

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1991

CHAPTER 1014  
SENATE BILL 721

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 caused by failure, arising out of the ownership, operation, or use of a motor vehicle, of a mechanical or other component part of the motor vehicle that is listed in the agreement. The term does not mean a contract or agreement guaranteeing the performance of parts or lubricants manufactured 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.
- (2) Motor vehicle service agreement company. Any person that issues motor vehicle service agreements and that is not a licensed insurer.

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

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

- (1) Maintaining in this State an agency or office where any acts in furtherance of a motor vehicle service agreement business are transacted.
- (2) Maintaining in this State files of motor vehicle service agreements.
- (3) Receiving in this State payments of premiums for motor vehicle service agreements, whether directly or through a sales representative of the company.
- (4) Issuing or delivering motor vehicle service agreements in this State.
- (5) Soliciting applications for motor vehicle service agreements through mail addressed to persons residing in this State, through media, or through other means intended to reach persons in this State.
- (6) Collecting in this State premiums, fees, assessments, or other considerations for motor vehicle service agreements.
- (7) Administering motor vehicle service agreements that have been issued or delivered in this State.

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

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

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

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

(a) This section applies to all home appliance 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 home appliances. This section does not apply to any home appliance dealer licensed to do business in this State (i) whose primary business is the retail sale and service of home appliances; (ii) who makes and administers its own service agreements without association with any other entity; or (iii) whose service agreements cover only appliances sold by the dealer to its retail customers.

(b) The following definitions apply in this section:

- (1) Home appliance. Includes a clothes washing machine or dryer; kitchen appliance; vacuum cleaner; sewing machine; home audio or

video electronic equipment; home electronic data processing equipment; or heater or air conditioner, other than a permanently installed unit using internal ductwork.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Has any title, heading, or other indication of its provisions that is misleading; or

(4) Is printed or otherwise reproduced in a manner that renders any material provision of the agreement substantially illegible.

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

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

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

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

(f) Each service agreement company, as a minimum requirement for permanent office records, shall maintain:

(1) A complete set of accounting records, including a general ledger, cash receipts and disbursements journals, accounts receivable registers, and accounts payable registers.

(2) Memorandum journals showing the service agreement forms issued to the company salespersons and recording the delivery of the forms to dealers.

(3) Memorandum journals showing the service agreement forms received by dealers and indicating the disposition of the forms by the dealers.

(4) A detailed service agreement register, in numerical order by agreement number, of agreements in force. The register shall include the following: agreement number, date of issue, issuing dealer, name of agreement holder, description of item covered, service agreement period (and, if applicable, mileage), gross premium, total commission paid, and net premium.

(5) A detailed claims register, in numerical order by service agreement number. The register shall include the following information: agreement number, date of issue, date claim paid, and, if applicable, disposition other than payment and reason for the disposition.

(g) The Commissioner or the Commissioner's employees shall have the right to examine periodically all service agreement companies pursuant to the Examination Law for insurers. The Commissioner may contract, at reasonable fees for work performed, with qualified, impartial, outside sources to perform, in whole or in part, audits or examinations to determine the continued compliance with the requirements applicable to service agreement companies. The contracts are not subject to Article 3C of Chapter 143 of the General Statutes. The audits or examinations shall be under the Commissioner's direct supervision. The results of the audits or examinations are subject to the Commissioner's review and approval, disapproval, or modification.

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

(i) All funds belonging to insurers, companies, or others received by a salesperson of a service agreement are trust funds received by the salesperson in a fiduciary capacity; and the salesperson, in the applicable regular course of business,

shall account for and pay the funds to the person entitled to the funds. Any salesperson who, not being entitled to the funds, diverts or appropriates the funds or any portion of the funds, other than funds representing the salesperson's commission if authorized by the salesperson agreement, to his or her own use, upon conviction is guilty of embezzlement under G.S. 14-90.

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

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

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

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

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

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

**"§ 58-1-41. Required deposit.**

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

(b) Such deposit shall be maintained unimpaired 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.

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

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

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

(c) The Commissioner may require a service agreement company to file quarterly, within 45 days after the end of each of its fiscal quarters, an unaudited financial statement on a form prescribed by the Commissioner, verified by the oath of the chief executive or financial officer, showing its financial condition on the last day of the preceding quarter.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

In the General Assembly read three times and ratified this the 23rd day of July, 1992.

James C. Gardner  
President of the Senate

Daniel Blue, Jr.  
Speaker of the House of Representatives