Article 43.

Service Agreements.

§ 66-370. Motor vehicle service agreement companies.

(a) This section applies to all motor vehicle service agreement companies soliciting business in this State, but it does not apply to maintenance agreements, performance guarantees, warranties, or motor vehicle service agreements made by

(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 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 with or without association with a third-party administrator or who makes its own service agreements in association with a manufacturer, distributor, or their subsidiaries or affiliates; and (iii) whose service agreements cover only vehicles sold by the dealer to its retail customer; provided that the dealer complies with G.S. 66-372 and G.S. 66-373. A motor vehicle dealer who sells a motor vehicle service agreement to a consumer, as defined in 15 U.S.C. § 2301(3), is not deemed to have made a written warranty to the consumer with respect to the motor vehicle sold or to have entered into a service contract with the consumer that applies to the motor vehicle, as provided in 15 U.S.C. § 2308(a), if: (i) the motor vehicle dealer acts as a mere agent of a third party in selling the motor vehicle service agreement; and (ii) the motor vehicle dealer would, after the sale of the motor vehicle service agreement, have no further obligation under the motor vehicle service agreement to the consumer to service or repair the vehicle sold to the consumer at or within 90 days before the dealer sold the motor vehicle service agreement to the consumer. An agreement whereby an employer, or a third party contracted by the employer, provides mileage reimbursement and incidental maintenance and repairs to its employees for personal vehicles used for business purposes shall not be considered a motor vehicle service agreement or a contract of insurance.

(b) The following definitions apply in this section and in G.S. 66-371, 66-372, and 66-373:

(1) Ancillary anti-theft protection program. – A device or system that (i) is installed on or applied to a motor vehicle, (ii) is designed to prevent loss or damage to a motor vehicle from theft, and (iii) includes an ancillary anti-theft protection program warranty. For purposes of this section, the term "ancillary anti-theft protection program" includes alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices. "Ancillary anti-theft protection program" does not include fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system or interior or exterior surfaces of a motor vehicle.

(1a) Ancillary anti-theft protection program warranty. – A written agreement by a warrantor that provides if the ancillary anti-theft protection program fails to prevent loss or damage to a motor vehicle from a theft, that the warrantor will

pay to or on behalf of the warranty holder specified incidental costs, as a result of the failure of the ancillary anti-theft protection program to perform pursuant to the terms of the ancillary anti-theft protection program warranty. Incidental costs may be reimbursed in either a fixed amount specified in the ancillary anti-theft protection program warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder.

(1b) Authorized insurer. – An insurance company authorized to write liability insurance under Articles 7, 16, 21, or 22 of Chapter 58 of the General Statutes.

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

(3) Licensed insurer. – An insurance company licensed to write liability insurance under Article 7 or 16 of Chapter 58 of the General Statutes.

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

(4a) Motor vehicle failure. – The failure of a mechanical or other component part of the motor vehicle arising out of the ownership, operation, or use of the vehicle.

(5) Motor vehicle service agreement. –

a. Any contract or agreement (i) indemnifying the motor vehicle service agreement holder against loss caused by a motor vehicle failure that is listed in the agreement or (ii) providing for the repair of a motor vehicle failure that is listed in the agreement.

b. A motor vehicle service agreement includes a contract or agreement to perform or to indemnify the holder of the motor vehicle service agreement for performance of any of the following services:

1. The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards.
2. The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint or finish and without replacing vehicle body panels, sanding, bonding, or painting.
3. The repair of chips or cracks in or the replacement of motor vehicle windshields as a result of damage caused by road hazards.
4. The replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen.
5. Other services which may be approved by the Commissioner of Insurance, if not inconsistent with other provisions of this Article.

c. A motor vehicle service agreement does not include a contract or agreement guaranteeing the performance of parts or lubricants manufactured or distributed by the guarantor and sold for use in connection with a motor vehicle where no additional consideration is paid or given to the guarantor for the contract or agreement beyond the price of the parts or lubricants.

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

(c) through (g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 730, s. 3. (1991 (Reg. Sess., 1992), c. 1014, s. 1; 1993, c. 504, ss. 47, 48, 52; c. 539, s. 442; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 730, ss. 3, 4; 1995, c. 193, s. 3; 2007-95, ss. 2, 9; 2015-283, s. 1; 2017-102, s. 5.2(b).)