Each service agreement company shall maintain contractual liability  
12 insurance with an authorized insurer for one hundred percent (100%) of claims  
13 exposure, including reported and incurred but not reported claims and claims expenses,  
14 on gross written premiums in this State. Each service agreement company must  
15 demonstrate to the Commissioner's satisfaction that one hundred percent (100%) of its  
16 claims exposure is covered by the policy.

17 (b) As used in this Article, 'gross written premiums' means the total amount of  
18 premiums, paid or to be paid by the customer for the entire period of the service  
19 agreement inclusive of commissions, for which the service agreement company is  
20 obligated under service agreements issued and currently in force.

21 (c) The policy shall contain the following provisions:

22 (1) If the service agreement company does not fulfill its obligations under  
23 service agreements issued in this State for any reason, the insurer will  
24 pay losses and unearned premium refunds directly to any person  
25 making the claim under the service agreement.

26 (2) The insurer shall assume full responsibility for the administration of  
27 claims if the service agreement company is unable to do so.

28 (3) The policy may not be cancelled or nonrenewed by either the insurer  
29 or the service agreement company unless the insurer gives 60 days'  
30 written notice of cancellation or nonrenewal to the Commissioner  
31 before the date of cancellation or nonrenewal.

32 (4) The policy shall insure all service agreements that were issued while  
33 the policy was in effect, regardless of whether the insurer remitted the  
34 premium.

35 (5) If the insurer is fulfilling any service agreement covered by the policy  
36 and if the service agreement holder cancels the service agreement, the  
37 insurer shall make a full refund of the unearned premium to the  
38 consumer according to G.S. 58-1-35(e)(3).

39 (d) The service agreement company shall submit a certified copy of the policy to  
40 the Commissioner for review. The insurer shall submit any change in the policy to the  
41 Commissioner no later than 30 days before its effective date."

42 Sec. 8. G.S. 58-1-41 reads as rewritten:

43 **"§ 58-1-41. Required deposit.**

1 (a) To ensure the faithful performance of its ~~obligations,~~ obligations in this State,  
 2 each service agreement company shall, ~~prior to before~~ issuance of its ~~license registration~~  
 3 by the ~~Department,~~ Commissioner and during the time the service agreement company  
 4 has premiums in force or claims outstanding, including incurred but not reported claims,  
 5 in this State, deposit with the Department securities of the type eligible for deposit by insurers,  
 6 ~~in accordance with~~ comply with the applicable provisions of Article 5 of this Chapter, and  
 7 ~~having at all times~~ Chapter. The deposit shall maintain a market value of not less than  
 8 \$200,000 ~~and not more than \$500,000,~~ in accordance with rules adopted by the  
 9 Commissioner that make the deposit required commensurate with the risk assumed.

10 (b) ~~Such~~ This deposit shall be maintained ~~unimpaired free and unencumbered~~ as  
 11 long as the company continues in business in this State. ~~Whenever the company ceases~~  
 12 ~~to transact business in this State and furnishes to the Department proof, satisfactory to~~  
 13 ~~the Department, that it has discharged or otherwise adequately provided for all its~~  
 14 ~~obligations to its consumers or purchasers in this State, the Department shall release the~~  
 15 ~~deposited securities to the parties entitled thereto, on presentation of the receipts of the~~  
 16 ~~Department for such securities."~~

17 Sec. 9. G.S. 58-1-50 reads as rewritten:

18 "**§ 58-1-50. Denial, suspension, or revocation of registration of service agreement**  
 19 **companies.**

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

- 22 (1) ~~Is insolvent;~~  
 23 (2) ~~Is using methods and practices in the conduct of its business that~~  
 24 ~~render its further transaction of business in this State hazardous or~~  
 25 ~~injurious to its customers or to the public;~~  
 26 (3) ~~Has failed to pay any final judgment rendered against it in a court of~~  
 27 ~~competent jurisdiction within 60 days after the judgment became final;~~  
 28 ~~or~~  
 29 (4) ~~Is or has been in violation of or threatens to violate applicable~~  
 30 ~~provisions of the laws of this State.~~

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

- 33 (1) ~~Has violated any lawful order or rule of the Commissioner; or~~  
 34 (2) ~~Has refused to be examined or to produce its accounts, records, or files~~  
 35 ~~for examination; or through any of its officers has refused to give~~  
 36 ~~information about its affairs or to perform any other legal obligation as~~  
 37 ~~to the examination, when required by the Commissioner.~~

38 (a) The Commissioner may deny an application for registration or renewal of  
 39 registration by any service agreement company or may suspend or revoke the  
 40 registration of any service agreement company if any of the following occur:

- 41 (1) The company has failed or refused to comply with any law, order, or  
 42 rule applicable to it.

- 1           (2)    The company's financial condition is unsound, the company is unable  
2           to pay its obligations when they are due, or the company's admitted  
3           assets do not exceed its liabilities.
- 4           (3)    The company has published or made to the Department or to the public  
5           any false statement or report.
- 6           (4)    The company has refused to submit to any examination authorized by  
7           law.
- 8           (5)    The company has made a practice of unduly engaging in litigation or  
9           delaying the investigation of claims or the adjustment or payment of  
10          valid claims.

11          Any suspension, revocation, or refusal to renew a registration may also be made  
12          applicable to the license or registration of any individual who is a party to the default or  
13          improper practice. The Commissioner may impose a civil penalty under G.S. 58-2-70 if  
14          a company fails to acknowledge a claim within 30 days after receiving written notice of  
15          the claim; provided that the notice contains sufficient information for the service  
16          agreement company to identify the specific coverage involved. The company  
17          acknowledges the claim by doing any of the following: advising the claimant or the  
18          claimant's legal representative that the claim is being investigated; paying the claim;  
19          making a bona fide written offer of settlement; or making a written denial of the claim.

20          (b)    The Commissioner may consider any or all of the standards outlined in G.S.  
21          58-30-60(b) to determine whether the continued operation of any registered service  
22          agreement company is hazardous to its service agreements holders, creditors, or the  
23          general public.

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

- 30           (1)    ~~Reduce the total amount of present potential liability for benefits by~~  
31           ~~reinsurance or other means.~~
- 32           (2)    ~~Reduce the volume of new business being accepted.~~
- 33           (3)    ~~Reduce the expenses of the company by specified methods.~~
- 34           (4)    ~~Suspend or limit the writing of new business for a period of time.~~

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

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



1 company's authority to write new business only if the company requests reinstatement  
2 and the Commissioner finds that the circumstances causing suspension no longer exist."

3 Sec. 10. G.S. 58-1-15(b) reads as rewritten:

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

13 Sec. 11. The Department of Insurance is authorized two staff positions, an  
14 Insurance Company Examiner I Grade 74 and an Insurance Company Examiner II  
15 Grade 76, to perform registration, receive and resolve consumer complaints, conduct  
16 financial oversight, and perform other duties related to the provisions of G.S. 58-1-15  
17 through G.S. 58-1-50. The positions shall be funded by the Department of Insurance  
18 Fund in G.S. 58-6-25 and shall become part of the Department's continuation budget.

19 Sec. 12. Section 11 of this act becomes effective July 1, 1993. The  
20 remainder of this act is effective upon ratification.