

Committee Substitute for House Bill No. 1749

An act relating to service warranties; amending s. 634.041, F.S.; providing requirements and limitations as to certain funds and premiums relating to unearned premium preserves; amending s. 634.121, F.S.; revising certain disclosure form requirements; amending s. 634.312, F.S.; requiring home warranty contracts to contain a certain disclosure; amending s. 634.401, F.S.; revising a definition; amending s. 634.406, F.S.; revising a contractual liability insurance requirement for service warranty associations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (8) section 634.041, Florida Statutes, is amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the department, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it purchases and maintains contractual liability insurance in accordance with the following:

1. The insurance covers 100 percent of its claim exposure and is obtained from an insurer approved by the department which holds a certificate of authority to do business within this state.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(5). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice

thereof has been given to the department by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the department with the claims statistics.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

Section 2. Subsections (9) and (12) of section 634.121, Florida Statutes, are amended to read:

634.121 Filing of forms, required procedures, provisions.—

(9) Each service agreement form must contain in conspicuous, boldfaced type any statement or clause that places restrictions or limitations on the benefits offered or disclose such restrictions or limitations in regular type in a section of the service agreement containing a conspicuous, boldfaced type heading.

(12) If a service agreement contains a rental car provision, it must disclose the terms and conditions of this benefit in conspicuous, boldfaced type or disclose such restrictions or limitations in regular type in a section of the service agreement containing a conspicuous, boldfaced type heading.

Section 3. Subsection (6) is added to section 634.312, Florida Statutes, to read:

634.312 Filing, approval of forms.—

(6) All home warranty contracts must state in conspicuous, boldfaced type that the home warranty may not provide listing period coverage free of charge.

Section 4. Subsection (14) of section 634.401, Florida Statutes, is amended to read:

634.401 Definitions.—As used in this part, the term:

(14) “Service warranty” means any warranty, guaranty, extended warranty or extended guaranty, maintenance service contract greater than 1 year in length or which does not meet the exemption in paragraph (a), contract agreement, or other written promise to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge by the consumer; however:

(a) Maintenance service contracts written for 1 year or less which do not contain provisions for indemnification and which do not provide a discount to the consumer for any combination of parts and labor in excess of 20 percent during the effective period of such contract, motor vehicle service agreements, transactions exempt under s. 624.125, and home warranties subject to regulation under parts I and II of this chapter are excluded from this definition; and

(b) The term “service warranty” does not include service contracts between consumers and condominium associations.

Section 5. The introductory paragraph of subsection (3) of section 634.406, Florida Statutes, is amended to read:

634.406 Financial requirements.—

(3) An association will not be required to establish an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the department that 100 percent of its claim exposure is covered by such policy. The contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state ~~or from an insurer approved by the department as financially capable of meeting the obligations incurred pursuant to the policy~~. For the purposes of this subsection, the contractual liability policy shall contain the following provisions:

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.