



**Travis Moore, General Counsel**  
**Written Testimony in Support of Amendments**  
**to North Dakota HB 1228**

**3/14/2023**

**Introduction**

Chairman Larsen and members of the Senate Industry and Business Committee. My name is Travis Moore, and I am General Counsel for the Service Contract Industry Council (SCIC). Thank you for the opportunity to testify in support of amendments to HB 1228.

**Background**

The SCIC is the national trade association representing providers, administrators, and sellers of service contracts covering motor vehicles, homes, and consumer goods. The association was established in 1991 and has collaborated with lawmakers and regulators around the country as well as the National Association of Insurance Commissioners (“NAIC”) in defining and regulating service contracts throughout the country. The SCIC monitors state legislative and regulatory activities, contributes to relevant legislative and administrative proceedings, and educates businesses and consumers about the value and benefits of service contracts.

**About Service Contracts**

Also known as “home warranties,” “extended warranties” or “extended service plans,” service contracts are popular among consumers as a cost-effective way to protect electronic devices, consumer goods, appliances and new and used autos beyond the terms provided by the manufacturers or seller’s original warranty. Approximately 250 million are sold annually nationwide, spanning:

- Protection afforded for **consumer goods** can include discounted product repair, product (e.g., phone) replacement, access to pre-qualified technicians, accidental damage from handling and 24-hour technical assistance.
- On the **home** front, typical service contracts cover repair or replacement of a home’s major systems, such as heating, air conditioning, electrical and plumbing and major appliances.
- Traditional **vehicle** service contracts provide reimbursement for repairs made due to

operational or structural failure, as well as some incidental payment of indemnity benefits, such as emergency roadside and towing assistance.

In addition to protecting their assets and helping stabilize household cashflows, high accessibility affords consumers with a convenient means to secure their peace of mind.

In North Dakota, service contracts are clearly defined in section 9-01-21 of the North Dakota Century Code. The definition is substantially similar to that promulgated by the NAIC and utilized in the vast majority of states. This definition recognizes both the similarity to, and the importance of distinguishing these products from insurance.

### **Automatic Renewal**

Automatic renewal provisions are an essential component of many service contracts. Service contracts provide coverage for potentially costly repairs and help consumers spread out the cost of maintaining and repairing certain goods and systems. Any lapse in coverage means a consumer may be on the hook for those repairs unexpectedly. By automatically renewing, the coverage provided by service contracts is always there for consumers.

While HB 1228 does not prohibit automatic renewal, we are concerned that the added requirements could cause some providers to not include automatic renewal clauses in their contracts. This would be to the detriment of North Dakota consumers as described above. We are aware of various instances where automatic renewal clauses are abused by purveyors of certain goods or services. To that end, we support this legislation and would hope to end abusive practices by bad actors. However, the service contract industry has for many years offered automatically renewing contracts without issue. Contract disclosures, cancellation anytime, advance notice and pro rata refunds are standard practices throughout the industry.

### **Special Considerations for Service Contracts**

All kinds of businesses are getting into the subscription service practice. Often time with direct-to-consumer sales over the internet. While service contracts can be sold in a similar method, usually they are sold via third party. If it is a home service contract it may be part of a real estate transaction, vehicles service contracts are frequently sold by dealers, and consumer goods service contracts can be purchased at big box retailers in connection with the protected product. Take, for example, an item purchased at a big box retailer through a check-out kiosk. You may be able to simply check a box to sign-up for a protection plan on whatever you are buying. It isn't clear that type of transaction would comply with the requirements of HB 1228.

### **Proposed Amendments**

Considering the foregoing, SCIC would suggest a few amendments to HB 1228. While an express exemption for service contracts as defined in Section 9-01-21 of the North Dakota

Century Code would be ideal, it is our understanding this committee would prefer not to carve-out specific industries. Therefore, we propose the following:

- 1) Exempt any contract that may be cancelled at anytime for a refund of any unearned portion.
- 2) Extend the effective date to January 1, 2024 to allow time for any retailers or sellers who require adjustments to their point of sale processes and systems.
- 3) Amend Section 51-37-04 to better reflect the intent of the legislation:
  - a. Failure to comply with 51-37-02 should result in rendering the automatic renewal void and not the underlying agreement. “51-37-04 Remedies. An **automatic renewal provision** ~~agreement~~ in violation of this chapter is unenforceable and void.”
  - b. Limit the unconditional gift provision to instances where the buyer does not request the merchandise or service. For example, if a homeowner requests and receives repair of their furnace after the automatic renewal date but the home service contract provider mistakenly forgot to send the notice required by 51-37-02, those repairs should not be considered an “unconditional gift.”

## Conclusion

The SCIC supports the objective of HB 1228 and applauds the effort to stop abusive automatic renewal practices. We respectfully request that the importance of automatic renewal for certain industries be considered including these proposed amendments.

I’m happy to answer any questions the committee may have on this testimony,

Thank you,



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