

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1084
Insurance Committee Substitute Adopted 5/27/93
Proposed Committee Substitute PCS2704
Finance Committee Substitute Adopted 6/24/93

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 AND TO ENABLE THE DEPARTMENT OF INSURANCE TO PROPERLY ADMINISTER THOSE LAWS BY AUTHORIZING TWO EXAMINER POSITIONS.

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

1 c. The common owner of fifty-one percent (51%) or more of the
2 manufacturer or distributor
3 in connection with the sale of ~~new~~ motor vehicles. This section does not apply to any
4 motor vehicle dealer licensed to do business in this State (i) whose primary business is
5 the retail sale and service of motor vehicles; (ii) who makes and administers its own
6 service agreements with or without association with any other entity; a third party
7 administrator or who makes its own service agreements in association with a
8 manufacturer, distributor, or their subsidiaries or affiliates; or and (iii) whose service
9 agreements cover only vehicles sold by the dealer to its retail ~~customer.~~ customer;
10 provided that the dealer complies with G.S. 58-1-35, 58-1-36, and 58-1-40.

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

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

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

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

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

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

30 ~~(2)~~(6) Motor vehicle service agreement company. – Any person that issues
31 motor vehicle service agreements and that is not a licensed insurer.

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

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

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

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

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

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

6 ~~(5)~~(2) Soliciting applications for motor vehicle service agreements through
7 mail addressed to persons residing in this State, through media, or
8 through other means intended to reach persons in this State.

9 ~~(6)~~(3) Collecting from persons residing in this State premiums, fees,
10 assessments, or other considerations for motor vehicle service
11 agreements.

12 ~~(7)~~(4) Administering motor vehicle service agreements that have been issued
13 or delivered to persons residing in this State.

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

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

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

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

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

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

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

43 "**§ 58-1-30. Home appliance service agreement companies.**

1 (a) This section applies to all home appliance service agreement companies
2 soliciting business in this State, but it shall not apply to ~~the usual~~ performance
3 guarantees or warranties ~~offered at no charge~~ made by manufacturers in connection with
4 the sale of new home appliances. This section does not apply to any home appliance
5 dealer licensed to do business in this State (i) whose primary business is the retail sale
6 and service of home appliances; (ii) who makes and administers its own service
7 agreements without association with any other entity; ~~or~~ and (iii) whose service
8 agreements cover only appliances sold by the dealer to its retail customers. This section
9 does not apply to any warranty made by a builder or seller of real property relating to
10 home appliances that are sold along with real property. This section does not apply to
11 any issuer of credit cards or charge cards that markets home appliance service
12 agreements as an ancillary part of its business; provided, however, that such issuer
13 maintains contractual liability insurance in accordance with G.S. 58-1-36.

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

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

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

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

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

35 (d) Transacting home appliance 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 home appliance service agreement business are~~
39 ~~transacted.~~

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

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

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

3 (5)(2) Soliciting applications for home appliance 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 home appliance service
8 agreements.

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

11 (e) Every home appliance service agreement company shall complete a
12 registration form and file it with the Commissioner as provided in G.S. 58-1-40. The
13 company shall include a nonrefundable registration fee of ~~five hundred dollars (\$500.00)~~
14 two hundred fifty dollars (\$250.00) with its application. It is a misdemeanor ~~offense for~~
15 any ~~service agreement company person to~~ knowingly ~~to~~ make a fraudulent statement or
16 representation in ~~its~~ an application for registration. The registration shall be renewed
17 annually by payment of a nonrefundable renewal fee of ~~two five hundred dollars~~
18 ~~(\$200.00)-(\$500.00)~~.

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

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

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

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

31 (1) Service agreement. ~~Includes A motor vehicle service agreements and~~
32 agreement or a home appliance service agreements-agreement.

33 (2) Service agreement company. ~~Includes A motor vehicle service~~
34 agreement companies and company or a home appliance service
35 agreement companies-company."

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

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

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

- 1 (2) With respect to a motor vehicle service agreement as defined in G.S. 58-
2 1-25(b)(1), agreement, provide for a right of assignability by the
3 consumer to a subsequent purchaser before expiration of coverage if
4 the subsequent purchaser meets the same criteria for motor vehicle
5 service agreement acceptability as the original purchaser; and
- 6 (3) Contain a cancellation provision allowing the consumer to cancel at
7 any time after purchase and receive a pro rata refund less any claims
8 paid on the agreement and a reasonable administrative fee, not to
9 exceed ten percent (10%) of the amount of the pro rata refund."

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

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

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

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

22 "**§ 58-1-36. Contractual liability insurance policy requirements.**

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

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

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

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

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

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

- 1 (4) The policy shall insure all service agreements that were issued while
 2 the policy was in effect, regardless of whether the insurer remitted the
 3 premium.
- 4 (5) If the insurer is fulfilling any service agreement covered by the policy
 5 and if the service agreement holder cancels the service agreement, the
 6 insurer shall make a full refund of the unearned premium to the
 7 consumer according to G.S. 58-1-35(e)(3).
- 8 (d) The service agreement company shall submit a certified copy of the policy to
 9 the Commissioner for review. The insurer shall submit any change in the policy to the
 10 Commissioner no later than 30 days before its effective date."

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

12 **"§ 58-1-41. Required deposit.**

13 (a) To ensure the faithful performance of its obligations, obligations in this State,
 14 each service agreement company shall, prior to before issuance of its license registration
 15 by the Department, Commissioner and during the time the service agreement company
 16 has premiums in force or claims outstanding, including incurred but not reported claims,
 17 in this State, deposit with the Department securities of the type eligible for deposit by insurers,
 18 in accordance with comply with the applicable provisions of Article 5 of this Chapter, and
 19 having at all times Chapter. The deposit shall maintain a market value of not less than
 20 \$200,000 and not more than \$500,000, fifty thousand dollars (\$50,000) or twenty-five
 21 percent (25%) of gross written premiums in force in this State, whichever is greater, in
 22 accordance with rules adopted by the Commissioner that make the deposit required
 23 commensurate with the risk assumed.

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

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

32 **"§ 58-1-50. Denial, suspension, or revocation of registration of service agreement**
 33 **companies.**

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

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

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

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

8 ~~(a) The Commissioner may deny an application for registration or renewal of~~
9 ~~registration by any service agreement company or may suspend or revoke the~~
10 ~~registration of any service agreement company if any of the following occur:~~

- 11 ~~(1) The company has failed or refused to comply with any law, order, or~~
12 ~~rule applicable to it.~~
13 ~~(2) The company's financial condition is unsound, the company is unable~~
14 ~~to pay its obligations when they are due, or the company's admitted~~
15 ~~assets do not exceed its liabilities.~~
16 ~~(3) The company has published or made to the Department or to the public~~
17 ~~any false statement or report.~~
18 ~~(4) The company has refused to submit to any examination authorized by~~
19 ~~law.~~
20 ~~(5) The company has made a practice of unduly engaging in litigation or~~
21 ~~delaying the investigation of claims or the adjustment or payment of~~
22 ~~valid claims.~~

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

32 ~~(b) The Commissioner may consider any or all of the standards outlined in G.S.~~
33 ~~58-30-60(b) to determine whether the continued operation of any registered service~~
34 ~~agreement company is hazardous to its service agreements holders, creditors, or the~~
35 ~~general public.~~

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

- 42 ~~(1) Reduce the total amount of present potential liability for benefits by~~
43 ~~reinsurance or other means.~~
44 ~~(2) Reduce the volume of new business being accepted.~~

- 1 (3) Reduce the expenses of the company by specified methods.
2 (4) Suspend or limit the writing of new business for a period of time.

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

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

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

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

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

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