

Committee Substitute for Senate Bill No. 2006

An act relating to warranty associations; amending s. 634.401, F.S.; redefining the term “service warranty” for purposes of regulation of service warranty associations; amending s. 634.011, F.S.; including paintless dent-removal in the services that may be covered by a motor vehicle service agreement; amending s. 634.041, F.S.; revising requirements governing qualifications for a license to issue such agreements; providing for use of a 50-percent reserve or contractual liability coverage by certain service agreement companies; amending s. 634.136, F.S.; requiring a motor vehicle service contract company to maintain additional information relating to motor vehicle service agreements; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (7) of section 634.011, Florida Statutes, to read:

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

(7) “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:

(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 is the subject of such contract or agreement; or

(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; ~~or~~.

(c)1. For the payment for paintless dent-removal services provided by a company whose primary business is providing such services.

2. "Paintless dent-removal" means the process of removing dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include services that involve the replacement of vehicle body panels or sanding, bonding, or painting.

Section 2. Subsection (9) 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 commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(9)(a) In meeting the requirements of this part, except as provided in paragraph (b), a service agreement company may not utilize both the 50-

percent reserve and contractual liability insurance simultaneously. However, a company may have contractual liability coverage on service agreements previously sold and sell new service agreements covered by the 50-percent reserve, and the converse of this is also allowed. A service agreement company must be able to distinguish how each individual service agreement is covered.

(b) A service agreement company that maintains net assets of at least \$10 million and that annually files with the office a financial statement audited in accordance with generally accepted accounting principles may use either the 50-percent reserve or the contractual liability coverage for specific blocks of new service agreements. For purposes of this subsection, the term “specific blocks of new service agreements” means the service agreements sold by a single designated licensed salesperson. A service agreement company must be able to distinguish how each individual service agreement is covered. A service agreement company using the 50-percent premium reserve, as permitted under this subsection, must obtain contractual liability insurance coverage for any future deficits in the premium reserve account directly attributable to the specific blocks of new agreements written. Such a contractual liability insurance policy must be filed with the office. Such policies or endorsements to an existing policy must contain language evidencing that the contractual liability insurance policy shall pay claims arising out of such specific blocks of agreements if the service agreement company cannot or will not pay such claims. All contractual liability insurance policies issued to a service agreement company under this part must cover all agreements issued during the term of the policy and, for purposes of this section, the company must obtain and file with the office endorsements to that policy identifying the specific blocks of agreements not covered thereunder.

Section 3. Subsection (4) of section 634.136, Florida Statutes, is amended to read:

634.136 Office records required.—Each licensed motor vehicle service contract company, as a minimum requirement for permanent office records, shall maintain:

(4) A detailed service agreement register, in numerical order by service agreement number, of agreements in force, which register shall include the following information: service agreement number, date of issue, issuing dealer, name of agreement holder, whether the agreement is covered by contractual liability insurance or the unearned premium reserve account, description of motor vehicle, service agreement period and mileage, gross premium, commission to salespersons, commission to dealer, and net premium.

Section 4. Subsection (13) of section 634.401, Florida Statutes, is amended to read:

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

(13) “Service warranty” means any warranty, guaranty, extended warranty or extended guaranty, maintenance service contract equal to or

greater than 1 year in length or which does not meet the exemption in paragraph (a), contract agreement, or other written promise for a specific duration to perform the repair, replacement, or maintenance of a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling 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 less than 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; ~~and~~.

(c) All contracts that include coverage for accidental damage from handling must be covered by the contractual liability policy referred to in s. 634.406(3).

Section 5. This act shall take effect July 1, 2005.

Approved by the Governor June 17, 2005.

Filed in Office Secretary of State June 17, 2005.