

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 721

Short Title: MV Extended Warranty Act.

(Public)

Sponsors: Senator Sands.

Referred to: Insurance.

April 22, 1991

A BILL TO BE ENTITLED  
AN ACT TO ENACT THE MOTOR VEHICLE SERVICE AGREEMENTS  
REGULATION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding a new  
Article to read:

**“ARTICLE 37A.**

**“MOTOR VEHICLE SERVICES AGREEMENTS REGULATION.**

**“§ 58-37A-5. Short title.**

This title shall be known and may be cited as the ‘Motor Vehicle Service  
Agreements Regulation Act.’

**“§ 58-37A-10. Purposes.**

The purposes of this Article are to require all service agreement companies to be  
licensed and maintain deposits with the Department to be used in the event of  
insolvency; to require all service agreement companies to provide an unearned premium  
reserve or, in the alternative, purchase contractual liability insurance for all claim  
exposure; to otherwise provide protection for the purchasers of service agreements in  
this State through regulation and supervision of service agreement companies, and their  
personnel by the Department.

**“§ 58-37A-15. Scope.**

This Article applies to all service agreement companies soliciting business in this  
State, but 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.

**“PART 1. MOTOR VEHICLE SERVICE AGREEMENTS ASSOCIATIONS.**

1 **"§ 58-37A-20. Definitions.**

2 As used in this Article:

- 3 (1) 'Capital surplus' means the entire surplus of a service agreement  
4 company other than its earned surplus.
- 5 (2) 'Commissioner' means the Commissioner of Insurance of this State.
- 6 (3) 'Department' means the Department of Insurance.
- 7 (4) 'Earned surplus' means the portion of the surplus of a service  
8 agreement company that is equal to the balance of its net profits,  
9 income gains, and losses from the date of incorporation or existence,  
10 or from the latest date on which a deficit in earned surplus was  
11 eliminated by an application of its capital surplus to the extent that  
12 such distributions and transfers are made out of earned surplus.  
13 'Earned surplus' also includes any portion of surplus allocated to  
14 earned surplus in mergers, consolidations, or acquisitions of all or  
15 substantially all of the outstanding shares of the property and assets of  
16 another corporation, domestic or foreign.
- 17 (5) 'Gross premiums written' means the total amount of premiums paid by  
18 the consumer, inclusive of commissions, for those agreements which  
19 are in force.
- 20 (6) 'Insolvent' means the inability of a service agreement company to pay  
21 its debts as they become due in the usual course of its business.
- 22 (7) 'Insurer' means any property or casualty insurer duly authorized to  
23 transact such business in this State.
- 24 (8) 'Motor vehicle service agreement' or 'service agreement' means any  
25 contract or agreement indemnifying the service agreement holder  
26 against loss caused by failure of mechanical or other component part  
27 of the motor vehicle listed in the agreement arising out of the  
28 ownership, operation, and use of such motor vehicle.
- 29 (9) 'Motor vehicle service agreement company' or 'service agreement  
30 company' means any corporation, sole proprietorship, person or  
31 partnership (other than an authorized insurer) issuing motor vehicle  
32 service agreements as herein defined.
- 33 (10) 'Net assets' means the amount by which the total assets of a service  
34 agreement company exceed the total liabilities of the company. For  
35 purposes of this definition, the term 'total liabilities' does not include  
36 the capital and surplus of a service agreement company.
- 37 (11) 'Premium' means the consideration paid, or to be paid, by whatever  
38 name called, to an insurer or service agreement company for the  
39 issuance and delivery of any binder or service agreement. No  
40 'assessment' or any 'membership fee,' 'policy fee,' 'survey fee,'  
41 'inspection fee,' 'service fee,' or similar fee shall be charged.
- 42 (12) 'Salesman' means any entity, which includes a dealership, corporation,  
43 partnership, sole proprietorship, or person with which the insurer or

1 motor vehicle service agreement company in business for the purpose  
2 of selling or issuing service agreements to service agreement holders.

3 (13) a. 'Stated capital' means, at any particular time, the sum of:

4 1. The par value of all shares of the service agreement  
5 company, having a par value, that have been issued and  
6 have not been cancelled;

7 2. The amount of the consideration received by the service  
8 agreement company for all shares of the company  
9 without par value that have been issued, except such part  
10 of the consideration therefore as may have been  
11 allocated to capital surplus in a manner permitted by law;  
12 and

13 3. Such amounts, not included in subparagraphs 1. and 2.,  
14 as have been transferred to stated capital of the company,  
15 whether upon the issue of shares as a share dividend or  
16 otherwise, minus all reductions from such sum as have  
17 been effected in a manner permitted by law.

18 b. Irrespective of the manner of designation thereof by the laws  
19 under which a foreign corporation is organized, the stated  
20 capital of a foreign company shall be determined on the same  
21 basis and in the same manner as the stated capital of a domestic  
22 service agreement company, for the purpose of commuting  
23 taxes on qualification and other charges imposed by this  
24 Article.

25 (14) 'Surplus' means the excess of the net assets of a service warranty  
26 company over its stated capital.

27 **"§ 58-37A-25. Department's authority.**

28 The Department may adopt and enforce rules and regulations necessary and proper  
29 to administer this Article.

30 **"§ 58-37A-30. Transacting business without license.**

31 (a) No motor vehicle service agreement company shall enter into a service  
32 agreement or transact business in this State as set forth in G.S. 58-37A-35 of this Article  
33 unless issued a license by the Commissioner. In addition, no motor vehicle service  
34 agreement company may use officers, personnel or facilities in this State to transact  
35 business in another state unless issued a license to transact the same kind of service  
36 agreement business in this State.

37 (b) Any company transacting service agreement business in this State without a  
38 license shall be subject to a fine not less than five thousand dollars (\$5,000) or more  
39 than twenty-five thousand dollars (\$25,000).

40 (c) An insurer authorized to transact property or casualty insurance in this State  
41 may also transact motor vehicle service agreement business without additional  
42 licensing, but shall otherwise be subject to this Article.

43 **"§ 58-37A-35. Acts constituting transacting business in this State.**

44 Transacting service agreement business in this State shall include:

- 1           (1) Maintaining in this State an agency or office where any acts in  
2 furtherance of a service agreement business are transacted;
- 3           (2) Maintaining in this State files of service agreements;
- 4           (3) Receiving in this State payments of premiums for service agreements,  
5 whether directly or through a salesman of the service agreement  
6 company;
- 7           (4) Issuing or delivering service agreements in this State;
- 8           (5) Soliciting applications for service agreements through mail addressed  
9 to persons residing in this State, media or other devices where  
10 reception of the same is intended to be received in this State.
- 11          (6) Collecting in this State premiums, fees, assessments, or other  
12 considerations for such agreements;
- 13          (7) Transacting any matters prior to or subsequent to the execution of such  
14 agreements.

15 **"§ 58-37A-40. License application and issuance.**

16       (a) Every motor vehicle service agreement company shall be required to obtain  
17 from the Commissioner of Insurance an application for a license to be filed with the  
18 Department on printed forms as prescribed and furnished by the Department. The  
19 application must include:

- 20           (1) The location of the applicant's home office;
- 21           (2) The name and residence address of each director or officer of the  
22 applicant;
- 23           (3) Any pertinent information as required by the Department, including  
24 biographies of company officers;
- 25           (4) Official documents including:
  - 26           a. A copy of the applicant's articles of incorporation;
  - 27           b. A copy of the most recent financial statement of the applicant,  
28 verified under the oath of at least two of its principal officers;
  - 29           c. If licensed by another state as a service agreement entity, a  
30 statement from each state where licensed as to the state's  
31 opinion as to the financial condition, operating practices, and  
32 consumer relations of the applicant for licensing in the  
33 particular state involved.

34       (b) upon completion of the application, a license fee of five thousand dollars  
35 (\$5,000) shall be paid to the Department; one thousand dollars (\$1,000) of said fee shall  
36 be nonrefundable in the event licensing is not had.

37       (c) The Commissioner shall examine the application and may, in his discretion,  
38 make further investigation of the applicant. If the Department does not find the  
39 applicant to be a qualified company under this section, it shall refuse to issue the motor  
40 vehicle service agreement license and refund four thousand dollars (\$4,000) of the  
41 accompanying license fee.

42 **"§ 58-37A-45. Qualifications for company license.**

1        To qualify for and hold a license to issue service agreements in this State, a service  
2 agreement company shall be otherwise in compliance with this Article and shall comply  
3 with the following:

- 4            (1) The service agreement company shall be a solvent corporation formed  
5 under the laws of this State or of another state, and shall meet  
6 minimum requirements of this section.
- 7            (2) The service agreement company shall furnish the Commissioner with  
8 evidence satisfactory to him that the management of the company is  
9 competent and trustworthy and can successfully manage its affairs in  
10 compliance with the law.
- 11           (3) The service agreement company shall make the deposit required under  
12 G.S. 58-37A-80.
- 13           (4) No service agreement company shall be licensed to transact service  
14 agreement business in this State which does not maintain reserves as  
15 required by this section and which does not maintain the ratio of gross  
16 premiums written to net assets as required by this section.
- 17           (5) No service agreement company shall be licensed to transact service  
18 agreement business in this State which, during the three years  
19 immediately preceding its application for a license, has violated any  
20 law pertaining to service agreements, and which, after being informed  
21 of such violation by a State agency, has failed to correct the same;  
22 except that, if all other requirements are met, the Department may  
23 nevertheless issue a license to such company upon the filing by the  
24 company of a sworn statement relating to all such service agreement  
25 business written in violation of law, and upon payment to the  
26 Department of a sum of money as an additional licensing fee  
27 equivalent to all the premium taxes and other State taxes and fees that  
28 would have been payable by the company if such business had been  
29 lawfully written by a licensed company under the laws of this State.  
30 This fee shall be collected by the Commissioner and then paid into the  
31 State treasury. The Department may also request that, prior to  
32 licensing, the company be required to deposit securities with the  
33 Department.
- 34           (6) In order to obtain or renew a license, a company shall have and  
35 maintain minimum net assets of five hundred thousand dollars  
36 (\$500,000). In computing the net asset requirement, receivables from  
37 officers, directors, employees, salesmen, and affiliated companies shall  
38 be deducted from the net assets of the company.
- 39           (7) All assets used to maintain the minimum net asset requirement shall be  
40 maintained in the United States.
- 41           (8) A service agreement company shall establish an unearned premium  
42 reserve, consisting of unencumbered assets, equal to a minimum of  
43 seventy percent (70%) of the gross premiums written on a reverse  
44 effective yield basis, the percentage of which will be determined and

1           applied uniformly by the Commissioner. Such assets shall be held in  
2           the form of securities for investment under G.S. 58-5-1.

3           (9) A company shall not be required to set up an unearned premium  
4           reserve if it has purchased contractual liability insurance for one  
5           hundred percent (100%) of its claim exposure. Such contractual  
6           liability insurance shall be obtained from an insurer that holds a  
7           certificate of authority to do business within the State and the insurer  
8           will be liable for all claims made to the service agreement. The  
9           contractual liability policy shall contain the following provisions:

10           a. In the event that the service agreement company is unable to  
11           fulfill its obligation under its agreements issued in this State for  
12           any reason, including insolvency, bankruptcy, or dissolution,  
13           the contractual liability insurer will pay losses and unearned  
14           premium under such plans directly to persons making claims  
15           under such agreements.

16           b. The insurer issuing the policy shall assume full responsibility  
17           for the administration of claims in the event of the inability of  
18           the service agreement company to do so.

19           (10) A service agreement company that purchases contractual liability  
20           insurance on the service agreements that it issues shall provide the  
21           Department with the claims statistics required to be filed by service  
22           agreement companies not purchasing such insurance.

23           (11) In addition to information called for and furnished with its annual  
24           statement, a company shall furnish to the Department, within 30 days  
25           or later with the permission of the Department, such information as to  
26           its transactions or affairs as the Department may from time to time  
27           request in writing. All such information furnished pursuant to the  
28           request of the Department shall be verified by the oath of two  
29           executive officers of the service agreement company, unless the  
30           Department requests otherwise.

31           (12) If a distinctive name and trademark shall be used by the service  
32           agreement company, the same shall be approved by the Department,  
33           and if said name and trademark is similar to any others presently in  
34           use, the Department shall have the right not to approve the use of said  
35           name or trademark until changes can be had so as not to confuse the  
36           public as to identities of companies.

37           **"§ 58-37A-50. License expiration and renewal.**

38           Each motor vehicle service company license issued by the Commissioner of  
39           Insurance under this Article shall expire on September 1 following the date of issuance  
40           of the motor vehicle service agreement license to the service agreement company and  
41           only if the service agreement company is in full compliance with this Article. A license  
42           renewal fee of two hundred dollars (\$200.00) is required upon issuance of the renewal  
43           license.

1 **"§ 58-37A-55. Discretionary grounds for suspension, revocation, or nonrenewal of**  
2 **license.**

3 (a) The Commissioner may suspend, revoke, or refuse to renew the license of a  
4 service agreement company if he finds the service agreement company:

5 (1) Has intentionally violated any provisions of this Article or any lawful  
6 order of the Department.

7 (2) Has allowed the ratio of gross premiums written to net assets exceed  
8 ten to one and has less than two million dollars (\$2,000,000) in net  
9 assets;

10 (3) Is involved in a delinquency proceeding in any state; and

11 (4) Intentionally has violated the statutes of any state regarding service  
12 contracts.

13 (b) An intentional violation of this statute by an insurer issuing motor vehicle  
14 service agreements is grounds for suspension or revocation of any or all license the  
15 insured might have been given by the Commissioner of Insurance.

16 **"§ 58-37A-60. Compulsory grounds for suspension, revocation, or nonrenewal of**  
17 **license.**

18 (a) The Commissioner shall suspend, revoke, or refuse to renew the license of a  
19 service agreement company if it finds the company:

20 (1) Has defaulted on valid claims or is on the verge of bankruptcy;

21 (2) Has refused cooperation with the Department's request for information  
22 on claims statistics, accounts, personnel, or any other pertinent  
23 information;

24 (3) Has refused to pay final judgment, in this State or any other state,  
25 rendered against it within 60 days after the judgment became final;

26 (4) Has refused to pay valid claims under the service agreement or has  
27 paid less than the amount due on valid claims with such frequency as  
28 to be detrimental to the people in this State;

29 (5) Is affiliated with an unlicensed motor vehicle service agreement  
30 company transacting business in this State under G.S. 58-37A-5.

31 (b) An intentional violation of this statute by an insurer is grounds for suspension  
32 or revocation of any or all license issued the insurer by the Commissioner of Insurance.

33 **"§ 58-37A-65. Duration of suspension.**

34 (a) The suspension of a service agreement company's license shall be for a period  
35 in the discretion of the Commissioner up to a maximum of two years. The  
36 Commissioner shall have the option to shorten such suspension if good cause is  
37 demonstrated by the service agreement company.

38 (b) In the discretion of the Commissioner, the suspended service agreement  
39 company may be required to file all statements and pay all fees, licenses, and taxes as  
40 required of a fully licensed service agreement company.

41 (c) Upon expiration of the suspension period, the service agreement company  
42 will be notified by the Commissioner and must demonstrate to him full compliance with  
43 this Article. License fees may be waived if paid under subsection (b) of this section. If  
44 full compliance is not demonstrated, the Commissioner shall either continue the

1 suspension period until such compliance is demonstrated, or revoke the service  
2 agreement company's license.

3 (d) Upon reinstatement of a service agreement company's license, the  
4 Commissioner shall notify the company's salesmen of the reinstatement.

5 **"§ 58-37A-70. Penalty for fraudulent application.**

6 It shall be unlawful for any individual service agreement company to knowingly  
7 make a fraudulent statement or representation in an application for registration of  
8 license under this Article. A violation of this statute shall be a misdemeanor and  
9 violation of this statute shall be punishable as a general misdemeanor subject to a  
10 minimum fine of one thousand dollars (\$1,000) for all violations.

11 **"§ 58-37A-75. Transacting unauthorized business.**

12 Nothing in this act shall be deemed to authorize any motor vehicle service  
13 agreement company to transact any business other than that of a motor vehicle service  
14 agreement as herein defined; or otherwise to engage in the business of insurance unless  
15 such company is authorized therefore as an insurer under a certificate of authority  
16 issued by the Commissioner under the Insurance Code.

17 **"§ 58-37A-80. Deposits.**

18 (a) (1) To assure the faithful performance of its obligations to its  
19 members or subscribers, each motor vehicle service agreement  
20 company shall, prior to issuance of its license by the Commissioner,  
21 deposit with him securities of the type eligible for deposit by  
22 insurers under G.S. 58-5-95 and having at all times a market value of  
23 not less than one hundred thousand dollars (\$100,000).

24 (2) In addition to the deposits otherwise required pursuant to this section,  
25 the Commissioner may, after notice and hearing, require any service  
26 agreement company for good cause to deposit and maintain in trust for  
27 the protection of the contract holders and creditors of the service  
28 agreement company, for such time as the Department deems  
29 necessary, securities eligible for such deposit under G.S. 58-5-85,  
30 having a value of not less than the amount which the Department  
31 determines is necessary, which additional amount shall be neither less  
32 than one hundred thousand dollars (\$100,000) nor more than one  
33 million dollars (\$1,000,000), depending on the obligations of the  
34 service agreement company in this State.

35 (3) The State shall be responsible for the safekeeping of all securities  
36 deposited with the Commissioner under this act. Such securities shall  
37 not, on account of being in this State, be subject to taxation, but shall  
38 be held exclusively and solely to guarantee the faithful performance by  
39 the service agreement company of its obligations to its members or  
40 subscribers.

41 (4) The depositing service agreement company shall, during its solvency,  
42 have the right to exchange or substitute other securities of like quality  
43 and value for securities so on deposit, to receive the interest and other



1 income accruing on such securities, and to inspect the deposit at all  
2 reasonable times.

3 (5) Such deposit shall be maintained unimpaired as long as the service  
4 agreement company continues in business in this State. Whenever the  
5 service agreement company ceases to do business in this State and  
6 furnishes to the Department proof satisfactory to it that it has  
7 discharged or otherwise adequately provided for all its obligations to  
8 its members or subscribers in this State, the Commissioner shall  
9 release the deposited securities to the parties entitled thereto, on  
10 presentation of the receipts of the Department for such securities.

11 (b) The Commissioner may allow the registrant a reasonable period, not to  
12 exceed 30 days, within which to pay to the Commissioner the amount of the penalty so  
13 imposed. If the registrant fails to pay the penalty in its entirety to the Commissioner  
14 within the period so allowed, the registration of the registrant shall stand suspended,  
15 revoked, or unrenewed, as the case may be, upon expiration of such period.

16 **"§ 58-37A-85. Sale of deposit for payment of liabilities.**

17 Any service agreement company licensed in this State and refusing to pay a claim of  
18 a North Carolina resident, after such claim has been reduced to a final judgment and no  
19 appeals are outstanding, shall be subject to the sale of their deposits. The parties due the  
20 claim shall ask the Commissioner to sell such deposit of securities as needed to pay the  
21 claim plus all expenses involved in settling such claim. The procedure for this sale is as  
22 follows:

23 (1) The claimant must inform the service agreement company or its North  
24 Carolina process forwarding agent in writing via certified mail 20 days  
25 in advance of his intentions to petition the Commissioner for sale of  
26 securities.

27 (2) After receiving the petition from the claimant, the Commissioner shall  
28 give notice by publication in Raleigh at least 30 days before the sale.  
29 Such notice shall include, at a minimum, the following information:

30 a. Securities to be sold,

31 b. Service agreement company having the deposit,

32 c. The law under which these securities are being sold.

33 The Commissioner will notify the service agreement company via certified mail,  
34 return receipt requested, after the deposit has been sold, to replace the deposit in an  
35 amount deemed to be adequate and reasonable by the Commissioner. The right of the  
36 Commissioner to sell such amount of the securities on deposit with him as is necessary  
37 to pay an outstanding liability of a company as provided by G.S. 58-5-69 shall extend to  
38 all deposits made under all rules of the Department of Insurance.

39 **"§ 58-37A-90. Filing and approval of service agreement forms.**

40 (a) All motor vehicle service agreement companies must submit to the  
41 Commissioner for approval all service agreement forms and related forms before  
42 issuance to the public. The Department will review and enter judgment on such forms  
43 within a 30-day period. After notification to the service agreement company, this  
44 period may be extended 15 days. At the expiration of any such period, in the absence of

1 prior written approval or disapproval, the submitted forms will be deemed automatically  
2 approved.

3 (b) This section does not apply to cost benefits in a service agreement offered at  
4 the time of sale at no cost or to benefits in an approved form increased without an  
5 accompanying increase in the rate filed with the Commissioner and Department of  
6 Insurance.

7 (c) Prior to the sale of any agreement, written notice shall be given to the  
8 customer on a form approved by the Commissioner that purchase of the service  
9 agreement is not required to purchase or obtain financing for a motor vehicle.

10 **"§ 58-37A-95. Disapproval of forms and required provisions.**

11 (a) The Commissioner will have the right to disapprove any form or withdraw  
12 previous approval if the form:

13 (1) Is in any respect in violation of or does not comply with this Chapter.

14 (2) Contains or incorporates by reference when such incorporation is  
15 otherwise permissible, any inconsistent, ambiguous, or misleading  
16 clauses, or exceptions and conditions which deceptively affect the risk  
17 purported to be assumed in the general coverage of the contract.

18 (3) Has any title, heading, or other indication of its provisions which is  
19 misleading.

20 (4) Is printed or otherwise reproduced in such manner as to render any  
21 material provision of the form substantially illegible.

22 (b) In addition, as a requirement for approval by the Commissioner, all  
23 agreements shall:

24 (1) Not contain provisions that allow a service agreement company to  
25 cancel the contract in its discretion other than for reasons of  
26 nonpayment of premiums or for a direct violation of the agreement by  
27 the consumer where it is stated in the contract that violation of the  
28 same would subject the agreement to cancellation;

29 (2) Provide for right of assignability by the consumer to a subsequent  
30 purchaser prior to expiration of coverage; and

31 (3) A cancellation provision allowing the consumer to cancel within 60  
32 days of purchase and receive a full refund less any claims paid on the  
33 agreement and a reasonable administrative fee. This administrative fee  
34 must be stated in the agreement.

35 **"§ 58-37A-100. Sales tax.**

36 Service agreements will be subject to sales tax at the current rate at the time the  
37 agreement is purchased. Repairs under such agreements will not be subject to sales tax.  
38 Contractual liability insurance purchased to cover such agreements will also be exempt  
39 from State premium tax. Sales tax is to be collected and remitted to the State by the  
40 service agreement company.

41 **"§ 58-37A-105. Annual statement.**

42 (a) Each motor vehicle service agreement company and each insurer issuing  
43 service warranties shall file annually with the Commissioner, on or before March 1,

1 showing all service agreement premiums or assessments received from agreement  
2 holders in this State during the preceding calendar year.

3 (b) For each day a service agreement company neglects to file its annual  
4 statement, a fine of one hundred dollars (\$100.00) shall be levied by the Commissioner.  
5 In addition, all authority to do business in this State shall cease until such statement is  
6 filed. All sums collected under this section shall be given to the Commissioner for  
7 deposit in the State treasury.

8 (c) In addition to the annual report, a service agreement company shall transmit  
9 the following information to the Commissioner with respect to motor vehicle service  
10 agreements the holders of which are citizens of this State.

11 (1) Net assets.

12 (2) Premium written.

13 (3) Premiums earned.

14 (4) Unearned Premium Reserve.

15 (5) Percent of claim exposure for which contractual liability insurance has  
16 been obtained.

17 (6) Incurred claims, not including claims incurred but not reported.

18 (7) Claims incurred but not reported.

19 (8) Loss reserve for all claims except those incurred but not reported.

20 (9) Reserves for claims incurred but not reported.

21 (10) Number and dollar amount of claims paid.

22 (11) Itemized acquisitions costs.

23 (12) Net gain or loss from operations before income taxes.

24 (13) Net investment income from all reserves.

25 (14) Net investment income from surplus.

26 (15) Ratio of claims paid to premium earned.

27 (16) Ratio of all claims incurred to premium earned plus investment income  
28 from all reserves.

29 (17) Number of claims resisted.

30 (d) The Commissioner shall provide a summary of the information provided  
31 pursuant to subsection (c) in his annual report.

32 **"§ 58-37A-110. Required office records and examinations.**

33 (a) Each licensed motor vehicle service agreement company, as a minimum  
34 requirement for permanent office records, shall maintain:

35 (1) A complete set of accounting records, including, but not limited to, a  
36 general ledger, cash receipts and disbursements journals, accounts  
37 receivable registers, and accounts payable registers.

38 (2) Memorandum journals showing the service agreement forms issued to  
39 the company salesmen and recording the delivery of the forms to the  
40 dealer.

41 (3) Memorandum journals showing the service agreement forms received  
42 by the motor vehicle dealers and indicating the disposition of the forms  
43 by the dealer.

1           (4) A detailed service agreement register, in numerical order by service  
2 agreement number, of agreements in force, which register shall include  
3 the following: service agreement number, date of issue, issuing dealer,  
4 name of agreement holder, description of motor vehicle, service  
5 agreement period and mileage, gross premium, commission to  
6 salesmen, commission to dealer, and net premium.

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

11       (b) The Commissioner or his deputies shall have the right to periodically  
12 examine all motor vehicle service agreement companies pursuant to the provisions of  
13 G.S. 58-2-130, 58-2-135, and 58-2-140 for insurers.

14 **"§ 58-37A-115. Fronting company prohibited.**

15 No authorized insurer or licensed motor vehicle service agreement company shall  
16 act as a fronting company for any unauthorized insurer or unlicensed motor vehicle  
17 service agreement company. A fronting company is an authorized insurer or licensed  
18 motor vehicle service agreement company which by reinsurance or otherwise generally  
19 transfers to one or more unauthorized insurers or unlicensed motor vehicle service  
20 agreement companies a substantial portion of the risk of loss under service agreements  
21 written by it in this State.

22 Any company guilty of such activity shall be subject to immediate suspension or  
23 revocation of all insurance and motor vehicle service agreement company licenses.

24 **"§ 58-37A-120. Merger or acquisition of another company.**

25       (a) No company may merge, consolidate, or acquire more than five percent (5%)  
26 of another service agreement company unless it has first fulfilled the requirements of  
27 G.S. 58-7-150 for insurers.

28       (b) When a request for merger, consolidation, or acquisition is made, the  
29 Commissioner maintains the right to request any relevant information required to enter  
30 judgment on the merger including biographies of officers of all companies involved.

31 **"§ 58-37A-125. Delinquency proceedings.**

32 The Commissioner is hereby vested with all of the powers and duties concerning  
33 rehabilitation and liquidation of a motor vehicle service agreement company as exist  
34 under G.S. 58-16-50 for insurers.

35 **"§ 58-37A-130. Appointment of Commissioner as agent for service of process.**

36       (a) Each service agreement company applying for authority to transact business  
37 in this state, whether domestic or foreign, shall file with the Department its appointment  
38 to the Commissioner and his successors in his office, on a form as furnished by the  
39 Commissioner, as its attorney to receive service of all legal process issued against it in  
40 any civil action or proceeding in this State and agreeing that process so served shall be  
41 valid and binding upon the service agreement company. The appointment shall be  
42 irrevocable, shall bind the service agreement company and successor in interest as to the  
43 assets or liabilities of the service agreement company, and shall remain in effect as long

1 as there is outstanding in this State any obligation or liability of the service agreement  
2 company resulting from its service agreement transactions therein.

3 (b) At the time of such appointment of the Insurance Commissioner as its process  
4 agent, the service agreement company shall file with the Department a designation of  
5 the name and address of the process forwarding agent to whom process against it served  
6 upon the Insurance Commissioner is to be forwarded. The service agreement company  
7 may change the designation at any time by a new filing.

8 **"§ 58-37A-135. Service of process.**

9 (a) Service of process upon the Insurance Commissioner as process agent of the  
10 service agreement company shall be made by serving copies in triplicate of the process  
11 upon the Insurance Commissioner or upon his assistant, deputy, or other person in  
12 charge of his office. When receiving such service, the Insurance Commissioner shall  
13 file one copy with the Department, return one copy of the process by registered or  
14 certified mail, return receipt requested, to the person last designated by the service  
15 agreement as the process forwarding agent, and return one copy to the filing party.

16 (b) Process served upon the Insurance Commissioner shall for all purposes  
17 constitute valid and binding service thereof upon the service agreement company.

18 **"§ 58-37A-140. Registration of salesmen.**

19 (a) Each motor vehicle service agreement company or insurer offering service  
20 agreements shall register on or before October 1 of each odd-numbered year on forms  
21 provided by the Commissioner, the name and business of each salesman. The service  
22 agreement company or insurer shall also pay a fee of forty dollars (\$40.00) annually for  
23 each salesman registered separately. Within 30 days of termination of a salesman, the  
24 service agreement company or insurer shall notify the Commissioner of the termination.  
25 Any salesman employed subsequent to the October 1 filing date shall be registered  
26 separately. A registered salesman shall be directly responsible and accountable for all  
27 acts of his employees or other representatives.

28 (b) When a salesman is a corporation licensed as a motor vehicle service  
29 agreement company, employees of the corporation are not required to be registered or  
30 licensed individually.

31 (c) Any person who sells service agreements without proper registration shall be  
32 guilty of a misdemeanor and subject to a fine of at least one hundred dollars (\$100.00)  
33 and not to exceed five hundred dollars (\$500.00). In addition, the person shall be  
34 denied registration as a salesman for service agreements for a period of no less than two  
35 years and no more than five years in the discretion of the Commissioner.

36 **"§ 58-37A-145. Fiduciary responsibility of salesman.**

37 (a) All funds belonging to insurers, motor vehicle service agreement companies,  
38 or others received by a salesman in transactions under his registration are trust funds so  
39 received by such salesman in a fiduciary capacity; and the salesman, in the applicable  
40 regular course of business, shall account for and pay such funds to the insurer,  
41 association, agreement holder, or other person entitled thereto.

42 (b) Any salesman who, not being entitled thereto, diverts or appropriates such  
43 funds or any portion thereof, other than funds representing his commission if authorized

1 by his salesman agreement, thereof to his own use, upon conviction is guilty of  
2 embezzlement punishable as provided by North Carolina law.

3 **"§ 58-37A-150. Compulsory grounds for suspension, revocation, or nonrenewal or**  
4 **registration.**

5 The Commissioner shall deny, suspend, revoke, or refuse to renew a salesman's  
6 registration if he finds the salesman:

- 7 (1) Made a material misrepresentation or fraud in registration;
- 8 (2) Willfully used the registration to circumvent the requirements or  
9 prohibitions of this Article;
- 10 (3) Willfully misrepresented a service agreement or deceived a service  
11 agreement buyer in person, through advertising, or through other  
12 information;
- 13 (4) Intentionally misrepresented to an agreement holder the terms and  
14 coverage of a service agreement as a means of effecting a lesser  
15 settlement when adjusting claims;
- 16 (5) Demonstrated a lack of trustworthiness to engage in business;
- 17 (6) Demonstrated a lack of adequate knowledge and technical skill to  
18 engage in the sale of a service agreement;
- 19 (7) Used fraudulent or dishonest practice when conducting business under  
20 the registration;
- 21 (8) Misappropriated, converted, or unlawfully withheld monies belonging  
22 to others when conducting business under the registration;
- 23 (9) Willfully failed to comply with or willfully violated any rule or order  
24 of the Commissioner or this Article;
- 25 (10) Rebated, or attempted to rebate, or unlawfully divide, or offered to  
26 divide, his commission with another.

27 **"§ 58-37A-155. Discretionary grounds for suspension, revocation or nonrenewal of**  
28 **registration.**

29 The Commissioner may, in his discretion, deny, suspend, revoke, or refuse to renew  
30 a salesman's registration only if there exist no compulsory grounds for such action and  
31 the salesman:

- 32 (1) Could have been refused registration for any cause had the cause been  
33 known to the Commissioner or existed when registration was granted.
- 34 (2) Violated any provision of this Article or of any other law applicable to  
35 the business of service agreement in the course of dealings under the  
36 registration.
- 37 (3) Violated any lawful order or rule or regulation of the Department.
- 38 (4) Failed or refused upon demand, to pay over to any company or insurer  
39 he represents or has represented any money coming into his hands  
40 belonging to the service agreement company or insurer.
- 41 (5) In the conduct of business under the registration, engaged in unfair  
42 methods of competition or in unfair or deceptive acts or practices, as  
43 such methods, acts, or practices are or may be defined under G.S. 58-  
44 63-1 and G.S. 58-7-50 through G.S. 58-7-70 or has otherwise shown

1                    himself to be a source of injury or loss to the public or detrimental to  
2                    the public interest.

3            (6)        Has been convicted of or pleaded guilty to or **nolo contendere** to a  
4                    felony or a misdemeanor involving moral turpitude in this or any other  
5                    state.

6        **"§ 58-37A-160. Procedure for suspension, revocation, or nonrenewal of salesman's**  
7                    **registration.**

8            (a)        If the Commissioner has reason to believe there may exist any one or more of  
9                    the grounds for action, he may suspend, revoke or refuse to renew the registration of  
10                   any salesman.

11           (b)        Any salesman convicted by a court of a violation of this Article shall have his  
12                   registration immediately revoked for a period of time in the discretion of the  
13                   Commissioner of Insurance.

14           (c)        Any licensed insurance agent found violating the provisions of this Article  
15                   may have his insurance license revoked.

16           (d)        In addition to any suspension, revocation, refusal to renew, any warranty  
17                   salesman acting in violation of this Article may be subject to a fine up to five thousand  
18                   dollars (\$5,000).

19           (e)        Any violation of this article by an individual salesman occurring without the  
20                   actual knowledge of the motor vehicle service agreement company shall not be grounds  
21                   for the suspension, revocation, or nonrenewal of the motor vehicle service agreement  
22                   company's license.

23        **"§ 58-37A-165. Duration of suspension.**

24           (a)        The suspension of a salesman's registration shall be for a period in the  
25                   discretion of the Commissioner up to a maximum of five years. The Commissioner  
26                   shall have the option to shorten such suspension if good cause is demonstrated by the  
27                   salesman.

28           (b)        Upon expiration of the suspension period, the salesman may request the  
29                   Commissioner to allow the salesman to be registered. The Commissioner, upon the  
30                   finding that the salesman has fully complied with any and all requirements of the  
31                   registration and suspension and that the salesman meets all other requirements of  
32                   registration other than the violation which was the cause of the revocation or  
33                   suspension, shall allow the salesman to apply as an initial applicant to be registered for  
34                   the Department and to be issued a license therefrom.

35           (c)        During any period of suspension or revocation of the registration, the  
36                   salesman may not engage in or attempt to engage in any transaction or business for  
37                   which a registration is required under this Part.

38        **"§ 58-37A-170. Fine in lieu of suspension, revocation, or refusal to renew.**

39           (a)        If the Commissioner finds that one or more grounds exist for the suspension,  
40                   revocation, or refusal to renew or continue any registration issued under this act, the  
41                   Department may, in his discretion, in lieu of such suspension, revocation, or refusal, on  
42                   a first offense and except where such suspension, revocation, or refusal is mandatory,  
43                   impose upon the registrant an administrative penalty in an amount up to one thousand  
44                   dollars (\$1,000), or if the Commissioner has found willful misconduct or willful

1 violation on the part of the registrant, an administrative fine of five thousand dollars  
2 (\$5,000). The administrative penalty may, in the Commissioner's discretion, be  
3 augmented in amount by an amount equal to any commissions received by or accruing  
4 to the credit of the registrant in connection with any transaction as to which the grounds  
5 for suspension, revocation, or refusal are related.

6 **"§ 58-37A-175. Penalty for selling agreements of noncomplying companies.**

7 Any individual or entity who knowingly offers for sale or sells a motor vehicle  
8 service agreement for a service agreement company which has failed to comply with the  
9 provisions of this Article shall be guilty of a misdemeanor and shall be punished as for a  
10 general misdemeanor. Reliance by an individual entity upon information given to that  
11 individual entity by the North Carolina Department of Insurance that a motor vehicle  
12 service agreement of a service agreement company is in compliance with the provisions  
13 of this Article shall be an absolute defense for any prosecution hereunder. Any person  
14 may request from the Department of Insurance a written statement as to the compliance  
15 or noncompliance of a company regarding motor vehicle service agreements in the State  
16 of North Carolina upon written request to the Commissioner.

17 **"§ 58-37A-180. Assurance of voluntary compliance.**

18 The Commissioner may terminate an investigation or an action upon acceptance of  
19 the written assurance of a service agreement company or salesman of voluntary  
20 compliance with this Part. An acceptance of assurance may be conditioned on a  
21 commitment to reimburse agreement purchasers or to take other appropriate corrective  
22 action. An assurance is not evidence of a prior violation of this Part. However, unless  
23 an assurance has been rescinded by agreement of the parties or voided by a court for  
24 good cause, the subsequent failure to comply with the terms of an assurance is **prima**  
25 **facie** evidence of a violation of this Part. No such assurance shall act as a limitation  
26 upon any action or remedy available to a person aggrieved by a violation of this Part.

27 **"§ 58-37A-185. Civil action.**

28 (a) Any person damaged by a violation of the provisions of this Part may bring a  
29 civil action against a person or company who violated such provisions, in the courts of  
30 the county in which the alleged violator resides or their principal place of business or in  
31 the county wherein the alleged violation occurred. Upon an adverse adjudication, the  
32 defendant shall be liable for actual damages or one thousand dollars (\$1,000) whichever  
33 is greater together with court costs and reasonable attorneys' fees incurred by the  
34 plaintiff.

35 (b) No such court costs or attorneys' fees or compensation shall be allowed if  
36 such suit was commenced prior to the parties' complying with any and all arbitration  
37 provisions existing in the service agreement or policy.

38 (c) When so awarded, court costs and compensation or fees of the attorneys shall  
39 be included in the judgment or decree rendered in the case.

40 (d) If it appears to the court that the suit brought by the plaintiff is ill-founded or  
41 brought for purposes of harassment, the plaintiff shall be liable for court costs and  
42 reasonable attorneys' fees incurred by the defendant.

43 **"§ 58-37A-190. Criminal proceedings.**



1 Whenever it appears to the Commissioner that any motor vehicle service agreement  
2 company, employee, officer, director, or salesman has committed a willful violation of  
3 this Article, the Commissioner may commence criminal proceedings against such  
4 service agreement company or individual.

5 **"§ 58-37A-195. Unfair trade practices.**

6 All service agreement companies and individuals selling service agreements shall be  
7 subject to the provisions, orders, and penalties of the Unfair Trade Practices Act, Article  
8 63 of this Chapter, and G.S. 75-1 through G.S. 75-5.

9 **"§ 58-37A-200. Assurance of voluntary compliance.**

10 The Commissioner may terminate an investigation or an action upon acceptance of  
11 the written assurance of a service agreement company of voluntary compliance with the  
12 Article. An acceptance of assurance may be conditioned on a commitment to reimburse  
13 agreement purchasers or to take other appropriate corrective action. An assurance is not  
14 evidence of a prior violation of this Part. However, unless an assurance has been  
15 rescinded by agreement of the parties or voided by a court for good cause, the  
16 subsequent failure to comply with the terms of an assurance is **prima facie** evidence of  
17 a violation of this Part. No such assurance shall act as a limitation upon any action or  
18 remedy available to a person aggrieved by a violation of this Part.

19 **"§ 58-37A-205. Civil action.**

20 (a) Any person damaged by a violation of the provisions of this Part may bring a  
21 civil action against a person or company who violated such provisions, in the courts of  
22 the county in which the alleged violator resides or their principal place of business or in  
23 the county wherein the alleged violation occurred. Upon an adverse adjudication, the  
24 defendant shall be liable for actual damages or one thousand dollars (\$1,000) whichever  
25 is greater together with court costs and reasonable attorneys' fees incurred by the  
26 plaintiff.

27 (b) No such court costs or attorneys' fees or damages compensation shall be  
28 allowed if such suit was commenced prior to the parties' complying with any and all  
29 arbitration provisions existing in the service agreement or policy.

30 (c) When so awarded, court costs and compensation or fees of the attorneys shall  
31 be included in the judgment or decree rendered in the case.

32 (d) If it appears to the court that the suit brought by the plaintiff is ill-founded or  
33 brought for purposes of harassment, the plaintiff shall be liable for court costs and  
34 reasonable attorneys' fees incurred by the defendant.

35 **"§ 58-37A-210. Criminal proceedings.**

36 Whenever it appears to the Commissioner that any motor vehicle service agreement  
37 company has committed a willful violation of this Article, the Commissioner may  
38 commence criminal proceedings against such service agreement company.

39 **"§ 58-37A-215. Unfair trade practices.**

40 All service agreement companies selling service agreements shall be subject to the  
41 provisions, orders, and penalties of the Unfair Trade Practices Act, G.S. 58-63-1  
42 through G.S. 58-63-60 and G.S. 75-1 through G.S. 75-5."

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

1        "(b) Any warranty made solely by a manufacturer, distributor, or seller of goods  
2 or services without charge, or an extended warranty offered as an option and made  
3 solely by a manufacturer, distributor, or seller of goods or services for charge, that  
4 guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or  
5 any other remedial measure, including replacements of goods or repetition of services,  
6 excluding motor vehicles, shall not be a contract of insurance under Articles 1 through  
7 64 of this Chapter. Service agreements or extended warranties sold, given without  
8 charge, or offered as an option that guarantees indemnity for defective parts, mechanical  
9 or electrical breakdowns, labor, or other remedial measures regarding motor vehicles  
10 shall be governed by the Motor Vehicle Service Agreements Regulation Act as  
11 contained in this Chapter."

12                Sec. 3. This act is effective upon ratification.