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SENATE BILL 721
Insurance Committee Substitute Adopted 6/6/91
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Short Title: MV/Home Appliance Service Agrmt. Act.

(Public)

Sponsors:

Referred to:

April 22, 1991

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REGISTRATION OF AND FINANCIAL AND ACTUARIAL 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 services 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; and (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

1 vehicle that is listed in the agreement. The term does not mean a
2 contract or agreement guaranteeing the performance of parts or
3 lubricants manufactured by the guarantor and sold for use in
4 connection with a motor vehicle where no additional consideration is
5 paid or given to the guarantor for the contract or agreement beyond the
6 price of the parts or lubricants.

7 (2) Motor vehicle service agreement company. Any person that issues
8 motor vehicle service agreements and that is not an authorized insurer.

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

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

18 (1) Maintaining in this State an agency or office where any acts in
19 furtherance of a motor vehicle service agreement business are
20 transacted.

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

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

25 (4) Issuing or delivering motor vehicle service agreements in this State.

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

29 (6) Collecting in this State premiums, fees, assessments, or other
30 considerations for motor vehicle service agreements.

31 (7) Administering motor vehicle service agreements that have been issued
32 or delivered in this State.

33 (e) Every motor vehicle service agreement company shall complete a registration
34 form and file it with the Commissioner as provided in G.S. 58-1-40. The company shall
35 include a registration fee of five hundred dollars (\$500.00) with its application. It is
36 unlawful for any company knowingly to make a fraudulent statement or representation
37 in its registration.

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

41 (g) Each motor vehicle service agreement company issuing motor vehicle service
42 agreements shall file a financial statement and an actuarial certification as provided in
43 G.S. 58-1-45. The Commissioner shall fine a company fifty dollars (\$50.00) for each

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

3 **"§ 58-1-30. Home appliance service agreement companies.**

4 (a) This section applies to all home appliance service agreement companies
5 soliciting business in this State, but it shall not apply to the usual performance
6 guarantees or warranties offered at no charge by manufacturers in connection with the
7 sale of new home appliances. This section does not apply to any home appliance dealer
8 licensed to do business in this State (i) whose primary business is the retail sale and
9 service of home appliances; (ii) who makes and administers its own service agreements
10 without association with any other entity; or (iii) whose service agreements cover only
11 appliances sold by the dealer to its retail customers.

12 (b) The following definitions apply in this section:

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

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

23 (3) Home appliance service agreement company. Any person that issues
24 home appliance service agreements and that is not an authorized
25 insurer.

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

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

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

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

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

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

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

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

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

8 (e) Every home appliance service agreement company shall complete a
9 registration form and file it with the Commissioner as provided in G.S. 58-1-40. The
10 company shall include a registration fee of five hundred dollars (\$500.00) with its
11 application. It is unlawful for any service agreement company knowingly to make a
12 fraudulent statement or representation in its registration.

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

16 (g) Each home appliance service agreement company issuing home appliance
17 service agreements shall file a financial statement and an actuarial certification as
18 provided in G.S. 58-1-45. The Commissioner shall fine a company fifty dollars
19 (\$50.00) for each day that the company does not file its statement. The company shall
20 not do business in the State until it files its statement.

21 **"§ 58-1-35. Miscellaneous requirements for motor vehicle and home appliance**
22 **service agreement companies.**

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

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

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

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

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

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

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

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

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

- 1 (4) Is printed or otherwise reproduced in a manner that renders any
2 material provision of the agreement substantially illegible.
- 3 (e) All service agreements used in this State by a service agreement company
4 shall:
- 5 (1) Not contain provisions that allow the company to cancel the agreement
6 in its discretion other than for nonpayment of premiums or for a direct
7 violation of the agreement by the consumer where the service
8 agreement states that violation of the agreement would subject the
9 agreement to cancellation;
- 10 (2) Provide for right of assignability by the consumer to a subsequent
11 purchaser before expiration of coverage, if the subsequent purchaser of
12 a motor vehicle service agreement, as defined in G.S. 58-1-25(b)(1),
13 meets the same criteria for motor vehicle service agreement
14 acceptability as the original purchaser; and
- 15 (3) Contain a cancellation provision allowing the consumer to cancel at
16 any time after purchase and receive a pro rata refund less any claims
17 paid on the agreement and a reasonable administrative fee that must be
18 stated in the agreement.
- 19 (f) Each service agreement company, as a minimum requirement for permanent
20 office records, shall maintain:
- 21 (1) A complete set of accounting records, including a general ledger, cash
22 receipts and disbursements journals, accounts receivable registers, and
23 accounts payable registers.
- 24 (2) Memorandum journals showing the service agreement forms issued to
25 the company salespersons and recording the delivery of the forms to
26 dealers.
- 27 (3) Memorandum journals showing the service agreement forms received
28 by dealers and indicating the disposition of the forms by the dealers.
- 29 (4) A detailed service agreement register, in numerical order by agreement
30 number, of agreements in force. The register shall include the
31 following: agreement number, date of issue, issuing dealer, name of
32 agreement holder, description of item covered, service agreement
33 period (and, if applicable, mileage), gross premium, commission to
34 sales representatives, commission to dealer, and net premium.
- 35 (5) A detailed claims register, in numerical order by service agreement
36 number. The register shall include the following information:
37 agreement number, date of issue, date claim paid, and, if applicable,
38 disposition other than payment and reason for the disposition.
- 39 (g) The Commissioner or the Commissioner's deputies shall have the right to
40 examine periodically all service agreement companies pursuant to the Examination Law
41 for insurers. A service agreement company or the Commissioner may contract, at
42 reasonable fees for work performed, with qualified, impartial, outside sources to
43 perform, in whole or in part, audits or examinations to determine the continued
44 compliance with the requirements applicable to service agreement companies. The

1 contracts are not subject to Article 3C of Chapter 143 of the General Statutes. The
2 audits or examinations shall be under the Commissioner's direct supervision. The
3 results of the audits or examinations are subject to the Commissioner's review and
4 approval, disapproval, or modification.

5 (h) No insurer or service agreement company shall act as a fronting company for
6 any unauthorized insurer or unregistered service agreement company. As used in this
7 subsection, 'fronting company' means an authorized insurer or registered service
8 agreement company that, by reinsurance or otherwise, generally transfers to one or more
9 unauthorized insurers or unregistered service agreement companies a substantial portion
10 of the risk of loss under agreements it writes in this State. Any service agreement
11 company acting in violation of this subsection is subject to immediate suspension or
12 revocation of all insurance and company licenses.

13 (i) All funds belonging to insurers, companies, or others received by a
14 salesperson of a service agreement are trust funds received by the salesperson in a
15 fiduciary capacity; and the salesperson, in the applicable regular course of business,
16 shall account for and pay the funds to the person entitled to the funds. Any salesperson
17 who, not being entitled to the funds, diverts or appropriates the funds or any portion of
18 the funds, other than funds representing the salesperson's commission if authorized by
19 the salesperson agreement, to his or her own use, upon conviction is guilty of
20 embezzlement under G.S. 14-90.

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

29 (k) Each service agreement company shall maintain excess insurance written by
30 an insurer authorized to do business in this State with a retention level determined in
31 accordance with sound actuarial principles or shall establish and maintain appropriate
32 loss reserves determined in accordance with sound actuarial principles.

33 (l) No service agreement company shall use in its name, contracts, literature,
34 advertising in any medium, or any other printed matter the words 'insurance', 'casualty',
35 'surety', 'mutual', or any other words descriptive of the insurance business or
36 deceptively similar to the name or description of any insurer doing business in this
37 State.

38 **"§ 58-1-40. Registration of service agreement companies.**

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

- 42 (1) A copy of the company's articles of incorporation, constitution, and
43 bylaws.

- 1 (2) A list of the names, addresses, and official capacities with the
2 company of the individuals who will be responsible for the
3 management and conduct of the affairs of the company, including all
4 trustees, officers, and directors. Those individuals shall fully disclose
5 the extent and nature of any contracts or arrangements between them
6 and the company, including possible conflicts of interest.
- 7 (3) A copy of the service agreement, including a table of the rates charged
8 or proposed to be charged for each form of the service agreement.
- 9 (4) A copy of a fidelity bond, in an amount equal to ten percent (10%) of
10 the funds handled annually, issued in the company's name and
11 covering any individuals managing or handling the company's funds or
12 assets. The bond shall not be less than fifty thousand (\$50,000) or
13 more than five hundred thousand dollars (\$500,000); however, the
14 Commissioner, after due notice to all interested parties and opportunity
15 for hearing, may require an amount greater than five hundred thousand
16 dollars (\$500,000).
- 17 (5) A copy of the company's excess insurance agreement.
- 18 (6) A copy of an audited financial statement of the company reflecting the
19 minimum reserves required by G.S. 58-1-35(k).
- 20 (7) Evidence satisfactory to the Commissioner showing that the company
21 will be operated in accordance with sound actuarial principles. The
22 Commissioner shall not register a company unless the Commissioner
23 determines, in accordance with sound actuarial principles, that the
24 company is designed to provide sufficient revenues to pay current and
25 future liabilities.
- 26 (8) Any additional information that the Commissioner requires.

27 **"§ 58-1-45. Annual reports, actuarial certifications, and quarterly reports of**
28 **service agreement companies.**

29 (a) Every service agreement company shall, on or before March 1 of each year or
30 within any extension of time that the Commissioner grants for good cause, file a report
31 with the Commissioner, on forms prescribed by the Commissioner and verified by oath
32 of its chief executive or financial officer, showing its financial condition on the last day
33 of the preceding calendar year. The report shall contain an audited financial statement
34 of the company prepared in accordance with statutory accounting principles, including
35 its balance sheet and a statement of the operations for the preceding calendar year,
36 certified by an independent certified public accountant. The report shall also include an
37 analysis of the adequacy of reserves and contributions or premiums charged, based on a
38 review of past and projected claims and expenses.

39 (b) In addition to the information called for and furnished in connection with the
40 annual report, the Commissioner may request information that summarizes paid and
41 incurred expenses and contributions or premiums received, and may request evidence
42 satisfactory to the Commissioner that the service agreement company is actuarially
43 sound. The company shall provide that information and evidence not later than 30 days
44 after the request, unless the Commissioner grants, for good cause, an extension.

1 (c) Annually, in conjunction with the annual report required in subsection (a) of
2 this section, the service agreement company shall submit an actuarial certification
3 prepared by an independent qualified actuary indicating that:

4 (1) The company is actuarially sound, including consideration of the rates,
5 benefits, and expenses of, and any other funds available for the
6 payment of obligations of, the company;

7 (2) The rates being charged and to be charged for contracts are actuarially
8 adequate to the end of the period for which rates have been
9 guaranteed; and

10 (3) Incurred but not reported claims and claims reported but not fully paid
11 have been adequately provided for.

12 The company shall also submit any other information that is required by the
13 Commissioner relating to the company's performance.

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

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

23 **"§ 58-1-50. Denial, suspension, or revocation of registration of service agreement**
24 **companies.**

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

27 (1) Is insolvent;

28 (2) Is using methods and practices in the conduct of its business that
29 render its further transaction of business in this State hazardous or
30 injurious to its customers or to the public;

31 (3) Has failed to pay any final judgment rendered against it in a court of
32 competent jurisdiction within 60 days after the judgment became final;

33 (4) Is or has been in violation of or threatens to violate applicable
34 provisions of the laws of this State;

35 (5) Is no longer actuarially sound; or

36 (6) Is charging rates that are excessive, inadequate, or unfairly
37 discriminatory.

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

40 (1) Has violated any lawful order or rule of the Commissioner or any
41 applicable provision of this Chapter; or

42 (2) Has refused to be examined or to produce its accounts, records, or files
43 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 (c) Whenever the financial condition of a service agreement company is such
4 that, if not modified or corrected, its continued operation would result in impairment or
5 insolvency, in addition to any provisions in Article 30 of this Chapter, the
6 Commissioner may order the company to file with the Commissioner and implement a
7 corrective action plan designed to do one or more of the following:

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

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

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

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

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

17 (d) The Commissioner shall, in the order suspending a service agreement
18 company's authority to write new business, specify the period during which the
19 suspension is to be in effect and the conditions, if any, that must be met before
20 reinstatement of its authority to write new business. The order of suspension is subject
21 to rescission or modification by further order of the Commissioner before the expiration
22 of the suspension period. The Commissioner shall not reinstate the service agreement
23 company unless the company requests reinstatement. However, the Commissioner shall
24 not grant reinstatement if the Commissioner finds that the circumstances causing
25 suspension still exist."

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

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

36 Sec. 3. This act becomes effective January 1, 1992.