

By Senator Latvala

19-976A-99

1 A bill to be entitled
2 An act relating to service warranties; amending
3 s. 634.041, F.S.; modifying insurance
4 requirements for service agreement companies;
5 amending s. 634.081, F.S.; providing for
6 revocation of a service agreement company's
7 license if the ratio of unearned gross written
8 premiums written to net assets exceeds a
9 specified amount; amending s. 634.121, F.S.;
10 prescribing manner in which a service agreement
11 must identify restrictions or limitations on
12 benefits or the existence of a rental car
13 provision; amending s. 634.312, F.S.; requiring
14 home warranty contracts to state that the
15 warranty may not provide listing period
16 coverage free of charge; amending s. 634.401,
17 F.S.; redefining the term "service warranty";
18 providing an effective date.

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

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22 Section 1. Subsections (8) and (9) of section 634.041,
23 Florida Statutes, are amended to read:

24 634.041 Qualifications for license.--To qualify for
25 and hold a license to issue service agreements in this state,
26 a service agreement company must be in compliance with this
27 part, with applicable rules of the department, with related
28 sections of the Florida Insurance Code, and with its charter
29 powers and must comply with the following:

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1 (8)(a) A service agreement company must establish and
2 maintain an unearned premium reserve in accordance with the
3 following:

4 1. It must consist of unencumbered assets equal to a
5 minimum of 50 percent of the unearned gross written premium on
6 each service agreement and must amortize this reserve pro rata
7 over the duration of the service agreement. Such assets must
8 be held in the form of cash or invested in securities for
9 investment under ss. 625.301-625.340.

10 2. In addition to the net asset requirements set forth
11 in subsection (6), a company utilizing the 50-percent reserve
12 must not allow its ratio of gross written premium in force to
13 net assets to exceed 10 to 1. For companies that have
14 utilized both contractual liability insurance and the
15 50-percent reserve, this ratio must be calculated based only
16 on that portion of gross written premium in force which is
17 covered by the 50-percent reserve.

18 3. A company that uses an unearned premium reserve
19 must deposit with the department securities of the type
20 eligible for deposit by insurers under s. 625.52 equal to 15
21 percent of the unearned premium reserve. This reserve deposit
22 may be included as an asset for calculating the requirement of
23 subparagraph 1. A request for release of the reserve deposit
24 may be made quarterly only after the department has approved
25 the company's current quarterly or annual financial statement
26 and a statement sworn to by two officers of the company,
27 verifying that the release will not reduce the reserve deposit
28 to less than 15 percent of the unearned premium reserve.

29 (b) A service agreement company does not have to
30 establish and maintain an unearned premium reserve if it
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1 purchases and maintains contractual liability insurance in
2 accordance with the following:

3 1. The insurance covers 100 percent of its claim
4 exposure and is obtained from an insurer approved by the
5 department which holds a certificate of authority to do
6 business within this state. The insurer may not delegate the
7 responsibility for maintaining claims reserves to the service
8 agreement company, and the insurer issuing the policy must
9 maintain adequate reserves to cover all claim exposure of the
10 service agreement company during the effective period of the
11 policy.

12 2. If the service agreement company does not meet its
13 contractual obligations, the contractual liability insurance
14 policy binds its issuer to pay or cause to be paid to the
15 service agreement holder all legitimate claims and
16 cancellation refunds for all service agreements issued by the
17 service agreement company while the policy was in effect.
18 This requirement also applies to those service agreements for
19 which no premium has been remitted to the insurer.

20 3. If the issuer of the contractual liability policy
21 is fulfilling the service agreements covered by the
22 contractual liability policy and the service agreement holder
23 cancels the service agreement, the issuer must make a full
24 refund of unearned premium to the consumer, subject to the
25 cancellation fee provisions of s. 634.121(5). The sales
26 representative and agent must refund to the contractual
27 liability policy issuer their unearned pro rata commission.

28 4. The policy may not be canceled, terminated, or
29 nonrenewed by the insurer or the service agreement company
30 unless a 90-day written notice thereof has been given to the
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1 department by the insurer before the date of the cancellation,
2 termination, or nonrenewal.

3 5. The service agreement company must provide the
4 department with the claims statistics.

5 (9) In meeting the requirements of this part, a
6 service agreement company may not utilize both the 50-percent
7 reserve and contractual liability insurance simultaneously,
8 unless the service agreement company complies with the
9 requirements of this subsection. ~~However,~~A company may have
10 contractual liability coverage on service agreements
11 previously sold and sell new service agreements covered by the
12 50-percent-reserve, and the converse of this is also allowed.
13 A service agreement company may simultaneously use a 50-per
14 cent reserve and contractual liability insurance if:

15 (a) Each contractual liability policy clearly
16 identifies the service agreements that are covered;

17 (b) The service agreement company separately reports
18 premiums written under each applicable contractual liability
19 policy and under the 50-percent reserve on all reports
20 required under s. 634.137;

21 (c) The service agreement company submits to the
22 department a plan to simultaneously use a 50-percent reserve
23 and contractual liability insurance for review and approval at
24 least 30-days before their implementation; and

25 (d) Each licensed salesperson appointed by the service
26 agreement company sells service contracts covered exclusively
27 by the 50-percent reserve or covered exclusively by
28 contractual liability insurance, and the service contract
29 agreement company maintains a record for each licensed sales
30 person which indicates which type of contract that salesperson
31 transacts.

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A service agreement company must be able to distinguish how each individual service agreement is covered.

Section 2. Subsection (5) of section 634.081, Florida Statutes, is amended to read:

634.081 Suspension or revocation of license;
grounds.--

(5) The department shall suspend or revoke the license of a company if it finds that the ratio of unearned gross written premiums written to net assets exceeds 10 to 1 unless the company has in excess of \$750,000 in net assets and is utilizing contractual liability insurance which cedes 100 percent of the service agreement company's claims liabilities to the contractual liability insurer or is utilizing contractual liability insurance which reimburses the service agreement company for 100 percent of its paid claims. However, if a service agreement company has been licensed by the department in excess of 10 years, is in compliance with all applicable provisions of this part, and has net assets at all times in excess of \$3 million that comply with the provisions of part II of chapter 625, such company may not exceed a ratio of gross written premiums written to net assets of 15 to 1.

Section 3. Subsections (9) and (12) of section 634.121, Florida Statutes, are amended to read:

634.121 Filing of forms, required procedures,
provisions.--

(9) Each service agreement form must contain in conspicuous, boldfaced type any statement or clause that places restrictions or limitations on the benefits offered or disclose such restrictions or limitations in regular typeface

1 in a section of the service agreement containing a
2 conspicuous, boldfaced-type heading.

3 (12) If a service agreement contains a rental car
4 provision, it must disclose the terms and conditions of this
5 benefit in conspicuous, boldfaced type or disclose the terms
6 and conditions of this benefit in regular typeface in a
7 section of the service agreement containing a conspicuous,
8 boldfaced-type heading.

9 Section 4. Subsection (6) is added to section 634.312,
10 Florida Statutes, to read:

11 634.312 Filing, approval of forms.--

12 (6) All home warranty contracts must state in
13 conspicuous, boldfaced type that the home warranty may not
14 provide listing period coverage free of charge.

15 Section 5. Subsection (14) of section 634.401, Florida
16 Statutes, is amended to read:

17 634.401 Definitions.--As used in this part, the term:

18 (14) "Service warranty" means any warranty, guaranty,
19 extended warranty or extended guaranty, contract agreement, or
20 other written promise to indemnify against the cost of repair
21 or replacement of a consumer product in return for the payment
22 of a segregated charge by the consumer, including, but not
23 limited to, any agreement for a specified duration which
24 provides the consumer a discount in excess of 40 percent on
25 parts and labor during such period; however:

26 (a) Maintenance service contracts written for 1 year
27 which do not contain provisions for indemnification and which
28 provide only for regularly scheduled maintenance, motor
29 vehicle service agreements, transactions exempt under s.
30 624.125, and home warranties subject to regulation under parts
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1 I and II of this chapter are excluded from this definition;
2 and

3 (b) The term "service warranty" does not include
4 service contracts between consumers and condominium
5 associations.

6 Section 6. This act shall take effect July 1, 1999.

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SENATE SUMMARY

10 Modifies insurance requirements for service agreement
11 companies. Provides for revocation of a service agreement
12 company's license if the ratio of unearned gross written
13 premiums written to net assets exceeds a specified
14 amount. Prescribes the manner in which a service
15 agreement must identify restrictions or limitations on
16 benefits or the existence of a rental car provision.
17 Requires home warranty contracts to state in conspicuous
18 boldfaced type that the warranty may not provide listing
19 period coverage free of charge. Redefines the term
20 "service warranty".

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