

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10518-NHa-151

Short Title: Home Warranty Regulatory Reform.

(Public)

Sponsors: Representative Logan.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PLACE CONSUMER PROTECTIONS AROUND HOME SERVICE
3 AGREEMENTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 66-371 reads as rewritten:

6 "~~§ 66-371. Home appliance-service agreement companies-agreements.~~

7 (a) ~~This section—Article~~ applies to all home ~~appliance—service agreement companies~~
8 ~~soliciting business agreements in use in this State, but it State.~~ For the purposes of this section, a
9 "home service agreement" is a service agreement for a set list of appliances and systems in a
10 residence, regardless of whether the agreement is titled as a contract, home warranty, extended
11 home warranty, home appliance warranty, or other.

12 (a1) In addition to the requirements of G.S. 66-369.2, home service agreements shall
13 contain the following:

14 (1) A list of covered items that is referenced each time the agreement is discussing
15 coverage.

16 (2) A detailed description of the types of loss or damage the agreement covers.

17 (3) A detailed description of what is excluded from the agreement, in a prominent
18 location in the agreement and in bold face type.

19 (4) A statement of the purchaser's rights under G.S. 66-369.2(d)(2), in immediate
20 proximity to the space reserved for the signature of the purchaser of the
21 agreement, in bold face type of a minimum size of 10 points, in substantially
22 the following form:

23 "You, the purchaser of this service agreement, may cancel this contract at
24 anytime after purchase and receive a pro rata refund less any claims paid on
25 the agreement and a reasonable administrative fee, not to exceed ten percent
26 (10%) of the amount of the pro rata refund."

27 (a2) Home service agreement companies shall do all of the following:

28 (1) At the time of signing the agreement, provide either an electronic or paper
29 copy of the agreement to the purchasing consumer. The company shall also
30 have versions of the agreement available in formats that are accessible to
31 people with disabilities.

32 (2) Maintain a list of company-approved vendors available to perform services
33 under the agreement and allow customers the option to use an approved
34 vendor. The vendor list shall be updated regularly to remove vendors that are
35 unresponsive or have declined to work with the company on a routine basis.



(3) Ensure that the repair, replacement, or maintenance requested under the agreement is completed or scheduled for completion within five business days of a consumer's claim for any covered item that is necessary for heating, air-conditioning, or the functioning of a bathroom if there is only one bathroom in the residence. If the company cannot have the claim completed or scheduled for completion within five days, the company shall pay to have an out-of-network vendor complete the service.

(a3) This Article does not apply to any of the following:

(1) ~~performance~~ Performance guarantees or warranties made by manufacturers in connection with the sale of new home appliances.

(2) ~~This section does not apply to any~~ Any home appliance dealer licensed to do business in this State (i) whose primary business is the retail sale and service of home appliances; (ii) ~~who~~ that makes and administers its own service agreements without association with any other entity; and (iii) whose service agreements cover primarily appliances sold by the dealer to its retail customers, ~~provided that customers so long as~~ the dealer complies with G.S. 66-372-G.S. 66-369.2 and G.S. 66-373-G.S. 66-369.3.

(3) ~~This section does not apply to any~~ A warranty made by a builder or seller of real property relating to home appliances that are sold along with real property.

(4) ~~This section does not apply to any~~ An issuer of credit cards or charge cards that markets home appliance service agreements as an ancillary part of its business; ~~provided, however, that such business so long as the~~ issuer maintains insurance in accordance with G.S. 66-373-G.S. 66-369.3.

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

(1) ~~"Home appliance" means a clothes washing machine or dryer; kitchen appliance; vacuum cleaner; sewing machine; home audio or video electronic equipment; home electronic data processing equipment; home exercise and fitness equipment; home health care equipment; power tools; heater or air conditioner, other than a permanently installed unit using internal ductwork; or other personal consumer goods.~~

(2) ~~"Home appliance service agreement" means any contract or agreement indemnifying the home appliance service agreement holder against loss caused by damage or failure, arising out of a power surge or the ownership, operation, use, or accidental damage from handling of a home appliance, of a mechanical or other component part of the home appliance that is listed in the agreement. The term does not include a contract or agreement that reimburses the home appliance service agreement holder for damage occurring during delivery or installation of a home appliance.~~

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

...."

SECTION 2.(a) Subsection (b) of G.S. 66-372 is recodified as G.S. 66-369.1 (to be entitled "Definitions") and reads as rewritten:

"§ 66-369.1. Definitions.

The following definitions apply in this section ~~and in G.S. 66-373:~~ Article:

(1) Consumer. – The purchaser or beneficiary of a service agreement.

(2) Covered items. – The list of items in a service agreement that are subject to the agreement, with each item identified in detail by brand, location, or other feature of the consumer's specific item.

~~(1)(3)~~ Service agreement. – ~~Includes motor vehicle service agreements and home appliance agreements.~~ An agreement between a consumer and a service agreement company in which a consumer agrees to pay a set fee or premium, and may agree to pay a deductible, in exchange for a service provider promising to repair, replace, or maintain a set list of covered items. This term includes agreements where the service provider facilitates but does not actually perform the repair, replacement, or maintenance of a covered item and agreements where a service provider reimburses the consumer for obtaining their own repair, replacement, or maintenance.

~~(2)(4)~~ Service agreement company. – ~~Includes motor vehicle service agreement companies and home appliance service agreement companies.~~ A person, other than an insurer licensed to write liability insurance under Article 7 or 16 of Chapter 58 of the General Statutes, that issues service agreements."

SECTION 2.(b) G.S. 66-372(e)(2) is recodified as G.S. 66-370(a2). Subsections (a), (c), (d), the remainder of (e), (f), (h), (i), (j), and (l) of G.S. 66-372 are recodified as subsections (a), (b), (c), (d), (e), (f), (g), (h), and (i), respectively, of G.S. 66-369.2 (to be entitled "Miscellaneous requirements for service agreements") and read as rewritten:

"§ 66-369.2. Miscellaneous requirements for service agreements.

(a) ~~The provisions of this section and G.S. 66-373 apply to companies specified in G.S. 66-370 and G.S. 66-371.~~ apply to all service agreements subject to this Article.

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

(c) ~~No service agreement may be~~ A service agreement used in this State by any service agreement company if the agreement violates this Article if it does any of the following:

- (1) In any respect violates, or does not comply with, the laws of this ~~State;~~ State.
- (2) Contains, or incorporates by reference when incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or any exceptions and conditions that deceptively affect the risk purported to be assumed in the general coverage of the ~~agreement;~~ agreement.
- (3) Has any title, heading, or other indication of its provisions that is ~~misleading;~~ or misleading.
- (4) Is printed or otherwise reproduced in a manner that renders any material provision of the agreement substantially illegible.
- (5) Contains provisions that allow the company to cancel the agreement in its discretion other than for nonpayment of premiums or for a direct violation of the agreement by the consumer where the service agreement states that violation of the agreement would subject the agreement to cancellation.

(d) All service agreements used in this State ~~by a service agreement company shall;~~ shall satisfy both of the following requirements:

- ~~(1)~~ Not contain provisions that allow the company to cancel the agreement in its discretion other than for nonpayment of premiums or for a direct violation of the agreement by the consumer where the service agreement states that violation of the agreement would subject the agreement to cancellation;
- ~~(3)(1)~~ Contain a cancellation provision allowing the consumer to cancel at any time after purchase and receive a pro rata refund less any claims paid on the agreement and a reasonable administrative fee, not to exceed ten percent (10%) of the amount of the pro rata refund.
- (2) Contain a list of covered items.

...."

1 **SECTION 2.(c)** G.S. 66-373 is recodified as G.S. 66-369.3 and reads as rewritten:

2 "**§ 66-369.3. Insurance policy requirements.**

3 (a) Each company or person subject to this ~~section~~Article shall maintain contractual
4 liability insurance or service agreement reimbursement insurance with an ~~authorized~~insurer
5 authorized to write liability insurance under Article 7, 16, 21, or 22 of Chapter 58 of the General
6 Statutes for one hundred percent (100%) of claims exposure, including reported and incurred but
7 not reported claims and claims expenses, on business written in this State unless the company or
8 person complies with all of the following:

9 ...

10 (e) Persons and companies subject to G.S. 58-1-15, ~~58-1-20, 66-370, 66-371, and 66-374~~
11 G.S. 58-1-20, and this Article are subject to and shall comply with this section."

12 **SECTION 2.(d)** G.S. 66-370, as amended by subsection (b) of this section, reads as
13 rewritten:

14 "**§ 66-370. Motor vehicle service ~~agreement companies~~agreements.**

15 (a) For purposes of this section, "motor vehicle" is as defined in G.S. 20-4.01(23) and
16 includes mopeds as defined in G.S. 20-4.01(27)j.

17 (a1) This ~~section~~Article applies to all motor vehicle service ~~agreement companies~~
18 soliciting business agreements in use in this State, State. A motor vehicle service agreement is
19 either of the following:

20 (1) Any contract or agreement (i) indemnifying a consumer against loss caused
21 by a motor vehicle failure that is listed in the agreement or (ii) providing for
22 the repair of a motor vehicle failure that is listed in the agreement. For
23 purposes of this subsection, "motor vehicle failure" is the failure of a
24 mechanical or other component part of the motor vehicle arising out of the
25 ownership, operation, or use of the vehicle.

26 (2) A contract or agreement to perform or to indemnify a consumer for
27 performance of any of the following services:

28 a. The repair or replacement of tires or wheels on a motor vehicle
29 damaged as a result of coming into contact with road hazards.

30 b. The removal of dents, dings, or creases on a motor vehicle that can be
31 repaired using the process of paintless dent removal without affecting
32 the existing paint or finish and without replacing vehicle body panels,
33 sanding, bonding, or painting.

34 c. The repair of chips or cracks in or the replacement of motor vehicle
35 windshields as a result of damage caused by road hazards.

36 d. The replacement of a motor vehicle key or key fob in the event that
37 the key or key fob becomes inoperable or is lost or stolen.

38 e. Other services that may be approved by the Commissioner of
39 Insurance, if not inconsistent with other provisions of this Article.

40 (a2) ~~With respect to a motor vehicle service agreement as defined in G.S. 66-370, In~~
41 addition to the requirements of G.S. 66-369.2, motor vehicle service agreements shall provide
42 for a right of assignability by the consumer to a subsequent purchaser before expiration of
43 coverage if the subsequent purchaser meets the same criteria for motor vehicle service agreement
44 acceptability as the original ~~purchaser, and~~purchaser.

45 (a3) ~~but it~~ This Article does not apply to any of the following:

46 (1) ~~maintenance~~Maintenance agreements, performance guarantees, warranties,
47 or motor vehicle service agreements made ~~by~~by any of the following:

48 (1)a. A ~~manufacturer,~~manufacturer.

49 (2)b. A ~~distributor, or~~distributor.

1 ~~(3)c.~~ A subsidiary or affiliate of a manufacturer or a distributor, where
2 fifty-one percent (51%) or more of the subsidiary or affiliate is owned
3 directly or indirectly ~~by~~ by any of the following:
4 ~~a.1.~~ The ~~manufacturer,~~ manufacturer.
5 ~~b.2.~~ The ~~distributor, or~~ distributor.
6 ~~e.3.~~ The common owner of fifty-one percent (51%) or more of the
7 manufacturer or distributor in connection with the sale of
8 motor vehicles.

9 ~~(2)~~ This section does not apply to any A motor vehicle dealer licensed to do
10 business in this State (i) whose primary business is the retail sale and service
11 of motor vehicles; (ii) who that makes and administers its own service
12 agreements with or without association with a third-party administrator or
13 ~~who that~~ makes its own service agreements in association with a
14 manufacturer, distributor, or their subsidiaries or affiliates; and (iii) whose
15 service agreements cover only vehicles sold by the dealer to its retail
16 customer; provided that customer so long as the dealer complies with
17 G.S. 66-372-G.S. 66-369.2 and G.S. 66-373-G.S. 66-369.3.

18 ~~(3)~~ A motor vehicle dealer who sells a motor vehicle service agreement to a
19 consumer, as defined in 15 U.S.C. § 2301(3), is not deemed to have made a
20 written warranty to the consumer with respect to the motor vehicle sold or to
21 have entered into a service contract with the consumer that applies to the
22 motor vehicle, as provided in 15 U.S.C. § 2308(a), if: (i) the motor vehicle
23 dealer acts as a mere agent of a third party in selling the motor vehicle service
24 agreement; and (ii) the motor vehicle dealer would, after the sale of the motor
25 vehicle service agreement, have no further obligation under the motor vehicle
26 service agreement to the consumer to service or repair the vehicle sold to the
27 consumer at or within 90 days before the dealer sold the motor vehicle service
28 agreement to the consumer. An agreement whereby an employer, or a third
29 party contracted by the employer, provides mileage reimbursement and
30 incidental maintenance and repairs to its employees for personal vehicles used
31 for business purposes shall is not be considered a motor vehicle service
32 agreement or a contract of insurance.

33 ~~(4)~~ A contract or agreement guaranteeing the performance of parts or lubricants
34 manufactured or distributed by the guarantor and sold for use in connection
35 with a motor vehicle where no additional consideration is paid or given to the
36 guarantor for the contract or agreement beyond the price of the parts or
37 lubricants.

38 ~~(a4)~~ A motor vehicle dealer that sells a motor vehicle service agreement to a consumer, as
39 defined in 15 U.S.C. § 2301(3), is not deemed to have made a written warranty to the consumer
40 with respect to the motor vehicle sold or to have entered into a service contract with the consumer
41 that applies to the motor vehicle, as provided in 15 U.S.C. § 2308(a), if (i) the motor vehicle
42 dealer acts as a mere agent of a third party in selling the motor vehicle service agreement and (ii)
43 the motor vehicle dealer would, after the sale of the motor vehicle service agreement, have no
44 further obligation under the motor vehicle service agreement to the consumer to service or repair
45 the vehicle sold to the consumer at or within 90 days before the dealer sold the motor vehicle
46 service agreement to the consumer.

47 ~~(b)~~ The following definitions apply in this section and in G.S. 66-371, 66-372, and
48 66-373:

49 ~~(1)~~ Ancillary anti-theft protection program.—A device or system that (i) is
50 installed on or applied to a motor vehicle, (ii) is designed to prevent loss or
51 damage to a motor vehicle from theft, and (iii) includes an ancillary anti-theft

1 protection program warranty. For purposes of this section, the term "ancillary
2 anti-theft protection program" includes alarm systems, body part marking
3 products, steering locks, window etch products, pedal and ignition locks, fuel
4 and ignition kill switches, and electronic, radio, and satellite tracking devices.
5 "Ancillary anti-theft protection program" does not include fuel additives, oil
6 additives, or other chemical products applied to the engine, transmission, or
7 fuel system or interior or exterior surfaces of a motor vehicle.

8 (1a) Ancillary anti-theft protection program warranty.—A written agreement by a
9 warrantor that provides if the ancillary anti-theft protection program fails to
10 prevent loss or damage to a motor vehicle from a theft, that the warrantor will
11 pay to or on behalf of the warranty holder specified incidental costs, as a result
12 of the failure of the ancillary anti-theft protection program to perform pursuant
13 to the terms of the ancillary anti-theft protection program warranty. Incidental
14 costs may be reimbursed in either a fixed amount specified in the ancillary
15 anti-theft protection program warranty or by use of a formula itemizing
16 specific incidental costs incurred by the warranty holder.

17 (1b) Authorized insurer.—An insurance company authorized to write liability
18 insurance under Articles 7, 16, 21, or 22 of Chapter 58 of the General Statutes.

19 (2) Distributor.—Defined in G.S. 20-286(3).

20 (3) Licensed insurer.—An insurance company licensed to write liability insurance
21 under Article 7 or 16 of Chapter 58 of the General Statutes.

22 (4) Motor vehicle.—Defined in G.S. 20-4.01(23), but also including mopeds as
23 defined in G.S. 20-4.01(27)j.

24 (4a) Motor vehicle failure.—The failure of a mechanical or other component part
25 of the motor vehicle arising out of the ownership, operation, or use of the
26 vehicle.

27 (5) Motor vehicle service agreement.—

28 a. Any contract or agreement (i) indemnifying the motor vehicle service
29 agreement holder against loss caused by a motor vehicle failure that is
30 listed in the agreement or (ii) providing for the repair of a motor
31 vehicle failure that is listed in the agreement.

32 b. A motor vehicle service agreement includes a contract or agreement to
33 perform or to indemnify the holder of the motor vehicle service
34 agreement for performance of any of the following services:

35 1. The repair or replacement of tires or wheels on a motor vehicle
36 damaged as a result of coming into contact with road hazards.

37 2. The removal of dents, dings, or creases on a motor vehicle that
38 can be repaired using the process of paintless dent removal
39 without affecting the existing paint or finish and without
40 replacing vehicle body panels, sanding, bonding, or painting.

41 3. The repair of chips or cracks in or the replacement of motor
42 vehicle windshields as a result of damage caused by road
43 hazards.

44 4. The replacement of a motor vehicle key or key fob in the event
45 that the key or key fob becomes inoperable or is lost or stolen.

46 5. Other services which may be approved by the Commissioner
47 of Insurance, if not inconsistent with other provisions of this
48 Article.

49 e. A motor vehicle service agreement does not include a contract or
50 agreement guaranteeing the performance of parts or lubricants
51 manufactured or distributed by the guarantor and sold for use in

