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HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS

BILL #: HB 1237

RELATING TO: Motor Vehicle Service Agreements

SPONSOR(S): Representative Fields

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:
(1) INSURANCE
(2) TRANSPORTATION
(3) COUNCIL FOR COMPETITIVE COMMERCE
(4)
(5)

I. SUMMARY:

The Department of Insurance may authorize a motor vehicle service agreement company to guarantee or warrant a consumer's automobile for any mechanical failure or a failure of a component part that arises out of the use or operation of the vehicle after the expiration of the manufacturer's warranty. Motor vehicle service agreements are typically marketed through automobile dealerships, which must be licensed by the Department of Insurance.

Insurance companies offer, and lenders generally require, comprehensive loss insurance for motor vehicles. Comprehensive insurance generally compensates losses from incidents other than a collision, such as losses as a result of theft, fire, windstorm, vandalism, flood, falling objects, or hitting an animal.

The bill would require a motor vehicle service agreement to cover "vehicle protection expenses" associated with the loss or damage to a vehicle because of the failure of a "vehicle protection product" (e.g. car alarms, window etching of vehicle identification numbers, devices that hinder the ability to drive a car).

This insurance product would cover "vehicle protection expenses" only in the event of:

- loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the vehicle; or
- incidental expenses as a result of a theft, such as expenses for a replacement vehicle, the registration of the replacement vehicle, and a rental vehicle.

Since the failure of a vehicle protection product may result in the damage to or the theft of the vehicle, a motor vehicle owner's comprehensive loss insurance, if applicable, would appear to cover this same loss. Also, while the motor vehicle service agreement company is required to submit their forms for Department approval, the bill would not require the form to contain information for distinguishing between the coverage provided by comprehensive loss insurance, if applicable, and the vehicle protection portion of a motor vehicle service agreement, as a basis for assessing the value received for the price paid.

The bill may have an indeterminate positive fiscal impact on state government. The bill would have no fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes [] No [] N/A [x]

2. Lower Taxes Yes [] No [] N/A [X]

3. Individual Freedom Yes [] No [] N/A [X]

4. Personal Responsibility Yes [] No [] N/A [X]

5. Family Empowerment Yes [] No [] N/A [X]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Motor Vehicle Service Agreement Companies

The Insurance Code[1] authorizes a motor vehicle service agreement company to guarantee or warrant a consumer's motor vehicle and its component parts for any mechanical failure that arises out of the use or operation of the vehicle after the expiration of the manufacturer's warranty.[2] These companies must be licensed by the Department of Insurance (Department), and must submit forms for Department approval.[3]

As a solvency safeguard, statute require motor vehicle service agreement companies to maintain reserves 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 ten-to-one. The Department must examine these companies every three years. A motor vehicle service agreement company may reinsure 100 percent of its service contract obligations in satisfaction of the reserve requirement.[4]

Motor vehicle service agreements are typically marketed through automobile dealerships, and the dealerships may obtain an agent license to market motor vehicle service agreements.[5] The employees of the automobile dealership may sell motor vehicle service agreements under the dealership's license. License fees are $100 annually, and are deposited into the Insurance Commissioner's Regulatory Trust Fund.

Comprehensive Insurance Coverage

Comprehensive insurance generally compensates losses from incidents other than a collision, such as losses as a result of theft, fire, windstorm, vandalism, flood, falling objects, or hitting an animal.[6] This insurance is not a mandatory coverage in Florida; however, according to the Department, most

[1] Section 624.01, F.S.
[2] Section 634.011, F.S.
[3] Chapter 634.121, and 634.041, F.S.
[4] Section 634. 041, F.S.
[5] Section 634.171, F.S.
[6] The losses covered are dependant on the details of the comprehensive insurance policy chosen by the consumer or lending institution.

lending institutions will require the consumer to maintain this coverage as a condition of securing a loan for the vehicle.

Vehicle Protection Products

According to the National Vehicle Protection Association, a trade association of companies providing benefits to purchasers of vehicle protection products through the sale of warranties, there are three basic types of warranty benefits offered to cover the loss of a vehicle due to the failure of a vehicle protection product to deter the theft of a vehicle following proper installation. They include:

- a flat fee amount selected by the purchaser;
- the cost of a current-year vehicle of the same make and model (after deducting comprehensive loss insurance coverage), including sales tax, registration fees, rental car, and deductibles ; or
- the cost of a same-year vehicle of the same make, and model (after deducting comprehensive loss insurance coverage), including sales tax, registration fees, rental car, and deductibles.

These products are subject to limitations and exceptions regarding, among other things, initial registration through the dealer, claims procedures, and maintenance of comprehensive loss coverage.

C. EFFECT OF PROPOSED CHANGES:

The bill would require motor vehicle service agreements to cover "vehicle protection expenses"[7] associated with the loss or damage to a vehicle because of the failure of a "vehicle protection product" [8]

This insurance product would provide coverage for "vehicle protection expenses" only in the event of:

- loss or damage to the vehicle as a result of the failure of the "vehicle protection product" to prevent the theft of the vehicle; or
- incidental expenses[9] as a result of a theft, such as expenses for a replacement vehicle, the registration of the replacement vehicle, and a rental vehicle.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

[7] "Vehicle protection expenses" would be defined as "payment to the holder of a service agreement in the event of the failure of a vehicle protection product to prevent the theft of a motor vehicle."
[8] "Vehicle protection product" would be defined as "a product or system that is installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle" (e.g. car alarms, window etching of vehicle identification numbers, devices that hinder the ability to drive a car).
[9] Please see Section V. C., other comments.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2002-2003	FY 2003 - 2004
Insurance Commissioner's Regulatory Trust Fund	Positive, but indeterminate	Positive, but indeterminate

To the extent new businesses or individuals must obtain licenses to continue selling or choose to begin selling motor vehicle service agreements, the state may experience increased licensure revenues at a rate of $100 per license.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent this type of risk is not currently underwritten, persons purchasing motor vehicle service agreements may experience increased costs.

D. FISCAL COMMENTS:

Please see section III. C., direct impact on private sector.

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:

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

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill would classify this product as a motor vehicle service agreement that is marketed by warranty companies licensed under Ch. 634, F.S., as opposed to a coverage of casualty insurance marketed by insurance companies authorized under other chapters of the Insurance Code. Where a “vehicle protection product” actually fails, this is clearly a case of product failure that is generally contemplated by a warranty (i.e., a motor vehicle service agreement). However, when a “vehicle protection product” does not operate as a deterrent to theft, the distinction between whether the product offers a warranty or a casualty coverage is less apparent. Under the bill, the failure of deterrence would be classified as a warranty.

The bill makes no distinction between this product and comprehensive loss insurance in terms of deductible amounts, application (i.e., primary coverage), and reimbursement amounts. If a consumer has a comprehensive insurance policy covering theft, and the consumer has a “vehicle protection product,” consumers purchasing this product could be duplicating coverage available under the comprehensive loss coverage, which would cover expenses in the event the car is lost or damaged due to theft.

While the motor vehicle service agreement company is required to submit their forms for Department approval, the bill would not require the form to contain information for distinguishing between the coverage provided by comprehensive loss insurance, if applicable, and the vehicle protection portion of a motor vehicle service agreement, as a basis for assessing the value received for the price paid.

The bill provides for the recovery of incidental expenses, including “expenses for a replacement vehicle, temporary vehicle rental expenses, and registration fees of a replacement vehicle.” The value of “expenses” covered would not be specifically defined. Does this mean minimal deductibles or up to and including the comprehensive replacement costs (i.e. the total value of the vehicle)? If it includes the total comprehensive replacement, the bill is silent as to how that cost would be measured. This may lead to a motor vehicle service agreement company having trouble assessing its risk exposure, and have consequences for solvency considerations.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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