

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2102

SPONSOR: Banking and Insurance Committee and Senator Villalobos

SUBJECT: Motor Vehicle Service Agreements

DATE: February 18, 2002 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Under current law, a motor vehicle service agreement company may guarantee or warrant a consumer's automobile for any mechanical failure that arises out of the use or operation of the vehicle after the expiration of the manufacturer's warranty. Such companies are licensed and regulated by the Department of Insurance.

Committee Substitute for Senate Bill 2102 would allow a motor vehicle service agreement company to be licensed to market and sell certain guarantees associated with vehicle theft prevention products. These theft prevention agreements could be sold only on a vehicle that is covered by a comprehensive motor vehicle insurance policy and would not take the place of regular theft coverage under a comprehensive insurance policy, but would supplement such insurance.

Theft prevention products would be installed in a motor vehicle and could include car alarms, window etching of vehicle I.D. numbers, and other applications that deter theft of automobiles. If these products failed to prevent the theft of the vehicle, the policyholder would be paid specified incidental expenses including expenses for a replacement vehicle, vehicle rental expenses, sales tax, or registration expenses for a replacement vehicle. Alternatively, the policyholder would be paid for unreimbursed expenses incurred by such policyholder for the loss or damage to the vehicle as a result of the failure of the theft protection product to prevent the theft of the vehicle or to assist in the recovery of the vehicle. Payments would exclude the cash value of the stolen vehicle and could not duplicate any benefits paid the policyholder by the insurer providing comprehensive motor vehicle insurance coverage on the stolen motor vehicle.

The bill mandates that service agreement companies offering theft prevention coverage must meet financial solvency requirements through the purchase of contractual liability insurance,

rather than maintaining reserves. Also, the Department of Insurance is given authority to disapprove motor vehicle service agreement forms that do not contain certain specific information and clear benefits.

Finally, the bill provides that a motor vehicle service agreement company applying for a license from the department must be a solvent corporation which may be formed under the laws of another state or a district of the United States. Current law requires such companies to be domiciled in Florida.

This bill substantially amends the following sections of the Florida Statutes: 634.011, 634.041, 634.121, and 634.191.

## II. Present Situation:

### Motor Vehicle Service Agreement Companies

Motor vehicle service agreement companies are regulated under part I, chapter 634, F.S. A motor vehicle service agreement means a contract or agreement indemnifying the service agreement holder (purchaser) for the motor vehicle listed on the service agreement against loss caused by failure of any mechanical or other component part.<sup>1</sup> Such agreements or warranties are generally considered *not* to be insurance products because a warranty promises to indemnify against defects in the article sold, while insurance indemnifies against loss or damage resulting from perils outside of and unrelated to defects in the article itself.<sup>2</sup>

Motor vehicle service agreement companies must be licensed through the Department of Insurance to conduct business in the state. Such companies must meet financial solvency, marketing and sales requirements and are examined by the department every 3 years. The financial solvency provisions require companies to maintain an unearned premium reserve consisting of unencumbered assets equal to a minimum of 50 percent of the unearned gross written premium on each service agreement and a ratio of gross written premium to net assets of 10 to 1.<sup>3</sup> However, 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. A motor vehicle service agreement company may not utilize both the 50 percent reserve of unearned gross written premium and the contractual liability insurance policy simultaneously. Companies that have previously sold service agreements covered by contractual liability policies have been allowed to convert to selling service agreements covered by the 50 percent reserve, or vice versa.

The department has the authority to suspend the license of a motor vehicle service agreement company when the ratio of gross written premiums to net assets exceeds 10 to 1, unless the company has over \$750,000 in net assets and uses a contractual liability insurance policy to cover 100 percent of its claims.<sup>4</sup> The purchaser of a motor vehicle service agreement must

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<sup>1</sup> S. 634.011, F.S.

<sup>2</sup> 44 C.J.S. 473-4, Section 1.

<sup>3</sup> S. 634.041, F.S.

<sup>4</sup> S. 624.081, F.S.

receive a copy of the motor vehicle service contract within 45 days of purchase and may cancel it within 60 days of purchase. A motor vehicle service agreement must contain the following in conspicuous boldfaced type:<sup>5</sup>

- A statement that a motor vehicle service agreement is assignable in a consumer transaction and all conditions on the right 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.

Motor vehicle service agreement forms must be filed with and approved by the department; however, a company's rates need only be filed with the department. Under the provisions of s. 634.282, F.S., the unfair or deceptive act provisions apply to motor vehicle service agreement companies and to persons who market and sell the service agreements. The deceptive act provisions apply to the advertising, sale, or delivery of motor vehicle service agreements. According to the Department of Insurance, as to information reported on February 13, 2002, of the 162 warranty or service agreement companies in Florida, 50 are motor vehicle service agreement companies.<sup>6</sup>

According to proponents of this bill, some motor vehicle service agreement companies currently offer vehicle theft protection agreements to auto dealerships which in turn sell them to both new and used car purchasers, however, such agreements are not regulated or are purchasers protected.<sup>7</sup> Such products include car alarms, window etching of vehicle I.D. numbers, and other applications that deter theft of automobiles. Ordinarily, consumers purchasing this product are required to have comprehensive automobile insurance<sup>8</sup> and may receive certain benefits in the event their car is stolen and not returned within a specific time period. Such benefits may include the costs above what an automobile insurer pays as the actual cash value and the amount of the actual cost of a new or used replacement vehicle, and may also include payment of incidental expenses such as a rental vehicle, vehicle registration and sales tax. Alternatively, some products pay a flat dollar amount. The theory behind classifying a theft prevention product as a "warranty" is that the product did not function as originally intended, and the service agreement company honors its warranty on the product by paying the costs to "make the consumer whole" by assuring there are no out of pocket expenses the consumer would have to pay. Consumers pay for anti-theft guarantees depending on the year and mileage of the vehicle.

Representatives with the department state that if there are companies currently marketing theft protection agreements to consumers, then these companies are selling insurance and thus subject

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<sup>5</sup> S. 634.121, F.S.

<sup>6</sup> The other warranty associations are home warranty associations (18), and service warranty associations (94).

<sup>7</sup> Under current law, auto dealerships must be licensed by the department under ch. 634, F.S., to sell auto service agreements, which guarantee or warrant a consumer's automobile for any mechanical failure that arises out of the use or operation of the vehicle after the expiration of the manufacturer's warranty. Such licenses are \$100 annually. However, salespersons for such dealerships are not licensed.

<sup>8</sup> Comprehensive insurance pays for losses from incidents other than a collision, such as theft, fire, windstorm, vandalism, or flood. It also covers damages caused by falling objects or hitting an animal. Such insurance is not a mandatory coverage in Florida.

to regulation by the department.<sup>9</sup> These representatives state that the department has not received any consumer complaints as to the sale of the theft protection agreements and has not initiated any administrative actions in this area.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 634.011, F.S., relating to the definition of a “motor vehicle service agreement,” to specify that the term includes a contract or agreement for the payment of a vehicle protection product. The bill defines “vehicle-protection expenses” as payments to a service agreement holder (purchaser) in the event of the failure of a vehicle protection product. Such payments may include unreimbursed expenses incurred by the purchaser only for:

- 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 to assist in recovery of the stolen motor vehicle; or
- incidental expenses including expenses for a replacement vehicle, temporary vehicle rental expenses, or sales tax or registration expenses for a replacement vehicle.

A “vehicle protection product” is defined to mean a product or system that is installed or applied to a vehicle and designed to prevent the theft of the vehicle or assist in the recovery of the vehicle. The term “payment” excludes the cash value of the stolen vehicle and cannot duplicate any benefits or expenses paid to the service agreement holder by the insurer providing comprehensive motor vehicle insurance coverage on the stolen motor vehicle.

**Section 2.** Amends s. 634.041, applying to license qualifications, to provide that a company applying for a motor vehicle service agreement license must be a “solvent” corporation formed under the laws of another state or district of the United States. Currently, corporations must be domiciled in Florida. The bill mandates that service agreement companies intending to offer theft prevention coverage must meet the financial solvency requirement through the purchase of contractual liability insurance, rather than maintaining reserves. Also, theft prevention products that provide vehicle protection expenses may be sold only to a service agreement holder that has in-force comprehensive motor vehicle insurance coverage for the vehicle to be covered by the theft protection product.

**Section 3.** Amends s. 634.121, F.S., relating to form filings, to provide that the Department of Insurance may disapprove any service agreement form which does not clearly indicate the method for calculating the benefit to be paid, the term of the agreement, whether new or used cars are eligible for the vehicle protection product, and that the service agreement holder must have in-force at the time of loss, comprehensive vehicle insurance coverage, as a condition precedent to requesting payment of vehicle protection expenses.

**Section 4.** Amends s. 634.191, F.S., to delete an out-of-date reference to the unfair trade practices act.

**Section 5.** Provides that the act will take effect July 1, 2002.

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<sup>9</sup> See Department of Insurance Memorandum of June 12, 2000, regarding Alexico’s Corporation Theft Gard.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Consumers who purchase vehicle theft protection products would be protected because motor vehicle service agreement companies which market such products and automobile dealers who sell these products would be required to be licensed by the Department of Insurance, meet certain solvency requirements, be subject to unfair and deceptive practice provisions, and submit their forms to the department for approval.<sup>10</sup>

## C. Government Sector Impact:

According to officials with the Department of Insurance, the agency will receive some revenue by licensing motor vehicle service agreement companies and auto dealerships (who currently are not licensed) to offer theft protection products. However, the amount of such revenue will be minimal. Current licenses are \$100 a year, according to these officials.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>10</sup> According to representatives with the department, auto service agreement companies and auto dealerships which currently have a license to sell vehicle service agreements would not need to obtain a separate license to offer theft protection devices.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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