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SENATE BILL 1084
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Short Title: Service Agreement Changes.

(Public)

Sponsors:

Referred to:

May 10, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL CHANGES AND IMPROVEMENTS IN THE LAWS REGULATING SERVICE AGREEMENTS.

The General Assembly of North Carolina enacts:

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

"§ 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~~ performance guarantees, warranties, or motor vehicle service agreements made by manufacturers

(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 ~~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

1 the retail sale and service of motor vehicles; (ii) who makes and administers its own
2 service agreements with or without association with any other entity; a third party
3 administrator or who makes its own service agreements in association with a
4 manufacturer, distributor, or their subsidiaries or affiliates; or and (iii) whose service
5 agreements cover only vehicles sold by the dealer to its retail ~~customer.~~ customer;
6 provided that the dealer complies with G.S. 58-1-35, 58-1-36, and 58-1-40.

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

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

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

12 (3) Licensed insurer. – An insurance company licensed to write liability
13 insurance under Article 7 or Article 16 of this Chapter.

14 (4) Motor vehicle. – Defined in G.S. 20-4.01(23), but also including
15 mopeds as defined in G.S. 20-4.01(27)d1.

16 ~~(4)~~(5) Motor vehicle service agreement. – Any contract or agreement
17 indemnifying the motor vehicle service agreement holder against loss
18 caused by failure, arising out of the ownership, operation, or use of a
19 motor vehicle, of a mechanical or other component part of the motor
20 vehicle that is listed in the agreement. The term does not mean a
21 contract or agreement guaranteeing the performance of parts or
22 lubricants manufactured by the guarantor and sold for use in
23 connection with a motor vehicle where no additional consideration is
24 paid or given to the guarantor for the contract or agreement beyond the
25 price of the parts or lubricants.

26 ~~(2)~~(6) Motor vehicle service agreement company. – Any person that issues
27 motor vehicle service agreements and that is not a licensed insurer.

28 (c) No motor vehicle service agreement company shall enter into a motor vehicle
29 service agreement or transact business in this State unless it has registered with the
30 ~~Commissioner of Insurance.~~ Commissioner. ~~Any nonregistered motor vehicle service~~
31 ~~agreement company transacting business in this State in violation of this section is subject to a~~
32 ~~civil 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 motor vehicle service~~
34 ~~agreement business without additional registration under G.S. 58-1-40.~~

35 (d) Transacting motor vehicle 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 motor vehicle service agreement business are~~
39 ~~transacted.~~

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

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

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

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

6 (6)(3) Collecting from persons residing in this State premiums, fees,
7 assessments, or other considerations for motor vehicle service
8 agreements.

9 (7)(4) Administering motor vehicle service agreements that have been issued
10 or delivered to persons residing in this State.

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

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

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

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

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

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

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

40 "**§ 58-1-30. Home appliance service agreement companies.**

41 (a) This section applies to all home appliance service agreement companies
42 soliciting business in this State, but it shall not apply to ~~the usual~~ performance
43 guarantees or warranties ~~offered at no charge~~ made by manufacturers in connection with
44 the sale of new home appliances. This section does not apply to any home appliance

1 dealer licensed to do business in this State (i) whose primary business is the retail sale
2 and service of home appliances; (ii) who makes and administers its own service
3 agreements without association with any other entity; ~~or and~~ (iii) whose service
4 agreements cover only appliances sold by the dealer to its retail customers. This section
5 does not apply to any warranty made by a builder or seller of real property relating to
6 home appliances that are sold along with real property. This section does not apply to
7 any issuer of credit cards or charge cards that markets home appliance service
8 agreements as an ancillary part of its business; provided, however, that such issuer
9 maintains contractual liability insurance in accordance with G.S. 58-1-36.

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

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

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

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

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

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

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

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

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

40 ~~(4)~~(1) Issuing or delivering home appliance service agreements to persons
41 residing in this State.

42 ~~(5)~~(2) Soliciting applications for home appliance service agreements through
43 mail addressed to persons residing in this State, through media, or
44 through other means intended to reach persons in this State.

1 ~~(6)~~(3) Collecting from persons residing in this State premiums, fees,
2 assessments, or other considerations for home appliance service
3 agreements.

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

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

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

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

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

- 26 (1) Service agreement. ~~Includes A motor vehicle service agreements and~~
27 agreement or a home appliance service agreements-agreement.
28 (2) Service agreement company. ~~Includes A motor vehicle service~~
29 agreement companies and company or a home appliance service
30 agreement companies-company."

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

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

- 34 (1) Not contain provisions that allow the company to cancel the agreement
35 in its discretion other than for nonpayment of premiums or for a direct
36 violation of the agreement by the consumer where the service
37 agreement states that violation of the agreement would subject the
38 agreement to cancellation;

- 39 (2) With respect to a motor vehicle service ~~agreement as defined in G.S. 58-~~
40 ~~1-25(b)(1), agreement,~~ provide for a right of assignability by the
41 consumer to a subsequent purchaser before expiration of coverage if
42 the subsequent purchaser meets the same criteria for motor vehicle
43 service agreement acceptability as the original purchaser; and

- 1 (3) Contain a cancellation provision allowing the consumer to cancel at
2 any time after purchase and receive a pro rata refund less any claims
3 paid on the agreement and a reasonable administrative fee, not to
4 exceed ten percent (10%) of the amount of the pro rata refund."

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

6 "(j) Any person who knowingly offers for sale or sells a service agreement for a
7 company that has failed to comply with the provisions of this section is guilty of a
8 misdemeanor. All service agreement companies and individuals selling service
9 agreements are subject to ~~Article 63 of this Chapter and~~ G.S. 75-1 through G.S. 75-19. ~~It~~
10 ~~is unlawful for any person to operate, maintain, or establish a service agreement company~~
11 ~~unless the company has a valid registration issued by the Commissioner.~~ Any service
12 agreement company operating in this State without a valid registration is an
13 unauthorized insurer."

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

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

17 "**§ 58-1-36. Contractual liability insurance policy requirements.**

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

24 (b) As used in this section and in G.S. 58-1-41, 'gross written premiums' means
25 the total amount of premiums, paid or to be paid by the customer for the entire period of
26 the service agreement inclusive of commissions, for which the service agreement
27 company is obligated under service agreements issued and currently in force.

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

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

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

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

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

42 (5) If the insurer is fulfilling any service agreement covered by the policy
43 and if the service agreement holder cancels the service agreement, the

insurer shall make a full refund of the unearned premium to the consumer according to G.S. 58-1-35(e)(3).

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

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

"§ 58-1-41. Required deposit.

(a) To ensure the faithful performance of its ~~obligations,~~ obligations in this State, each service agreement company shall, ~~prior to before~~ issuance of its license registration by the ~~Department, Commissioner and during the time the service agreement company~~ has premiums in force or claims outstanding, including incurred but not reported claims, in this State, deposit with the Department securities of the type eligible for deposit by insurers, in accordance with ~~comply with the applicable provisions of Article 5 of this Chapter, and having at all times Chapter.~~ The deposit shall maintain a market value of not less than \$200,000 and not more than \$500,000, fifty thousand dollars (\$50,000) or twenty-five percent (25%) of gross written premiums in force in this State, whichever is greater, in accordance with rules adopted by the Commissioner that make the deposit required commensurate with the risk assumed.

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

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

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

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

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

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

- (1) ~~Has violated any lawful order or rule of the Commissioner; or~~
- (2) ~~Has refused to be examined or to produce its accounts, records, or files for examination; or through any of its officers has refused to give~~

1 information about its affairs or to perform any other legal obligation as
2 to the examination, when required by the Commissioner.

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

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

8 (2) The company's financial condition is unsound, the company is unable
9 to pay its obligations when they are due, or the company's admitted
10 assets do not exceed its liabilities.

11 (3) The company has published or made to the Department or to the public
12 any false statement or report.

13 (4) The company has refused to submit to any examination authorized by
14 law.

15 (5) The company has made a practice of unduly engaging in litigation or
16 delaying the investigation of claims or the adjustment or payment of
17 valid claims.

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

27 (b) The Commissioner may consider any or all of the standards outlined in G.S.
28 58-30-60(b) to determine whether the continued operation of any registered service
29 agreement company is hazardous to its service agreements holders, creditors, or the
30 general public.

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

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

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

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

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

42 If the service agreement company fails to submit a plan within the time specified by the
43 Commissioner or submits a plan that is insufficient to correct the company's financial

1 condition, the Commissioner may order the company to implement one or more of the
2 corrective actions listed in this subsection.

3 (d) The Commissioner shall, in the order suspending a service agreement
4 company's authority to write new business, specify the period during which the
5 suspension is to be in effect and the conditions, if any, that must be met before
6 reinstatement of its authority to write new business. The order of suspension is subject
7 to rescission or modification by further order of the Commissioner before the expiration
8 of the suspension period. The Commissioner shall reinstate the service agreement
9 company's authority to write new business only if the company requests reinstatement
10 and the Commissioner finds that the circumstances causing suspension no longer exist.
11 may adopt rules specifying the kinds of assets held by service agreement companies that
12 are appropriate and inappropriate for determining the financial condition of a service
13 agreement company."

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

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

24 Sec. 11. This act is effective upon ratification.