

Committee Substitute for
Committee Substitute for Senate Bill No. 2264

An act relating to motor vehicle warranty associations; amending s. 628.4615, F.S., relating to specialty insurers; conforming a cross-reference to changes made by the act; amending s. 634.011, F.S.; defining the terms “motor vehicle manufacturer” and “subsidiary” for purposes of part I of ch. 634, F.S.; amending s. 634.041, F.S.; exempting motor vehicle manufacturers applying for licensure as service agreement companies from certain licensing requirements and limitations on claims liabilities; amending s. 634.137, F.S.; authorizing the Office of Insurance Regulation to develop an abbreviated form for statistical reporting of sales of service agreements by motor vehicle manufacturers in lieu of certain other financial reports; amending s. 634.271, F.S.; conforming a cross-reference; amending s. 634.4165, F.S.; requiring warranty service associations that do not collect the names and addresses of warranty holders at the time of sale to provide an alternative method for warranty holders to provide such information; amending s. 634.436, F.S.; prohibiting warranty service associations that do not collect the names and addresses of warranty holders from denying a warranty holder’s claim on the basis that the association cannot confirm that the warranty holder in fact purchased the warranty; providing an effective date.

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

Section 1. Subsection (1) of section 628.4615, Florida Statutes, is amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(1) For the purposes of this section, the term “specialty insurer” means any person holding a license or certificate of authority as:

(a) A motor vehicle service agreement company authorized to issue motor vehicle service agreements as those terms are defined in s. 634.011 s. 634.011(7) and (8);

(b) A home warranty association authorized to issue “home warranties” as those terms are defined in s. 634.301(3) and (4);

(c) A service warranty association authorized to issue “service warranties” as those terms are defined in s. 634.401(13) and (14);

(d) A prepaid limited health service organization authorized to issue prepaid limited health service contracts, as those terms are defined in chapter 636;

- (e) An authorized health maintenance organization operating pursuant to s. 641.21;
- (f) An authorized prepaid health clinic operating pursuant to s. 641.405;
- (g) A legal expense insurance corporation authorized to engage in a legal expense insurance business pursuant to s. 642.021;
- (h) A provider which is licensed to operate a facility which undertakes to provide continuing care as those terms are defined in s. 651.011(2), (4), (5), and (6);
- (i) A multiple-employer welfare arrangement operating pursuant to ss. 624.436-624.446;
- (j) A premium finance company authorized to finance insurance premiums pursuant to s. 627.828; or
- (k) A corporation authorized to accept donor annuity agreements pursuant to s. 627.481.

Section 2. Present subsections (7) through (16) of section 634.011, Florida Statutes, are renumbered as subsections (8) through (17), respectively, and a new subsection (7) is added to that section, to read:

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

(7) “Motor vehicle manufacturer” means an entity that:

(a) Manufactures or produces motor vehicles and sells motor vehicles under its own name or label;

(b) Is a subsidiary of an entity that manufactures or produces motor vehicles; or

(c) Is a corporation that owns 100 percent of an entity that manufactures or produces motor vehicles.

For purposes of this subsection, an entity qualifies as a subsidiary if 25 percent or more of its voting securities are directly or indirectly owned by an entity that manufactures or produces motor vehicles and sells motor vehicles under its own name or label.

Section 3. Subsection (12) is added to section 634.041, Florida Statutes, 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:

(12) A motor vehicle manufacturer complying with the provisions of this part must be an entity formed under the laws of this state or of another state

or district of the United States and need comply only with subsections (2) and (10). A motor vehicle manufacturer need not submit fingerprints, background information, or biographical statements for any individual except those serving as officers or directors of the applicant entity. A motor vehicle manufacturer need not comply with s. 634.081(5). Motor vehicle manufacturers are subject to all other applicable provisions of this part.

Section 4. Subsection (6) is added to section 634.137, Florida Statutes, to read:

634.137 Financial and statistical reporting requirements.—

(6) The office shall develop by rule an abbreviated form for motor vehicle manufacturers to use in submitting statistical reporting of sales of service agreements in this state in lieu of the financial reports required in subsections (1) and (2).

Section 5. Subsection (5) of section 634.271, Florida Statutes, is amended to read:

634.271 Civil remedy.—

(5) The penalty provisions in ss. 520.12 and 521.006, as well as the statutory penalty in subsection (1), do not apply to any violation of this part or chapters 520 and 521 relating to or in connection with the sale or failure to disclose in a retail installment contract or lease, prior to April 23, 2002, of a vehicle protection product, or contract or agreement that provides for payment of vehicle protection expenses, as defined in s. 634.011(8)(b)1. ~~s. 634.011(7)(b)1.~~, so long as the sale of such product, contract, or agreement was otherwise disclosed to the consumer in writing at the time of the purchase or lease. However, in the event of a violation for which such statutory penalties do not apply, the court shall award actual damages and costs, including reasonable attorney's fees. Nothing in this subsection shall be construed to require the application of the referenced statutory penalty provisions where this subsection is not applicable.

Section 6. Subsection (2) of section 634.4165, Florida Statutes, is amended to read:

634.4165 Office records required.—As a minimum requirement for permanent office records, each licensed service warranty association shall maintain:

(2) A detailed warranty register of warranties in force, by unique identifier. The register shall include the unique identifier, date of issue, issuing sales representative, name of warranty holder and the, location of the property to the extent the name and address have been furnished by the warranty holder, warranty period, gross premium, commission to sales representative, and net premium. Associations not collecting the name and address of the warranty holder at the time of sale must provide another method for warranty holders to provide such information, such as Internet registration, return postcard, or other means acceptable to the office.

Section 7. Subsection (5) of section 634.436, Florida Statutes, is amended to read:

634.436 Unfair methods of competition and unfair or deceptive acts or practices defined.—The following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

(5) UNFAIR CLAIM SETTLEMENT PRACTICES.—

(a) Attempting to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the warranty holder;

(b) Making a material misrepresentation to the warranty holder for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract on less favorable terms than those provided in, and contemplated by, such contract; or

(c) Committing or performing with such frequency as to indicate a general business practice any of the following practices:

1. Failure properly to investigate claims;
2. Misrepresentation of pertinent facts or contract provisions relating to coverages at issue;
3. Failure to acknowledge and act promptly upon communications with respect to claims;
4. Denial of claims without conducting reasonable investigations based upon available information;
5. Failure to affirm or deny coverage of claims upon written request of the warranty holder within a reasonable time after proof-of-loss statements have been completed; or
6. Failure to promptly provide a reasonable explanation to the warranty holder of the basis in the contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(d) Denying a claim solely on the basis that the association was not able to confirm that the warranty holder in fact purchased a service warranty because the association did not obtain the name and address as set forth in s. 634.4165(2).

Section 8. This act shall take effect upon becoming a law.

Approved by the Governor June 17, 2008.

Filed in Office Secretary of State June 17, 2008.