

STORAGE NAME: h1749s1b.jud

DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: CS/HB 1749

RELATING TO: Service warranties

SPONSOR(S): Committee on Insurance and Representative Farkas

COMPANION BILL(S): CS/SB 1234(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 12 NAYS 0
 - (2) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 8 NAYS 0
 - (3) JUDICIARY YEAS 8 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 1749 requires an insurer that provides contractual liability coverage for 100 percent of the claims would be prohibited from delegating the responsibility for maintaining the claims reserve to the service agreement company. The insurer would also be required to maintain adequate reserves to cover all claims exposure of the service agreement company for the duration of the policy.

The bill authorizes the motor vehicle service agreement company to set forth certain restrictions or limitations of the motor vehicle service agreement contract in regular type with a boldface heading, rather than boldface type.

The bill requires home warranty contracts to state in conspicuous, boldfaced type that the home warranty may not provide free of charge coverage for the period that the home is listed for sale.

The bill provides that a maintenance service contract that is longer than one year would be included in the definition of service warranty. A maintenance service contract for less than one year that also provides a combination of parts and labor discounted by more than 20 percent would fall under the definition of a service warranty. As such, these types of maintenance service contracts would be subject to regulation by the DOI.

The bill requires a service warranty association to obtain contractual liability insurance from an insurer that is authorized to write insurance in the state.

There is no anticipated fiscal impact on state or local governments.

The bill shall become effective on becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

A warranty contract is a form of insurance that pays for repairs to goods after the expiration of the manufacturer's warranty. According to the Department of Insurance, there are 162 warranty associations in Florida: 52 motor vehicle service agreement companies, 15 home warranty associations, and 95 service warranty associations. Warranty associations are regulated by the DOI under chapter 634, Florida Statutes.

Motor Vehicle Service Agreement Companies

Motor vehicle service agreement companies are regulated under ss. 634.011 - 634.281, F.S. A motor vehicle service agreement is defined in s. 634.011, F.S., as a contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement against loss caused by failure of any mechanical or other component part.

Motor vehicle service agreement companies must be licensed through the DOI to conduct business in the state. A motor vehicle service agreement company must maintain an unearned premium reserve consisting of assets equal to a minimum of 50 percent of unearned gross written premium on each service agreement and a ratio of gross written premium to net assets of 10 to 1. A motor vehicle service agreement company does not have to maintain reserves of 50 percent of unearned gross written premium if the company purchases and maintains a contractual liability insurance policy to insure 100 percent of its service contract obligations.

Motor vehicle service agreement forms must be filed with the DOI to be used in the state. The purchaser of a motor vehicle service agreement must receive a copy of the motor vehicle service contract within 45 days of purchase. A motor vehicle service agreement must contain the following in conspicuous boldfaced type:

- ▶ a statement that a motor vehicle service agreement is assignable in a consumer transaction and conditions regarding the rights of such transfer;
- ▶ any statement or clause that places limitations or restrictions on the service agreement;
- ▶ a statement of the intention of the motor vehicle service agreement company to use remanufactured or used replacement parts; and
- ▶ the terms and conditions of any rental car provision.

Home Warranty Associations

Home warranty associations are regulated under ss. 634.301 - 634.348, F.S. A home warranty is defined in s. 634.301, F.S., as a contract or agreement offered in connection with the sale of a home, a loan of \$5,000 or more secured by residential property, or a home improvement of \$7,500 or more.

A home warranty may not be issued in the state unless the company is licensed by the DOI under s. 634.306, F.S., and the warranty form has been filed with the DOI.

A home warranty may provide coverage during the period in which a home is listed for sale. The warranty company must charge the purchaser of the warranty a separate charge that equals at least 15 percent of the annual premium charged for the home warranty for coverage during the listing period.

Service Warranty Associations

Service warranty associations are regulated under ss. 634.401 - 634.444, F.S. A service warranty is defined under s. 634.401, F.S., as a warranty or contract agreement to repair or replace a consumer product in return for payment by the consumer. Maintenance service contracts written for one year which do not contain provisions for indemnification are not included in the definition of service warranty.

B. EFFECT OF PROPOSED CHANGES:

Motor Vehicle Service Agreement Companies

An insurer that provides contractual liability coverage for 100 percent of the claims of a motor vehicle service agreement would be prohibited from delegating the responsibility for maintaining the claims reserve to the service agreement company. The insurer would also be required to maintain adequate reserves to cover all claims exposure of the service agreement company for the duration of the policy. These reserves could not be reported by the motor vehicle service agreement company as an asset.

Certain provisions of the service agreement contract would no longer be required to be set forth in conspicuous, boldfaced type. Any restrictions or limitations of the service agreement contract could be set forth in regular type with a boldfaced heading. A rental car provision that is included in the service agreement contract could also be set forth in regular type with a boldfaced heading.

Home Warranty Associations

A home warranty contract would be required to state in conspicuous, boldfaced type that coverage provided for the period that a home is for sale would not be provided free of charge under the home warranty.

Service Warranty Associations

A maintenance service contract that is longer than one year would be included in the definition of service warranty. A maintenance service contract for less than one year that also provides a combination of parts and labor discounted by more than 20 percent would fall under the definition of a service warranty. As such, these types of maintenance service contracts would be subject to regulation by the DOI. For example, Company A would have to be licensed as a service warranty association if a maintenance service contract is offered, and in connection with that contract, offers a discount of over 20 percent for all parts and labor for the period of the maintenance service contract.

The bill would disallow a service warranty association from using a policy from a surplus lines insurer to meet its requirements for contractual liability.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

A maintenance service contract that is longer than one year would be included in the definition of service warranty. A maintenance service contract for less than one year that also provides a combination of parts and labor discounted by more than 20 percent would fall under the definition of a service warranty. As such, these types of maintenance service contracts would be subject to regulation by the DOI.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill does not reduce or eliminate an agency or program.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

A maintenance service contract that is longer than one year would be included in the definition of service warranty. A maintenance service contract for less than one year that also provides a combination of parts and labor discounted by more than 20 percent would fall under the

definition of a service warranty. As such, these types of maintenance service contracts would be subject to regulation by the DOI.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

The bill does not create or change a program providing services to families or children.

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 634.041, 634.121, 634.312, 634.401, and 634.406, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 634.041, F.S., regarding the qualifications for licensure for service warranty companies. An insurer that provides contractual liability coverage for 100 percent of the claims would be prohibited from delegating the responsibility for maintaining the claims reserve to the service agreement company. The insurer would also be required to maintain adequate reserves to cover all claims exposure of the service agreement company for the duration of the policy.

Section 2. Amends s. 634.121, F.S., to authorize the motor vehicle service agreement company to set forth certain restrictions or limitations of the motor vehicle service agreement contract in regular type with a boldface heading, rather than boldface type.

Section 3. Amends s. 634.312, F.S., to require that a home warranty contract must state in conspicuous, boldfaced type that the home warranty may not provide free of charge coverage for the period that the home is listed for sale.

Section 4. Amends s. 634.401, F.S., to provide that a maintenance service contract that is longer than one year would be included in the definition of service warranty. A maintenance service contract for less than one year that also provides a combination of parts and labor discounted by more than 20 percent would fall under the definition of a service warranty. As such, these types of maintenance service contracts would be subject to regulation by the DOI.

Section 5. Amends s. 634.406, F.S., to require a service warranty association to obtain contractual liability insurance from an insurer that is authorized to write insurance in the state.

Section 6. Provides that the bill would take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

New licensees providing maintenance service contracts would be required to comply with licensure and solvency requirements. A licensee would be required to pay an annual license fee of \$200. The DOI does not anticipate the fiscal impact to be significant.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

A maintenance service contract that is longer than one year would be included in the definition of service warranty. A maintenance service contract for less than one year that also provides a combination of parts and labor discounted by more than 20 percent would fall under the definition of a service warranty. As such, these types of maintenance service contracts would be subject to regulation by the DOI. Those that offer maintenance service contracts of this type would be required to meet the financial requirements of a service warranty association and pay an annual license fee in the amount of \$200.

2. Direct Private Sector Benefits:

Unknown.

3. Effects on Competition, Private Enterprise and Employment Markets:

See 1. above.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties and municipalities have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

See Committee on Judiciary comments regarding the amendment offered in committee (below).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 7, 1999, the Committee on Business Regulation and Consumer Affairs adopted one amendment. The amendment strikes from the provisions of the committee substitute the words "funds or" to specify that only premiums received from a motor vehicle service agreement company would be classified as assets of the insurer and, thereby, exclude other agreements or contracts that do not relate to contractual liability.

The committee substitute differs from the original bill as follows:

- * Removes from the bill the proposed conditions to be imposed on a service agreement company if the company were to choose to use reserves and insurance to cover their liability exposure;
- * Removes from the bill the proposed requirement for a motor vehicle service agreement company to maintain a ratio of "unearned" gross written premium rather than a ratio based on gross written premium;

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- * Revises the conditions for a maintenance service contract to be considered within the definition of service warranty for purposes of regulation by the DOI; and
- * Prohibits service warranty companies from obtaining contractual liability insurance from certain insurers.

The Committee on Judiciary adopted one amendment. The amendment exempts insurers which are affiliated with a motor vehicle warranty company where both entities are members of an insurance holding company from the requirement that the insurer hold premiums or other funds and count such funds as an asset.

Note:

The amendment offered in the committee by Representative Bense was intended as a substitute amendment to the first amendment which was traveling with the bill. At present both amendments are traveling with the bill, and a correction on the floor is in order.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Meredith Woodrum Snowden

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AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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