

By the Committee on Banking and Insurance; and Senator Latvala

311-1927-99

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. 634.121, F.S.; prescribing manner
6 in which a service agreement must identify
7 restrictions or limitations on benefits or the
8 existence of a rental car provision; amending
9 s. 634.312, F.S.; requiring home warranty
10 contracts to state that the warranty may not
11 provide listing period coverage free of charge;
12 amending s. 634.401, F.S.; redefining the term
13 "service warranty"; amending s. 634.406, F.S.;
14 providing for contractual liability
15 requirements for associations; providing an
16 effective date.

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

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20 Section 1. Subsection (8) of section 634.041, Florida
21 Statutes, is amended to read:

22 634.041 Qualifications for license.--To qualify for
23 and hold a license to issue service agreements in this state,
24 a service agreement company must be in compliance with this
25 part, with applicable rules of the department, with related
26 sections of the Florida Insurance Code, and with its charter
27 powers and must comply with the following:

28 (8)(a) A service agreement company must establish and
29 maintain an unearned premium reserve in accordance with the
30 following:

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

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

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

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

30 1. The insurance covers 100 percent of its claim
31 exposure and is obtained from an insurer approved by the

1 department which holds a certificate of authority to do
2 business within this state. All funds or premiums remitted to
3 an insurer by a motor vehicle service agreement company under
4 this part must remain in the care, custody, and control of the
5 insurer and must be counted as an asset of the insurer. If a
6 motor vehicle service agreement company chooses to comply with
7 this paragraph, but also maintains a reserve to pay claims,
8 the reserve may only be considered an asset of the covered
9 motor vehicle service agreement company and may not be
10 simultaneously counted as an asset of any other entity.

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

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

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

1 5. The service agreement company must provide the
2 department with the claims statistics.

3 Section 2. Subsections (9) and (12) of section
4 634.121, Florida Statutes, are amended to read:

5 634.121 Filing of forms, required procedures,
6 provisions.--

7 (9) Each service agreement form must contain in
8 conspicuous, boldfaced type any statement or clause that
9 places restrictions or limitations on the benefits offered or
10 disclose such restrictions or limitations in regular typeface
11 in a section of the service agreement containing a
12 conspicuous, boldfaced-type heading.

13 (12) If a service agreement contains a rental car
14 provision, it must disclose the terms and conditions of this
15 benefit in conspicuous, boldfaced type or disclose the terms
16 and conditions of this benefit in regular typeface in a
17 section of the service agreement containing a conspicuous,
18 boldfaced-type heading.

19 Section 3. Subsection (6) is added to section 634.312,
20 Florida Statutes, to read:

21 634.312 Filing, approval of forms.--

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

25 Section 4. Subsection (14) of section 634.401, Florida
26 Statutes, is amended to read:

27 634.401 Definitions.--As used in this part, the term:

28 (14) "Service warranty" means any warranty, guaranty,
29 extended warranty or extended guaranty, maintenance service
30 contract greater than 1 year or which does not meet the
31 exemption in paragraph (a), contract agreement, or other

1 written promise to indemnify against the cost of repair or
2 replacement of a consumer product in return for the payment of
3 a segregated charge by the consumer; however:

4 (a) Maintenance service contracts written for 1 year
5 or less which do not contain provisions for indemnification
6 and which do not provide a discount to the consumer for any
7 combination of parts and labor in excess of 20 percent during
8 the effective period of the contract, motor vehicle service
9 agreements, transactions exempt under s. 624.125, and home
10 warranties subject to regulation under parts I and II of this
11 chapter are excluded from this definition; and

12 (b) The term "service warranty" does not include
13 service contracts between consumers and condominium
14 associations.

15 Section 5. Subsection (3) of section 634.406, Florida
16 Statutes, is amended to read:

17 634.406 Financial requirements.--

18 (3) An association will not be required to establish
19 an unearned premium reserve if it has purchased contractual
20 liability insurance which demonstrates to the satisfaction of
21 the department that 100 percent of its claim exposure is
22 covered by such policy. The contractual liability insurance
23 shall be obtained from an insurer that holds a certificate of
24 authority to do business within the state ~~or from an insurer~~
25 ~~approved by the department as financially capable of meeting~~
26 ~~the obligations incurred pursuant to the policy.~~ For the
27 purposes of this subsection, the contractual liability policy
28 shall contain the following provisions:

29 (a) In the event that the service warranty association
30 does not fulfill its obligation under contracts issued in this
31 state for any reason, including insolvency, bankruptcy, or

1 dissolution, the contractual liability insurer will pay losses
2 and unearned premium refunds under such plans directly to the
3 person making a claim under the contract.

4 (b) The insurer issuing the contractual liability
5 policy shall assume full responsibility for the administration
6 of claims in the event of the inability of the association to
7 do so.

8 (c) The policy may not be canceled or not renewed by
9 either the insurer or the association unless 60 days' written
10 notice thereof has been given to the department by the insurer
11 before the date of such cancellation or nonrenewal.

12 (d) The contractual liability insurance policy shall
13 insure all service warranty contracts which were issued while
14 the policy was in effect whether or not the premium has been
15 remitted to the insurer.

16 (e) In the event the issuer of the contractual
17 liability policy is fulfilling the service warranty covered by
18 policy and in the event the service warranty holder cancels
19 the service warranty, it is the responsibility of the
20 contractual liability policy issuer to effectuate a full
21 refund of unearned premium to the consumer. This refund shall
22 be subject to the cancellation fee provisions of s.

23 634.414(3). The salesperson or agent shall refund to the
24 contractual liability policy issuer the unearned pro rata
25 commission.

26 (f) An association may not utilize both the unearned
27 premium reserve and contractual liability insurance
28 simultaneously. However, an association shall be allowed to
29 have contractual liability coverage on service warranties
30 previously sold and sell new service warranties covered by the
31 unearned premium reserve, and the converse of this shall also

1 be allowed. An association must be able to distinguish how
2 each individual service warranty is covered.

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

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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 1234

- 8 1. Clarifies that all funds or premiums remitted to a
9 contractual liability insurer by a motor vehicle service
10 agreement company must remain in the custody of the
11 contractual liability insurer and be counted as an asset
12 of that insurer. If a motor vehicle service agreement
13 company also maintains a reserve to pay claims, the
14 reserve may only be considered an asset of such service
15 agreement company and may not be simultaneously counted
16 as an asset of any other entity.
- 17 2. Removes the provision allowing a motor vehicle service
18 agreement company to simultaneously use 50 percent
19 reserves and contractual liability insurance under
20 certain conditions. Also, deletes the provision allowing
21 a motor vehicle service agreement company to maintain a
22 ratio of unearned gross written premiums written to net
23 assets of no more than 10 to 1.
- 24 3. Expands the definition of "service warranty" to include
25 maintenance service contracts that are greater than 1
26 year or maintenance service contracts written for 1 year
27 or less which provide consumer discounts for parts and
28 labor in excess of 20 percent.
- 29 4. Disallows service warranty companies from purchasing
30 contractual liability insurance from surplus lines
31 insurers.