

## Committee Substitute for Senate Bill No. 2102

An act relating to service agreements; amending s. 634.011, F.S.; revising the definition of “motor vehicle service agreement”; amending s. 634.041, F.S.; revising the definition of “corporation”; requiring service agreement companies to maintain contractual liability insurance and limiting those to whom vehicle protection products may be sold; amending s. 634.121, F.S.; providing service agreement form requirements; amending s. 634.191, F.S.; revising the definition of unfair competition or unfair or deceptive acts or practices for purposes of disciplinary actions against a salesperson; amending s. 634.406, F.S.; revising the financial requirements for warranty associations to qualify for contractual liability policies covering claims exposure under contracts delivered in this state; providing an effective date.

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

Section 1. Subsection (8) of section 634.011, Florida Statutes, is amended to read:

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

(8) “Motor vehicle service agreement” or “service agreement” means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles; ~~and provided further, however, Transactions exempt under s. 624.125 are shall be expressly excluded from this definition and are exempt from the provisions of this part.~~ The term “motor vehicle service agreement” includes any contract or agreement that ~~which~~ provides;

(a) For the coverage or protection defined in this subsection and which is issued or provided in conjunction with an additive product applied to the motor vehicle that which is the subject of such contract or agreement; or.

(b) For payment of vehicle protection expenses.

1.a. “Vehicle protection expenses” means expenses incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses specified in the agreement.

b. "Vehicle protection product" means a product or system installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.

2. Vehicle protection expenses shall be payable in the event of loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in the recovery of the stolen motor vehicle. Vehicle protection expenses covered under the agreement shall be clearly stated in the service agreement form.

3. Motor vehicle service agreements providing for the payment of vehicle protection expenses shall:

a. Reimburse a service agreement holder for the following expenses, at a minimum: deductibles applicable to comprehensive coverage under the service agreement holder's motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; and the difference between the benefits paid to the service agreement holder for the stolen vehicle under the service agreement holder's comprehensive coverage and the actual cost of a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; or

b. Pay a preestablished flat amount to the service agreement holder.

Payments shall not duplicate any benefits or expenses paid to the service agreement holder by the insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle.

Section 2. Subsection (1) of section 634.041, Florida Statutes, is amended, and subsection (11) is added to that section, 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:

(1) Any service agreement company applying for a license must be a solvent corporation formed under the laws of this state or of another state or district of the United States and must meet minimum requirements under this section.

(11) A service agreement company offering service agreements providing vehicle protection expenses may meet the requirements for this part only by maintaining contractual liability insurance in accordance with paragraph (8)(b), which insurance must be issued by an insurance company not affiliated with the service agreement company, unless the insurance company had issued a contractual liability insurance policy to a service agreement company on or before January 1, 2002. Service agreements providing vehicle protection expenses may be sold only to a service agreement holder that has in-force comprehensive motor vehicle insurance coverage for the vehicle to be covered by the service agreement.

Section 3. Paragraph (c) is added to subsection (1) of section 634.121, Florida Statutes, to read:

634.121 Filing of forms, required procedures, provisions.—

(1) A service agreement form or related form may not be issued or used in this state unless it has been filed with and approved by the department. Upon application for a license, the department shall require the applicant to submit for approval each brochure, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution. The department shall disapprove any document which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material facts.

(c) The department shall disapprove any service agreement form providing vehicle protection expenses which does not clearly indicate the method for calculating the benefit to be paid or provided to the service agreement holder. All service agreement forms providing vehicle protection expenses shall clearly indicate the term of the service agreement, whether new or used cars are eligible for the vehicle protection product, and that the service agreement holder may not make any claim against the Florida Insurance Guarantee Association for vehicle protection expenses. The service agreement shall be provided to a service agreement holder on a form that provides only vehicle protection expenses. A service agreement form providing vehicle protection expenses must state that the service agreement holder must have in force at the time of loss comprehensive motor vehicle insurance coverage as a condition precedent to requesting payment of vehicle protection expenses.

Section 4. Subsection (5) of section 634.191, Florida Statutes, is amended to read:

634.191 Grounds for discretionary refusal, suspension, or revocation of license or appointment of salespersons.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any salesperson if it finds that as to the salesperson any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.181:

(5) If, in the conduct of business under the license or appointment, the salesperson has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under this part IX of chapter 626, or has otherwise shown herself or himself to be a source of injury or loss to the public or detrimental to the public interest.

Section 5. Subsection (7) of section 634.406, Florida Statutes, is amended to read:

634.406 Financial requirements.—

(7) The department shall require that a contractual liability policy insure 100 percent of an association's claims exposure under all of the association's

service warranty contracts, wherever written, unless all of the following are satisfied:

(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;

(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;

(c) The association has been in existence for at least 5 years or the association is a wholly-owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5 years, and:

1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file either of Forms 10-K, 100, or 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly-owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;

2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;

3. Has and maintains at all times a minimum net worth of not less than \$10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the department annually; and

4. Is authorized to do business in this state; and

(d) The insurer issuing the contractual liability policy:

1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least \$100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the department;

2. Holds a certificate of authority to do business in this state and is approved to write this type of coverage; and

3. Acknowledges to the department quarterly that it insures all of the association's claims exposure under contracts delivered in this state.

If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.

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

Approved by the Governor April 23, 2002.

Filed in Office Secretary of State April 23, 2002.