

## **Motor Club Service Act**

### **SOUTH CAROLINA GENERAL ASSEMBLY**

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Title 39 – Trade and Commerce

#### **CHAPTER 61.**

#### **MOTOR CLUB SERVICES ACT**

**SECTION 39 61 10.** Short title.

This chapter is known and may be cited as the "Motor Club Services Act".

**SECTION 39 61 20.** Definitions.

As used in this chapter:

- (a) "Administrator" means the Administrator of the Department of Consumer Affairs.
- (b) "Club" means any person presently or hereafter engaged in selling, furnishing, or making available to members, either as principal or agent, motor club services.
- (c) "Club representative" means any individual in this State designated by the club who acts or aids in any manner in the solicitation, negotiation, or renewal of service contracts. This definition does not include any individual performing only work of a clerical nature in the office of a club or providing an application to a potential club member.
- (d) "Insurance service" means any act by a club to sell or furnish to a member insurance benefits, including, but not limited to, accidental injury and death benefits when the insurance is issued only by an insurance company duly authorized to do business in this State.
- (e) "Motor club service" means the rendering, furnishing, or procuring of, or reimbursement for, any of the following: towing service, bail and arrest bond service, emergency road service, claim adjustment service, legal service, theft service, map service, emergency travel expense service, community traffic safety service, license service, merchandise and discount service, travel, touring, and travel information service, guaranteed hotel/motel rates service, new car pricing service, financial service, check cashing service, personal property registration

service, credit card service, insurance service, and buying and selling service to any member of the club.

(f) "Service contract" means any written agreement whereby any club, for a consideration, promises to render, furnish, or procure for any member a motor club service.

**SECTION 39 61 30.** Deposit of cash, securities, or bonds.

A club may not render or agree to render a motor club service without first depositing and thereafter continuously maintaining the amount of fifty thousand dollars in cash or securities approved by the Administrator or, in lieu thereof, a bond in the amount of fifty thousand dollars executed by a surety company authorized by the laws of this State to transact business within this State. The bond must be executed to the State of South Carolina and must be for the use of the State and for any members who may have a cause of action against the club.

**SECTION 39 61 40.** Security; required assurances.

The security:

(a) Must be for the protection, use, and benefit of all persons whose applications for membership in a motor club have been accepted by the club or its representatives.

(b) Shall assure that the club faithfully furnishes and renders to members any and all of the motor club services furnished, sold, or offered for sale by it.

(c) Shall assure that the club complies with and abides by all the provisions of this chapter and all the regulations of the Administrator prescribed, published, adopted, and promulgated under authority of this chapter.

(d) Shall assure that the club pays all fines and penalties that may become due to the State from the club and by virtue of the provisions of this chapter.

**SECTION 39 61 50.** Suits by aggrieved members; aggregate liability.

If any member is defrauded or aggrieved by any misconduct, wrongful act, misrepresentation, or failure of the club to render its services or fulfill its contractual obligations, the member may bring suit on the security in his own name, but the aggregate liability of the surety for all suits may, in no event, exceed the amount of the bond.

**SECTION 39 61 60.** Submission and approval of club name.

The name of the club must be submitted to the Administrator with its application for a certificate of authority, and the Administrator shall approve any name so submitted unless the proposed name is deceptively similar to that of any other club licensed or qualified to do business in this State or unless the name is likely to confuse or mislead the public.

**SECTION 39 61 70.** Application for, and issuance of, certificate of authority; fee.

(a) No club may offer, issue, or renew a motor club service contract in this State without first obtaining from the Administrator a certificate of authority so to act. A certificate of authority must be issued by the Administrator to the club upon submission of items (1) through (6) of this subsection (a) in a form satisfactory to the Administrator.

The applicant shall submit:

(1) A formal application for the certificate in the form and detail the Administrator requires, executed under oath by its president and secretary or two other principal officers of the club or other persons the Administrator may require.

(2) A certified copy of its charter or articles of incorporation and its bylaws, if any.

(3) If a corporation, a certified copy of the certificate of authority or good standing certificate from the Secretary of State.

(4) A copy of its most recent financial statement prepared in accordance with generally accepted accounting principles and certified by two principal officers of the applicant or, in the event the applicant is not a corporation, other persons as the Administrator may require.

(5) An explanation of its plan of doing business and copies of the following:

(i) Its application for membership.

(ii) The proposed membership certificate or identification card and any proposed addendum thereto.

(iii) Any individual insurance policy or group certificate to be offered.

(iv) Any service contract to be issued.

(6) Any other relevant information requested by the Administrator.

(b) No certificate of authority may be issued by the Administrator until the club has paid an initial certificate of authority fee of five hundred dollars.

**SECTION 39 61 80.** Certificates of authority permanent unless suspended or revoked; renewal requirements.

Certificates of authority issued hereunder are permanent unless revoked or suspended as provided in this chapter. No certificate of authority may be renewed by the Administrator until the club has:

(a) Paid an annual certificate of authority renewal fee of five hundred dollars by October thirty first.

(b) Filed a copy of its most recent financial statement prepared in accordance with generally accepted accounting principles and certified by two principal officers of the club or, in the event the applicant is not a corporation, other persons as the Administrator may require.

**SECTION 39 61 90.** Service of process.

(a) Serving of process in any action, rule, order, or legal proceeding may be made on any club not domiciled in this State having a certificate of authority to transact business in this State by mailing two copies of the process to the Administrator by registered or certified mail. One copy, certified by the Administrator or his deputy as having been served upon him, is considered sufficient evidence, and service upon the Administrator or his deputy as attorney is considered valid service upon the club.

(b) When legal process is served upon the Administrator as attorney for a club not domiciled in this State, he shall forthwith forward one of the duplicate copies of the process served on him to the club. The Administrator shall give immediate notice of process to the club by telephone. As a condition of valid and effective service and of the duty of the Administrator in the premises, the plaintiff in each process shall pay to the Administrator at the time of service the sum of ten dollars, which the plaintiff may recover as taxable costs in the case if he prevails in the suit. The Administrator shall keep a record of all processes, which shall show the day and hour of service and where and by whom served.

**SECTION 39 61 100.** Cease and desist orders; revocation or suspension of certificate of authority.

(A) The department may file a request for a contested case hearing with the Administrative Law Court for an order requiring the club to cease and desist or an order revoking, suspending, or vacating the certificate of authority of a club, if the Administrative Law Court finds, after a hearing, that the club:

(1) has violated or failed to comply with any provisions of this chapter or regulations promulgated pursuant to the authority of this chapter;

(2) has obtained a certificate of authority through wilful misrepresentation or fraud;

(3) has engaged in fraudulent or deceptive practices;

(4) has wilfully, orally or in writing, misrepresented the terms, benefits, privileges, and provisions of any service contract issued or to be issued by it or any other club;

(5) is unable to meet its obligations as determined by generally accepted accounting principles;

(6) has, after notice to the club of an alleged occurrence of any of items (1) through (5) of this section, refused without just cause to submit relevant information to the administrator with respect to the motor club services within this State.

(B) Instead of revocation, suspension, or refusal to continue a certificate of authority for a violation or violations of items (1) through (6) of subsection (A) of this section, the administrative law judge may assess an administrative penalty of not less than one hundred nor more than one thousand dollars for each violation. An accumulation of these penalties may not exceed five thousand dollars for matters commenced in any calendar year. These penalties may be assessed in connection with orders to cease and desist.

**SECTION 39 61 110.** Requirements of service contracts.

No service contract may be issued or delivered in this State unless it contains:

- (a) The exact corporation or other name of the club.
- (b) The exact location of its home office or any business office to which inquiries may be made.
- (c) The motor club services contracted for.
- (d) The territory wherein motor club services contracted for are to be rendered.
- (e) The duration of the service contract.

**SECTION 39 61 120.** Registration of club representatives; termination of representative's authority; fee.

(a) No individual may act as a club representative in this State without the club having registered the individual with the Administrator within thirty days of the date of designation as a club representative. Registration as a club representative must be made to the Administrator upon forms prescribed and furnished by him. The registration is permanent, subject to revocation or suspension as provided in this chapter.

(b) The club representative shall furnish information concerning his identity, business address, personal history, business experience, and other information that the Administrator considers pertinent and germane. A club representative:

- (1) Must be at least eighteen years of age.
- (2) Must be a trustworthy person of good repute.
- (3) Shall have received training from the club or must have otherwise qualified by experience in the business of clubs rendering motor club services.

(c) Any willful misrepresentation of any information required to be disclosed in any registration is subject to the sanctions provided for in this chapter.

(d) Upon termination of any club representative's authority to act on behalf of the club, the club shall notify the Administrator in writing within thirty days of termination.

(e) The fee to be paid to the Administrator at the time registration is made and annually on or before April thirtieth for the renewal is twenty dollars.

**SECTION 39 61 130.** Sanctions for noncompliance by club representative; contested case hearing.

Upon satisfactory evidence that a club representative has violated or failed to comply with a provision of this chapter or regulation promulgated pursuant to the authority of this chapter, the administrator may issue an order requiring the club representative to cease and desist from engaging in the violation or may revoke or suspend the club representative's authority. A club representative aggrieved by an action of the administrator taken pursuant to this provision may file a request for a contested case hearing with the Administrative Law Court.

**SECTION 39 61 140.** Restrictions on advertising.

No club may make reference to its certificate of authority or approval from the Administrator or the State in advertising, circular, contract, or a membership card nor may it advertise or describe its services in a manner which would lead the public to believe that it is an insurance company, association, or exchange.

**SECTION 39 61 150.** Services subject exclusively to this chapter.

The offering of motor club services is subject solely and exclusively to the provisions of this chapter and the offering of services by any authorized club is not considered transacting business as an insurance company, association, or exchange, except as otherwise provided herein.

**SECTION 39 61 160.** Authority of administrator.

The Administrator shall administer this chapter and may promulgate regulations, subject to Act 176 of 1977 (the

Administrative Procedures Act) necessary to carry out its provisions.

**SECTION 39 61 170.** Violations; penalties.

Any person who violates the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than five hundred dollars or imprisonment for not more than three months, or both.

**SECTION 39 61 180.** Sale of insurance by club representatives; license requirements.

A club representative is not required to be a licensed insurance agent in connection with the sale of accidental injury and death benefits or other insurance covering a motor club service, which is issued in conjunction with and as a part of a motor club service contract but must be licensed to sell any other type of insurance.

**SECTION 39 61 190.** Incidental services.

Nothing contained in this chapter prohibits a club from offering services which augment or are incidental to any service offered by the club or any other services which are of assistance and are beneficial to members and are feasible for the club to render.

**SECTION 39 61 200.** Attorney's fees.

Any person who brings a civil suit for damages suffered because of any violation of any provision of this chapter, or any regulation promulgated by its authority, and who prevails in the suit, may be awarded reasonable attorney's fees.