

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 832

INTRODUCER: Senator Flores

SUBJECT: Financing of Motor Vehicles

DATE: March 4, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	<b>Pre-meeting</b>
2.			JU	
3.			CJ	

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**I. Summary:**

SB 832 defines an “automotive-related product” and “vehicle contract” in regards to the retail purchase and financing of an automobile. The bill prohibits a finance company that is owned, affiliated, or contracts with an automobile manufacturer from adopting or implementing a policy that denies the financing of a motor vehicle contract when the contract includes a third party automotive-related product that is substantially similar or is superior in kind and quality to an automotive-related product also being offered by the finance company. Any persons violating the provisions in this bill are guilty of a second degree misdemeanor.

**II. Present Situation:**

**Motor Vehicle Service Agreement**

Motor vehicle service agreements indemnify the service agreement holder (owner) of the motor vehicle listed on the service agreement from losses caused by the failure or improper function of any mechanical or other component part arising out of the ownership, operation, and use of the motor vehicle.<sup>1</sup> Such products can include:

- *Mechanical and Electrical coverage* – This product covers the cost of replacement and repair, beyond the manufactures warranty, for limited mechanical and electrical components of an automobile. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Tire & Wheel replacement coverage* – This product covers the cost of replacement or repair to a damaged wheel or tire. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Paint-less dent removal* – This product removes dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include

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<sup>1</sup> s. 634.011(8), F.S.

services that involve the replacement of vehicle body panels or sanding, bonding, or painting. Such coverage is often limited to time of ownership and mileage of the automobile.

- *Lost key replacement* – This product covers the cost of replacing a lost smart key with a new key that has been programmed by the manufacturer. The costs of replacing today’s smart keys can range from \$200 to over \$400 for a new key that has been programmed by the manufacturer.<sup>2</sup>
- *Anti-theft deterrent etch coverage* – This is a vehicle protection product<sup>3</sup> where the Vehicle Identification Number (VIN) is etched into the glass of an automobile making those parts easier to identify after a theft.
- *Vehicle theft recovery coverage* – This is a vehicle protection product<sup>4</sup> where a device is installed in the automobile that allows a vehicle monitoring service to locate the automobile through the use of global positioning satellites (GPS) in the event of a theft.

Other automotive-related products offered by automobile dealers not regulated under ch. 634, F.S., can include:

- *Basic Maintenance coverage* – This product covers the labor cost of servicing an automobile, as well as any costs for replacing parts and fluids based on normal use of the vehicle. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Appearance protection* – This product is a film or spray applied to an automobile to help protect against damage from the elements as well as dents and scratches that can occur through normal use of the automobile.
- *Auto detailing service* – This product is for periodic interior and exterior car cleaning service. Such coverage is often limited to number of cleanings per a given month or year.

Service agreements that cover motor vehicles used for commercial purposes and sold to persons other than consumers are excluded from the definition and are exempt from regulation under the Florida Insurance Code.<sup>5</sup>

Any motor vehicle service agreement can be canceled by the owner within 60 days after purchase. The owner is entitled to a refund of 100 percent of the gross premium paid minus any claims paid on the service agreement.<sup>6</sup> An administrative fee of not more than 5 percent of the gross premium paid by the owner may be assessed. Once a motor vehicle service agreement has been in effect for 60 days it may not be canceled by the insurer or service agreement company unless: there has been a material misrepresentation or fraud at the time of sale of the service agreement, the owner has failed to maintain the motor vehicle as prescribed by the manufacturer, the odometer has been tampered with or disabled and the owner has failed to repair the odometer, or for nonpayment of premium by the owner.<sup>7</sup> If the insurer or service agreement company cancels the service agreement, the refund to the owner must not be less than 100 percent of the paid unearned pro rata premium minus any claims paid on the agreement. However, if the agreement is canceled after 60 days by the owner, the insurer or service agreement company must return directly to the owner not less than 90 percent of the unearned

<sup>2</sup> <http://money.msn.com/saving-money-tips/post.aspx?post=e297a885-9af3-4274-8228-89b9c7eb0680> (Last viewed 3/3/14).

<sup>3</sup> s. 634.011(8)(b)1.b.

<sup>4</sup> Id.

<sup>5</sup> s. 634.011(8), F.S.

<sup>6</sup> s. 634.121(3)(a), F.S.

<sup>7</sup> s. 634.121(3)(b), F.S.

pro rata premium minus any claims paid on the agreement.<sup>8</sup> A full refund to the owner on canceled service agreements remains the responsibility of the service agreement company; however, the salesperson and agent are responsible for refunding the unearned pro rata commission. Under current law the company may effectuate refunds through the issuing salesperson or agent.<sup>9</sup>

The Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) may, within their respective regulatory jurisdictions, examine and investigate every person involved in the business of motor vehicle service agreements in this state to determine whether such person is engaged in any unfair method of competition or in any unfair or deceptive acts or practices that are prohibited by s. 634.282, F.S.<sup>10</sup>

The OIR conducts financial examinations of motor vehicle service agreement companies as required under part II of ch. 634, F.S. The OIR may examine the companies as often as may be warranted for the protection of policyholders and the public interest, but must examine each company once every 5 years.<sup>11</sup> Criteria are provided for the OIR to consider in determining whether to conduct an examination of a company. The examinations may be conducted by an independent certified public accountant, actuary, investment specialist, information technology specialist, or reinsurance specialist, with the costs paid for by the companies.<sup>12</sup> Section 634.141, F.S., authorizes the establishment of rules whereby a motor vehicle service company may be exempted from examination. Motor vehicle service agreement companies that meet certain criteria and file an exemption fee of \$2,000 to be deposited in the Regulatory Trust Fund may be exempt from examination.<sup>13</sup>

### **Guaranteed Asset Protection (GAP)**

A Guaranteed Asset Protection (GAP) product is a form of debt cancellation product. These products are generally sold in conjunction with an automobile loan and state that the lending institution for the loan will waive the difference between the value of the vehicle and the outstanding balance of the loan or lease, if the loan or lease balance is greater than the vehicle value. The product is not an insurance product regulated under the Florida Insurance Code.<sup>14</sup>

Under current law,<sup>15</sup> a motor vehicle retail installment seller,<sup>16</sup> a sales finance company,<sup>17</sup> a retail lessor,<sup>18</sup> and any assignee of such an entity may offer, for a fee or otherwise, optional guaranteed asset protection products. The purchase of a guaranteed asset protection product may not be required as a condition for making the loan. In order to offer any guaranteed asset protection product those authorized to do so must comply with the following:

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<sup>8</sup> s. 634.121(3)(b)(4), F.S.

<sup>9</sup> Id.

<sup>10</sup> s. 634.283, F.S.

<sup>11</sup> s. 634.141, F.S.

<sup>12</sup> s. 624.316(2)(e), F.S.

<sup>13</sup> The Office of Insurance Regulation, Rule 69O-200.014, FAC.

<sup>14</sup> s. 520.02(7), F.S.

<sup>15</sup> s. 520.07(11), F.S.

<sup>16</sup> s. 520.02, F.S.

<sup>17</sup> Id.

<sup>18</sup> s. 521.003, F.S.

- The cost of any guaranteed asset protection product, with respect to any loan covered by the guaranteed asset protection product, may not exceed the amount of the indebtedness.
- Any contract or agreement pertaining to a guaranteed asset protection product shall be governed by s. 520.07, F.S.
- A guaranteed asset protection product is considered an obligation of any person that purchases or otherwise acquires the loan contract covering such product.
- An entity providing guaranteed asset protection products shall provide readily understandable disclosures that explain in detail eligibility requirements, conditions, refunds, and exclusions. The disclosures must provide that the purchase of the product is optional. The disclosures must be in plain language and of a typeface and size that are easy to read.
- An entity must provide a copy of the executed guaranteed asset protection product contract to the buyer. The entity bears the burden of proving the contract was provided to the buyer.
- An entity may not offer a contract for a guaranteed asset protection product that contains terms giving the entity the right to unilaterally modify the contract unless:
  - The modification is favorable to the buyer and is made without additional charge to the buyer; or
  - The buyer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes in effect.

If a contract for a guaranteed asset protection product is canceled, the issuer shall refund to the buyer any unearned fees paid for the contract unless the contract provides otherwise. A refund is not due to a consumer who receives a benefit under such product. In order to receive a refund, the buyer must notify the issuer of the event terminating the contract and request a refund within 90 days after the occurrence of the event terminating the contract. An issuer may offer a buyer a contract that does not provide for a refund only if the issuer also offers that buyer a bona fide option to purchase a comparable contract that provides for a refund.

### **III. Effect of Proposed Changes:**

The bill defines a “vehicle contract” as a “conditional sales contract, retail installment sales contract, chattel mortgage, lease agreement, promissory note, or any other financial obligation arising from the retail sale or lease of a motor vehicle.” Additionally, “automotive-related product” is defined in the bill as “a motor vehicle service agreement, as defined in s. 634.011, F.S., a guaranteed asset protection product, as defined in s. 520.02, F.S., or another ancillary product that is purchased or otherwise provided as part of the sale or lease of a motor vehicle by a dealer.”

The bill prohibits a finance company that is owned, affiliated, or contracts with an automobile manufacturer from adopting or implementing a policy that results in:

- A refusal to purchase or accept the assignment of a vehicle contract from a dealer because the vehicle contract includes a third party automotive related product;
- A charge to a dealer of an additional fee or surcharge for the purchase or acceptance of the assignment of a vehicle contract from a dealer because the vehicle contract includes a third party automotive related product; or
- An offer to purchase or accept assignment of a vehicle contract from a dealer on less favorable terms than a vehicle contract that contains otherwise substantially similar credit

risk, duration, and other terms, because the vehicle contract includes a third party automotive related product.

The prohibitions of the bill only apply to third party automotive-related products that are substantially similar or superior in kind and quality to an automotive-related product offered by the affiliated finance company or a wholesaler or manufacturer that is affiliated with the finance company. Thus, the bill would require an affiliated finance company to finance substantially similar, competing automotive related products sold by a third party provider without imposing an additional charge to a dealer or providing less favorable terms for purchasing or accepting assignment of a vehicle contract from a deal.

Any person who violates any of the provisions of ch 545, F.S., including the new provisions in this bill is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>19</sup>

The effective date of the bill is July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would prohibit affiliated finance companies from enacting policies that limit the automotive related products that are presented to consumers that have been approved and choose to finance with an affiliated finance company. Dealers will have wide discretion regarding the automotive related products that are presented to consumers in conjunction with the purchase of a motor vehicle.

The requirement that an affiliated finance company must finance a substantially similar, competing automotive related product sold by a third party provider could prohibit the

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<sup>19</sup> s. 545.12, F.S.

affiliated finance company from scrutinizing the third party provider's financials and business practices. The Consumer Financial Protection Bureau (CFPB) issued Bulletin 2012-03<sup>20</sup> recommending the scrutinizing of third party providers by financial institutions. The director of the CFPB stated in a press release about the bulletin, "Consumers are at a real disadvantage because they do not get to choose the service providers they deal with-the financial institution does."<sup>21</sup> It is unclear if future regulations issued by the CFPB will apply to the scenarios raised in this bill.

The bill does not prohibit the affiliated finance company from choosing to withhold financing on sales contracts that included third party automobile related products not offered by the affiliated finance company or a wholesaler or manufacturer that is affiliated with the finance company.

The bill only applies to an affiliated finance company as defined in the bill and does not apply to other automobile lenders or finance companies.

Any person who violates the provisions in this bill is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.<sup>22</sup>

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 545.01 of the Florida Statutes.

This bill creates section 545.045 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

<sup>20</sup> [http://files.consumerfinance.gov/f/201204\\_cfpb\\_bulletin\\_service-providers.pdf](http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf) (Last viewed 3/3/14).

<sup>21</sup> <http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-to-hold-financial-institutions-and-their-service-providers-accountable/> (Last viewed 3/3/14).

<sup>22</sup> s. 545.12, F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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