

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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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 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **"§ 58-1-30. Home appliance service agreement companies.**

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

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

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  
31 company transacting business in this State in violation of this section is subject to a civil  
32 penalty or restitution, or both, as provided in G.S. 58-2-70. An insurer authorized to  
33 transact property and casualty insurance in this State may also transact home appliance  
34 service agreement business 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.

44 (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 nonrefundable registration fee of five hundred dollars  
11 (\$500.00) with its application. It is a misdemeanor offense for any service agreement  
12 company knowingly to make a fraudulent statement or representation in its registration.  
13 The registration shall be renewed annually by payment of a nonrefundable renewal fee  
14 of two hundred dollars (\$200.00).

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

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

23 **"§ 58-1-35. Miscellaneous requirements for motor vehicle and home appliance**  
24 **service agreement companies.**

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

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

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

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

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

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

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

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

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

1 examinations to determine the continued compliance with the requirements applicable  
2 to service agreement companies. The contracts are not subject to Article 3C of Chapter  
3 143 of the General Statutes. The audits or examinations shall be under the  
4 Commissioner's direct supervision. The results of the audits or examinations are subject  
5 to the Commissioner's review and approval, disapproval, or modification.

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

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

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

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

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

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

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

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

17 **"§ 58-1-41. Required deposit.**

18           (a) To ensure the faithful performance of its obligations, each service agreement  
19 company shall, prior to issuance of its license by the Department, deposit with the  
20 Department securities of the type eligible for deposit by insurers, in accordance with  
21 Article 5 of this Chapter, and having at all times a market value of not less than  
22 \$200,000 and not more than \$500,000, in accordance with rules adopted by the  
23 Commissioner commensurate with the risk assumed.

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

31 **"§ 58-1-45. Annual reports and quarterly reports of service agreement companies.**

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

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

42           (c) The Commissioner may require a service agreement company to file  
43 quarterly, within 45 days after the end of each of its fiscal quarters, an unaudited  
44 financial statement on a form prescribed by the Commissioner, verified by the oath of

1 the chief executive or financial officer, showing its financial condition on the last day of  
2 the preceding quarter.

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

7 **"§ 58-1-50. Denial, suspension, or revocation of registration of service agreement**  
8 **companies.**

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

11 (1) Is insolvent;

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

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

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

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

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

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

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

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

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

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

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

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

41 (d) The Commissioner shall, in the order suspending a service agreement  
42 company's authority to write new business, specify the period during which the  
43 suspension is to be in effect and the conditions, if any, that must be met before  
44 reinstatement of its authority to write new business. The order of suspension is subject



1 to rescission or modification by further order of the Commissioner before the expiration  
2 of the suspension period. The Commissioner shall reinstate the service agreement  
3 company's authority to write new business only if the company requests reinstatement  
4 and the Commissioner finds that the circumstances causing suspension no longer exist."

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

6 "(b) Any warranty made solely by a manufacturer, distributor, or seller of goods  
7 or services without charge, or an extended warranty offered as an option and made  
8 solely by a manufacturer, distributor, or seller of goods or services for charge, that  
9 guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or  
10 any other remedial measure, including replacement of goods or repetition of services,  
11 shall not be a contract of insurance under Articles 1 through 64 of this ~~Chapter~~ Chapter;  
12 however, service agreements on motor vehicles are governed by G.S. 58-1-25 and G.S.  
13 58-1-35 through G.S. 58-1-50. Service agreements on home appliances are governed by  
14 G.S. 58-1-30 through G.S. 58-1-50."

15 Sec. 3. There is hereby authorized for the Department of Insurance a staff  
16 position to perform the registration and related duties of the Department under the  
17 provisions of this act. The position shall be funded from available funds in the  
18 Department of Insurance Fund established under G.S. 58-6-25.

19 Sec. 4. G.S. 58-6-25(d) reads as rewritten:

20 "(d) Use of Proceeds. The Department of Insurance Fund is created in the State  
21 treasury. The proceeds of the charge levied in this section and all fees collected under  
22 G.S. 58-1-25, 58-1-30, under Articles 69 through 71 of this ~~Chapter~~ Chapter, and under  
23 Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund.  
24 The Fund shall be placed in an interest-bearing account and any interest or other income  
25 derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent  
26 only pursuant to appropriation by the General Assembly and in accordance with the line  
27 item budget enacted by the General Assembly. The Fund is subject to the provisions of  
28 the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to  
29 the General Fund. ~~Fund~~ Fund unless part of the surplus is due to fees collected under G.S. 58-  
30 1-25 or G.S. 58-1-30 that were not needed to fund a position to administer G.S. 58-1-25  
31 through G.S. 58-1-50. The part of any surplus due to this reason shall revert to the  
32 General Fund. All money credited to the Fund shall be used only to pay the expenses of  
33 the Commissioner and the Department that are incurred in regulating the insurance  
34 industry and other industries in this State and the general administrative expenses of the  
35 State incident thereto."

36 Sec. 5. G.S. 58-6-1 reads as rewritten:

37 **§ 58-6-1. Commissioner to report taxes, fees, and civil penalties and pay monthly.**

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

1                   Sec. 6. This act becomes effective January 1, 1993, and applies to service  
2 agreements written to become effective on or after that date.