

Committee Substitute for Senate Bill No. 2278

An act relating to motor vehicle service agreements; amending s. 634.011, F.S.; revising criteria within a definition of a motor vehicle service agreement relating to preestablished flat amounts; providing a limitation; amending s. 634.041, F.S.; providing requirements of a service agreement company to offer service agreements for vehicle protection; amending s. 634.121, F.S.; providing for disapproval of certain service agreement forms for not indicating the preestablished flat amount payable under the agreement; providing an effective date.

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

Section 1. Paragraph (b) of 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. Transactions exempt under s. 624.125 are 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 provides:

(b) For payment of vehicle protection expenses.

1.a. “Vehicle protection expenses” means a preestablished flat amount payable for the loss of or damage to a vehicle or 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, unless the agreement provides for the payment of a preestablished flat amount, in which case the service agreement form shall clearly identify such amount.

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

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; however, the payment of vehicle protection expenses at a preestablished flat amount of \$5,000 or less does not duplicate any benefits or expenses payable under any comprehensive motor vehicle insurance policy.

Section 2. Subsection (11) of 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:

(11)(a) A service agreement company offering service agreements providing vehicle protection expenses may meet the requirements for this part only by maintaining contractual liability insurance covering 100 percent of its vehicle protection claim exposure 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.

(b) Notwithstanding any other requirement of this part, a service agreement company maintaining an unearned premium reserve on all service agreements in accordance with paragraph (8)(a) may offer service agreements providing vehicle protection expenses if it maintains contractual liability insurance only on all service agreements providing vehicle protection

expenses and continues to maintain the 50-percent reserve for all service agreements not providing vehicle protection expenses. A service agreement company maintaining contractual liability insurance for all service agreements providing vehicle protection expenses and the 50-percent reserve for all other service agreements must, in the service agreement register as required under s. 634.136(4), distinguish between insured service agreements providing vehicle protection expenses and service agreements not providing vehicle protection expenses.

Section 3. Paragraph (c) of subsection (1) of section 634.121, Florida Statutes, is amended 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 either the method for calculating the benefit to be paid or provided to the service agreement holder or the preestablished flat amount payable pursuant to the terms of the service agreement. 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. This act shall take effect upon becoming a law.

Approved by the Governor June 12, 2003.

Filed in Office Secretary of State June 12, 2003.