

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1084

Short Title: Service Agreement Changes.

(Public)

Sponsors: Senator Sands.

Referred to: Insurance.

May 10, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL CHANGES AND IMPROVEMENTS IN THE LAWS REGULATING SERVICE AGREEMENTS AND TO ENABLE THE DEPARTMENT OF INSURANCE TO PROPERLY ADMINISTER THOSE LAWS.

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—manufacturers, distributors, or their subsidiaries or affiliates, fifty-one percent (51%) or more of which are owned directly or indirectly by the manufacturer, distributor, or 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 the retail sale and service of motor vehicles; (ii) who makes and administers its own service agreements without association with any other ~~entity; entity~~ or who makes its own service agreements in association with a manufacturer, distributor, or their subsidiaries or affiliates; ~~or~~ and (iii) whose service agreements cover only vehicles sold by the dealer to its retail customer.

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

- 1 (1) Authorized insurer. – An insurance company authorized to write
2 liability insurance under Articles 7, 16, 21, or 22 of this Chapter.
- 3 (2) Motor vehicle. – As defined in G.S. 20-4.01(23), but also including
4 mopeds as defined in G.S. 20-4.01(27)d1.
- 5 ~~(1)~~(3) Motor vehicle service agreement. – Any contract or agreement
6 indemnifying the motor vehicle service agreement holder against loss
7 caused by failure, arising out of the ownership, operation, or use of a
8 motor vehicle, of a mechanical or other component part of the motor
9 vehicle that is listed in the agreement. The term does not mean a
10 contract or agreement guaranteeing the performance of parts or
11 lubricants manufactured by the guarantor and sold for use in
12 connection with a motor vehicle where no additional consideration is
13 paid or given to the guarantor for the contract or agreement beyond the
14 price of the parts or lubricants.
- 15 ~~(2)~~(4) Motor vehicle service agreement company. Any person that issues
16 motor vehicle service agreements and that is not a ~~licensed~~ an
17 authorized insurer.
- 18 (c) No motor vehicle service agreement company shall enter into a motor vehicle
19 service agreement or transact business in this State unless it has registered with the
20 ~~Commissioner of Insurance.~~ Commissioner. ~~Any nonregistered motor vehicle service~~
21 ~~agreement company transacting business in this State in violation of this section is subject to a~~
22 ~~civil penalty or restitution, or both, as provided in G.S. 58-2-70. An insurer authorized to~~
23 ~~transact property and casualty insurance in this State may also transact motor vehicle service~~
24 ~~agreement business without additional registration under G.S. 58-1-40.~~
- 25 (d) Transacting motor vehicle service agreement business in this State includes
26 any of the following:
- 27 (1) ~~Maintaining in this State an agency or office where any acts in~~
28 ~~furtherance of a motor vehicle service agreement business are~~
29 ~~transacted.~~
- 30 (2) ~~Maintaining in this State files of motor vehicle service agreements.~~
- 31 (3) ~~Receiving in this State payments of premiums for motor vehicle~~
32 ~~service agreements, whether directly or through a sales representative~~
33 ~~of the company.~~
- 34 ~~(4)~~(1) Issuing or delivering motor vehicle service agreements to persons
35 residing in this State.
- 36 ~~(5)~~(2) Soliciting applications for motor vehicle service agreements through
37 mail addressed to persons residing in this State, through media, or
38 through other means intended to reach persons in this State.
- 39 ~~(6)~~(3) Collecting from residents in this State premiums, fees, assessments, or
40 other considerations for motor vehicle service agreements.
- 41 ~~(7)~~(4) Administering motor vehicle service agreements that have been issued
42 or delivered to persons residing in this State.
- 43 (e) Every motor vehicle service agreement company shall complete a registration
44 form and file it with the Commissioner as provided in G.S. 58-1-40. The company shall

1 include a nonrefundable registration fee of ~~five hundred dollars (\$500.00)~~ two hundred
2 fifty dollars (\$250.00) with its application. It is a misdemeanor ~~offense~~ for any company
3 knowingly to make a fraudulent statement or representation in its registration. The
4 registration shall be renewed annually by payment of a nonrefundable renewal fee of
5 ~~two five hundred dollars (\$200.00)-(\$500.00).~~

6 (f) Nothing in this section authorizes any motor vehicle service agreement
7 company to transact any business other than motor vehicle service agreement ~~business~~
8 ~~unless the company is authorized to engage in that other business as a licensed insurer.~~
9 business.

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

15 (h) A motor vehicle dealer who acts as a mere agent of a third party in selling a
16 motor vehicle service agreement to a consumer, as defined in 15 U.S.C. § 2301(3),
17 pursuant to which the dealer subsequent to the sale of the motor vehicle service
18 agreement, would have no further obligation to the consumer for the servicing or repair
19 of a vehicle sold to the consumer at or within 90 days prior to the time the dealer sold
20 the motor vehicle service agreement to the consumer, shall not be deemed by the act to
21 have made a written warranty to the consumer with respect to the motor vehicle sold or
22 to have entered into a service contract with the consumer which applies to the motor
23 vehicle, as provided in 15 U.S.C. § 2308(a)."

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

25 "**§ 58-1-30. Home appliance service agreement companies.**

26 (a) This section applies to all home appliance service agreement companies
27 soliciting business in this State, but it shall not apply to ~~the usual~~ performance
28 guarantees or warranties ~~offered at no charge~~ made by manufacturers in connection with
29 the sale of new home appliances. This section does not apply to any home appliance
30 dealer licensed to do business in this State (i) whose primary business is the retail sale
31 and service of home appliances; (ii) who makes and administers its own service
32 agreements without association with any other entity; or (iii) whose service agreements
33 cover only appliances sold by the dealer to its retail customers.

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

36 (1) Home appliance. —Includes a clothes washing machine or dryer;
37 kitchen appliance; vacuum cleaner; sewing machine; home audio or
38 video electronic equipment; home electronic data processing
39 equipment; or heater or air conditioner, other than a permanently
40 installed unit using internal ductwork.

41 (2) Home appliance service agreement. —Any contract or agreement
42 indemnifying the home appliance service agreement holder against
43 loss caused by failure, arising out of the ownership, operation, or use

1 of a home appliance, of a mechanical or other component part of the
2 home appliance that is listed in the agreement.

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

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

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

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

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

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

22 (4)(1) Issuing or delivering home appliance service agreements to persons
23 residing in this State.

24 (5)(2) Soliciting applications for home appliance service agreements through
25 mail addressed to persons residing in this State, through media, or
26 through other means intended to reach persons in this State.

27 (6)(3) Collecting from residents in this State premiums, fees, assessments, or
28 other considerations for home appliance service agreements.

29 (7)(4) Administering home appliance service agreements that have been
30 issued or delivered to persons residing in this State.

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

38 (f) Nothing in this section authorizes any home appliance service agreement
39 company to transact any business other than home appliance service agreement ~~business~~
40 ~~unless the company is authorized to engage in that other business as a licensed insurer.~~
41 business.

42 (g) Each home appliance service agreement company issuing home appliance
43 service agreements shall file a financial statement as provided in G.S. 58-1-45. The
44 Commissioner shall impose on a company a late penalty of fifty dollars (\$50.00) for

1 each day that the company does not file its statement. The company shall not do
2 business in the State until it files its statement."

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

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

6 (1) Service agreement. ~~Includes~~ A motor vehicle service agreements and
7 agreement or a home appliance service agreements.

8 (2) Service agreement company. ~~Includes~~ A motor vehicle service
9 agreement companies and company or home appliance service
10 agreement companies. company."

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

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

14 (1) Not contain provisions that allow the company to cancel the agreement
15 in its discretion other than for nonpayment of premiums or for a direct
16 violation of the agreement by the consumer where the service
17 agreement states that violation of the agreement would subject the
18 agreement to cancellation;

19 (2) With respect to a motor vehicle service agreement ~~as defined in G.S. 58-~~
20 ~~1-25(b)(1), agreement,~~ provide for a right of assignability by the
21 consumer to a subsequent purchaser before expiration of coverage if
22 the subsequent purchaser meets the same criteria for motor vehicle
23 service agreement acceptability as the original purchaser; and

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

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

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

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

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

40 "**§ 58-1-36. Contractual liability insurance policy requirements.**

41 (a) Each service agreement company shall maintain contractual liability
42 insurance with an authorized insurer for one hundred percent (100%) of claims
43 exposure, including reported and incurred but not reported claims and claims expenses,
44 on gross written premiums in this State. Each service agreement company must

1 demonstrate to the satisfaction of the Commissioner that one hundred percent (100%) of
2 its claims exposure is covered by the policy.

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

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

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

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

14 (3) The policy may not be cancelled or nonrenewed by either the insurer
15 or the service agreement company unless 60 days' written notice
16 thereof has been given to the Commissioner by the insurer before the
17 date of such cancellation or nonrenewal.

18 (4) The policy shall insure all service agreements that were issued while
19 the policy was in effect, regardless of whether the premium was
20 remitted by the insurer.

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

25 (d) A certified copy of the policy shall be submitted to the Commissioner for
26 review. Any change in the policy shall be submitted by the insurer to the Commissioner
27 no later than 30 days before its effective date."

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

29 **"§ 58-1-41. Required deposit.**

30 (a) To ensure the faithful performance of its obligations, obligations in this State,
31 each service agreement company shall, prior to before issuance of its license registration
32 by the Department, Commissioner and during the time the service agreement company
33 has premiums in force or claims outstanding, including incurred but not reported claims,
34 in this state, deposit with the Department securities of the type eligible for deposit by insurers,
35 in accordance with comply with the applicable provisions of Article 5 of this Chapter, and
36 having at all times Chapter. The deposit shall maintain a market value of not less than
37 \$200,000 and not more than \$500,000, in accordance with rules adopted by the
38 Commissioner that make the deposit required commensurate with the risk assumed.

39 (b) Such This deposit shall be maintained unimpaired free and unencumbered as
40 long as the company continues in business in this State. Whenever the company ceases
41 to transact business in this State and furnishes to the Department proof, satisfactory to
42 the Department, that it has discharged or otherwise adequately provided for all its
43 obligations to its consumers or purchasers in this State, the Department shall release the

1 deposited securities to the parties entitled thereto, on presentation of the receipts of the
2 Department for such securities."

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

4 **"§ 58-1-50. Denial, suspension, or revocation of registration of service agreement**
5 **companies.**

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

8 (1) ~~Is insolvent;~~

9 (2) ~~Is using methods and practices in the conduct of its business that~~
10 ~~render its further transaction of business in this State hazardous or~~
11 ~~injurious to its customers or to the public;~~

12 (3) ~~Has failed to pay any final judgment rendered against it in a court of~~
13 ~~competent jurisdiction within 60 days after the judgment became final;~~
14 ~~or~~

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

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

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

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

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

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

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

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

34 (4) The company has refused to submit to any examination authorized by
35 law.

36 (5) The company has made a practice of unduly engaging in litigation or
37 delaying the investigation of claims or the adjustment or payment of
38 valid claims.

39 Any suspension, revocation, or refusal to renew a registration may also be made
40 applicable to the license or registration of any individual who is a party to such default
41 or improper practice. The Commissioner may impose a civil penalty under G.S. 58-2-
42 70 if a company fails to acknowledge a claim within 30 days after receiving written
43 notice of the claim; provided that the notice contains sufficient information for the
44 service agreement company to identify the specific coverage involved.

1 Acknowledgement of the claim shall be made to the claimant or his legal representative
2 advising that the claim is being investigated; or shall be a payment of the claim; or shall
3 be a bona fide written offer of settlement; or shall be a written denial of the claim.

4 (b) The Commissioner may consider any or all of the standards outlined in G.S.
5 58-30-60(b) to determine whether the continued operation of any registered service
6 agreement company is hazardous to its service agreements holders, creditors, or the
7 general public.

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

- 14 ~~(1) Reduce the total amount of present potential liability for benefits by~~
15 ~~reinsurance or other means.~~
- 16 ~~(2) Reduce the volume of new business being accepted.~~
- 17 ~~(3) Reduce the expenses of the company by specified methods.~~
- 18 ~~(4) Suspend or limit the writing of new business for a period of time.~~

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

23 ~~(d) The Commissioner shall, in the order suspending a service agreement~~
24 ~~company's authority to write new business, specify the period during which the~~
25 ~~suspension is to be in effect and the conditions, if any, that must be met before~~
26 ~~reinstatement of its authority to write new business. The order of suspension is subject~~
27 ~~to rescission or modification by further order of the Commissioner before the expiration~~
28 ~~of the suspension period. The Commissioner shall reinstate the service agreement~~
29 ~~company's authority to write new business only if the company requests reinstatement~~
30 ~~and the Commissioner finds that the circumstances causing suspension no longer exist."~~

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

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

41 Sec. 11. G.S. 58-1-20(a) reads as rewritten:

42 "(a) Any warranty relating to fixtures to real property or relating to home
43 appliances, as defined in G.S. 58-1-30(b), that are sold in conjunction with real property
44 ~~issued by a person~~ is a contract of insurance, except the following:

- 1 (1) A warranty made by a builder or seller of the real property;
2 (2) A warranty providing for the repair or replacement of the items
3 covered by the warranty for defective parts and mechanical failure or
4 resulting from ordinary wear and tear, and excluding from its coverage
5 damage from recognizable perils, such as fire, flood, and wind, that
6 neither relate to any defect in the items covered nor result from
7 ordinary wear and tear."

8 Sec. 12. The Department of Insurance is authorized two staff positions, an
9 Insurance Company Examiner I Grade 74 and an Insurance Company Examiner II
10 Grade 76, to perform registration, receive and resolve consumer complaints, conduct
11 financial oversight, and perform other duties related to the provisions of G.S. 58-1-15
12 through G.S. 58-1-50. The positions shall be funded by the Department of Insurance
13 Fund in G.S. 58-6-25 and shall become part of the Department's continuation budget.

14 Sec. 13. Section 12 of this act becomes effective July 1, 1993. The
15 remainder of this act is effective upon ratification.