

1 A bill to be entitled
2 An act relating to service agreements; amending
3 s. 634.011, F.S.; revising the definition of
4 "motor vehicle service agreement"; amending s.
5 634.041, F.S.; revising the definition of
6 "corporation"; requiring service agreement
7 companies to maintain contractual liability
8 insurance and limiting those to whom vehicle
9 protection products may be sold; amending s.
10 634.121, F.S.; providing service agreement form
11 requirements; amending s. 634.191, F.S.;
12 revising the definition of unfair competition
13 or unfair or deceptive acts or practices for
14 purposes of disciplinary actions against a
15 salesperson; amending s. 634.406, F.S.;
16 revising the financial requirements for
17 warranty associations to qualify for
18 contractual liability policies covering claims
19 exposure under contracts delivered in this
20 state; providing an effective date.

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

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24 Section 1. Subsection (8) of section 634.011, Florida
25 Statutes, is amended to read:

26 634.011 Definitions.--As used in this part, the term:

27 (8) "Motor vehicle service agreement" or "service
28 agreement" means any contract or agreement indemnifying the
29 service agreement holder for the motor vehicle listed on the
30 service agreement and arising out of the ownership, operation,
31 and use of the motor vehicle against loss caused by failure of

1 any mechanical or other component part, or any mechanical or
2 other component part that does not function as it was
3 originally intended; however, nothing in this part shall
4 prohibit or affect the giving, free of charge, of the usual
5 performance guarantees by manufacturers or dealers in
6 connection with the sale of motor vehicles. ~~and provided~~
7 ~~further, however,~~ Transactions exempt under s. 624.125 are
8 ~~shall be~~ expressly excluded from this definition and are
9 exempt from the provisions of this part. The term "motor
10 vehicle service agreement" includes any contract or agreement
11 that ~~which~~ provides:

12 (a) For the coverage or protection defined in this
13 subsection and which is issued or provided in conjunction with
14 an additive product applied to the motor vehicle that ~~which~~ is
15 the subject of such contract or agreement; or.

16 (b) For payment of vehicle protection expenses.

17 1.a. "Vehicle protection expenses" means expenses
18 incurred by the service agreement holder for loss or damage to
19 a covered vehicle, including, but not limited to, applicable
20 deductibles under a motor vehicle insurance policy; temporary
21 vehicle rental expenses; expenses for a replacement vehicle
22 that is at least the same year, make, and model of the stolen
23 motor vehicle; sales taxes or registration fees for a
24 replacement vehicle that is at least the same year, make, and
25 model of the stolen vehicle; or other incidental expenses
26 specified in the agreement.

27 b. "Vehicle protection product" means a product or
28 system installed or applied to a motor vehicle or designed to
29 prevent the theft of the motor vehicle or assist in the
30 recovery of the stolen motor vehicle.

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1 2. Vehicle protection expenses shall be payable in the
2 event of loss or damage to the vehicle as a result of the
3 failure of the vehicle protection product to prevent the theft
4 of the motor vehicle or to assist in the recovery of the
5 stolen motor vehicle. Vehicle protection expenses covered
6 under the agreement shall be clearly stated in the service
7 agreement form.

8 3. Motor vehicle service agreements providing for the
9 payment of vehicle protection expenses shall:

10 a. Reimburse a service agreement holder for the
11 following expenses, at a minimum: deductibles applicable to
12 comprehensive coverage under the service agreement holder's
13 motor vehicle insurance policy; temporary vehicle rental
14 expenses; sales taxes and registration fees on a replacement
15 vehicle that is at least the same year, make, and model of the
16 stolen motor vehicle; and the difference between the benefits
17 paid to the service agreement holder for the stolen vehicle
18 under the service agreement holder's comprehensive coverage
19 and the actual cost of a replacement vehicle that is at least
20 the same year, make, and model of the stolen motor vehicle; or

21 b. Pay a preestablished flat amount to the service
22 agreement holder.

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24 Payments shall not duplicate any benefits or expenses paid to
25 the service agreement holder by the insurer providing
26 comprehensive coverage under a motor vehicle insurance policy
27 covering the stolen motor vehicle.

28 Section 2. Subsection (1) of section 634.041, Florida
29 Statutes, is amended, and subsection (11) is added to that
30 section, to read:

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1 634.041 Qualifications for license.--To qualify for
2 and hold a license to issue service agreements in this state,
3 a service agreement company must be in compliance with this
4 part, with applicable rules of the department, with related
5 sections of the Florida Insurance Code, and with its charter
6 powers and must comply with the following:

7 (1) Any service agreement company applying for a
8 license must be a solvent corporation formed under the laws of
9 this state or of another state or district of the United
10 States and must meet minimum requirements under this section.

11 (11) A service agreement company offering service
12 agreements providing vehicle protection expenses may meet the
13 requirements for this part only by maintaining contractual
14 liability insurance in accordance with paragraph (8)(b), which
15 insurance must be issued by an insurance company not
16 affiliated with the service agreement company, unless the
17 insurance company had issued a contractual liability insurance
18 policy to a service agreement company on or before January 1,
19 2002. Service agreements providing vehicle protection
20 expenses may be sold only to a service agreement holder that
21 has in-force comprehensive motor vehicle insurance coverage
22 for the vehicle to be covered by the service agreement.

23 Section 3. Paragraph (c) is added to subsection (1) of
24 section 634.121, Florida Statutes, to read:

25 634.121 Filing of forms, required procedures,
26 provisions.--

27 (1) A service agreement form or related form may not
28 be issued or used in this state unless it has been filed with
29 and approved by the department. Upon application for a
30 license, the department shall require the applicant to submit
31 for approval each brochure, pamphlet, circular, form letter,

1 advertisement, or other sales literature or advertising
2 communication addressed or intended for distribution. The
3 department shall disapprove any document which is untrue,
4 deceptive, or misleading or which contains misrepresentations
5 or omissions of material facts.

6 (c) The department shall disapprove any service
7 agreement form providing vehicle protection expenses which
8 does not clearly indicate the method for calculating the
9 benefit to be paid or provided to the service agreement
10 holder. All service agreement forms providing vehicle
11 protection expenses shall clearly indicate the term of the
12 service agreement, whether new or used cars are eligible for
13 the vehicle protection product, and that the service agreement
14 holder may not make any claim against the Florida Insurance
15 Guarantee Association for vehicle protection expenses. The
16 service agreement shall be provided to a service agreement
17 holder on a form that provides only vehicle protection
18 expenses. A service agreement form providing vehicle
19 protection expenses must state that the service agreement
20 holder must have in force at the time of loss comprehensive
21 motor vehicle insurance coverage as a condition precedent to
22 requesting payment of vehicle protection expenses.

23 Section 4. Subsection (5) of section 634.191, Florida
24 Statutes, is amended to read:

25 634.191 Grounds for discretionary refusal, suspension,
26 or revocation of license or appointment of salespersons.--The
27 department may, in its discretion, deny, suspend, revoke, or
28 refuse to renew or continue the license or appointment of any
29 salesperson if it finds that as to the salesperson any one or
30 more of the following applicable grounds exist under
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1 circumstances for which such denial, suspension, revocation,
2 or refusal is not mandatory under s. 634.181:

3 (5) If, in the conduct of business under the license
4 or appointment, the salesperson has engaged in unfair methods
5 of competition or in unfair or deceptive acts or practices, as
6 such methods, acts, or practices are or may be defined under
7 this part ~~IX of chapter 626~~, or has otherwise shown herself or
8 himself to be a source of injury or loss to the public or
9 detrimental to the public interest.

10 Section 5. Subsection (7) of section 634.406, Florida
11 Statutes, is amended to read:

12 634.406 Financial requirements.--

13 (7) The department shall require that a contractual
14 liability policy insure 100 percent of an association's claims
15 exposure under all of the association's service warranty
16 contracts, wherever written, unless all of the following are
17 satisfied:

18 (a) The contractual liability policy contains a clause
19 that specifically names the service warranty contract holders
20 as sole beneficiaries of the contractual liability policy and
21 claims are paid directly to the person making a claim under
22 the contract;

23 (b) The contractual liability policy meets all other
24 requirements of this part, including subsection (3) of this
25 section, which are not inconsistent with this subsection;

26 (c) The association has been in existence for at least
27 5 years or the association is a wholly-owned subsidiary of a
28 corporation that has been in existence and has been licensed
29 as a service warranty association in the state for at least 5
30 years, and:

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1 1. Is listed and traded on a recognized stock
2 exchange; is listed in NASDAQ (National Association of
3 Security Dealers Automated Quotation system) and publicly
4 traded in the over-the-counter securities market; is required
5 to file either of Forms 10-K, 100, or 20-G with the United
6 States Securities and Exchange Commission; or has American
7 Depository Receipts listed on a recognized stock exchange and
8 publicly traded or is the wholly-owned subsidiary of a
9 corporation that is listed and traded on a recognized stock
10 exchange; is listed in NASDAQ (National Association of
11 Security Dealers Automated Quotation system) and publicly
12 traded in the over-the-counter securities market; is required
13 to file Form 10-K, Form 100, or Form 20-G with the United
14 States Securities and Exchange Commission; or has American
15 Depository Receipts listed on a recognized stock exchange and
16 is publicly traded;

17 2. Maintains outstanding debt obligations, if any,
18 rated in the top four rating categories by a recognized rating
19 service;

20 3. Has and maintains at all times a minimum net worth
21 of not less than \$10 million as evidenced by audited financial
22 statements prepared by an independent certified public
23 accountant in accordance with generally accepted accounting
24 principles and submitted to the department annually; and

25 4. Is authorized to do business in this state; and

26 (d) The insurer issuing the contractual liability
27 policy:

28 1. Maintains and has maintained for the preceding 5
29 years, policyholder surplus of at least \$100 million and is
30 rated "A" or higher by A.M. Best Company or has an equivalent
31 rating by another rating company acceptable to the department;

1 2. Holds a certificate of authority to do business in
2 this state and is approved to write this type of coverage; and

3 3. Acknowledges to the department quarterly that it
4 insures all of the association's claims exposure under
5 contracts delivered in this state.

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7 If all the preceding conditions are satisfied, then the scope
8 of coverage under a contractual liability policy shall not be
9 required to exceed an association's claims exposure under
10 service warranty contracts delivered in this state.

11 Section 6. This act shall take effect upon becoming a
12 law.

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