

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: SB 2278

SPONSOR: Senator Atwater

SUBJECT: Motor Vehicle Service Agreements

DATE: March 27, 2003 REVISED: 04/03/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/3 amendments</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill establishes that motor vehicle service agreements that provide coverage for “vehicle protection expenses” may provide benefits in the form of a preestablished flat amount. This addresses legislation enacted in 2002 which allowed motor vehicle service agreements to cover losses resulting from the failure of an anti-theft device. The bill will permit the sale of motor vehicle service agreements that provide a specified payment for a particular dollar amount. Motor vehicle service agreements that provide a flat amount of \$7,500 do not duplicate benefits payable under a comprehensive motor vehicle insurance policy. If a motor vehicle service agreement provides vehicle protection expenses in a flat amount, the service agreement form must clearly state the preestablished flat amount of coverage that the agreement provides.

The bill states that the Office of Insurance Regulation cannot approve a service agreement form unless it clearly indicates the preestablished flat amount payable pursuant to the terms of the service agreement.

The act shall take effect upon becoming a law.

This bill substantially amends sections 634.011 and 634.121, of the Florida Statutes.

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 is defined as 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.¹ 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.²

Motor vehicle service agreement companies must be licensed through the Department of Insurance (department) to conduct business in the state.³ Such companies must meet financial solvency, marketing and sales requirements, and be 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 1.⁴ However, a motor vehicle service agreement company does not have to maintain reserves of 50 percent of its unearned gross written premiums 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 premiums 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.⁵ The purchaser of a motor vehicle service agreement must 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:⁶

- 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. A service agreement form must be disapproved if the form does not clearly indicate the method for calculating the benefits 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 comprehensive vehicle

¹ S. 634.011, F.S.

² 44 C.J.S. 473-4, Section 1.

³ Effective January 7, 2003, the Department of Insurance was transferred to the Department of Financial Services and to the Office of Insurance Regulation. (ch. 2002-404, L.O.F.) Conforming changes are made in CS/CS/SB 1712.

⁴ S. 634.041, F.S.

⁵ S. 624.081, F.S.

⁶ S. 634.121, F.S.

insurance coverage in force at the time of loss as a condition precedent to requesting payment of vehicle protection expenses. 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.

Motor Vehicle Theft Protection Agreements

Legislation enacted in 2002 (ch. 2002-86, L.O.F.) allowed motor vehicle service agreement companies to market and sell vehicle theft protection agreements—certain guarantees associated with vehicle theft prevention products. A theft prevention agreement can be sold only on a vehicle that is covered by a comprehensive motor vehicle insurance policy. Theft protection agreements must not take the place of regular theft coverage under a comprehensive insurance policy, but may supplement such insurance.

Theft prevention agreements may be sold when theft protection products such as car alarms, window-etched vehicle ID numbers, and other applications are installed in motor vehicles. If the theft protection products fail to prevent the theft of the vehicle, the policyholder is paid specified incidental expenses, including expenses for a replacement vehicle, in one of two ways. First, payments from the agreement may cover vehicle rental expenses, sales tax, or registration expenses for a replacement vehicle. Alternatively, the policyholder is paid for unreimbursed expenses incurred by the 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 must exclude the cash value of the stolen vehicle and cannot duplicate benefits paid to the policyholder by the insurer providing comprehensive motor vehicle insurance coverage on the stolen motor vehicle.

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 is given authority to disapprove motor vehicle service agreement forms that do not contain certain specific information and clear benefits. Finally, 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 Florida, another state, or a district of the United States.

III. Effect of Proposed Changes:

Section 1 establishes that motor vehicle service agreements covering vehicle protection expenses may provide benefits in the form of a preestablished flat amount. The definition of “vehicle protection expenses” in s. 634.011, F.S., is expanded to include “a preestablished flat amount payable for the loss of or damage to a vehicle.” This change will permit motor vehicle warranty associations to sell motor vehicle service agreements which cover losses resulting from the failure of an anti-theft device to either reimburse specified expenses incurred by the service agreement holder or to pay a specified dollar amount. If a vehicle service agreement provides vehicle protection expenses in a flat amount, the service agreement form must clearly state the preestablished flat amount of coverage that the agreement provides.

The bill states that a motor vehicle service agreement with a preestablished flat amount payment of \$7,500 or less does not duplicate benefits due under a comprehensive motor vehicle insurance policy. The bill states that all agreements with a flat amount of \$7,500 or less do not duplicate coverage available under a comprehensive motor vehicle insurance policy. This satisfies the requirement in subsection (b) of s. 634.011, F.S., that payment under a motor vehicle service agreement shall not duplicate benefits or expenses paid under a comprehensive motor vehicle insurance policy.

Section 2 amends s. 634.121, F.S., to require that the department cannot approve a service agreement form unless it clearly indicates the method for calculating the benefit to be provided under the service agreement or clearly indicates the preestablished flat amount payable pursuant to the terms of the service agreement. The bill allows service agreements that pay out flat amounts to be approved.

Section 3 states that the act shall take effect upon becoming a law.

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:

Proponents of the bill assert that it allows consumers greater flexibility and options when purchasing a motor vehicle service agreement. The preestablished flat amount clearly alerts the consumer what he or she is bargaining for when purchasing the additional coverage, and provides certainty regarding what benefits are being purchased in the event the consumer's car is stolen.

Representatives from the Department of Financial Services and the Office of Insurance Regulation expressed the following concerns: the \$7,500 flat amount potentially creates a situation where an insured can financially benefit from the loss or damage to their motor vehicle, thus creating the opportunity for double indemnification and moral hazard;

the \$7,500 flat amount could encourage fraud by opening the door for over collection upon the loss of a car; and consumers could be “oversold” this motor vehicle warranty contract for coverage that may already be present in a consumer’s comprehensive automobile policy.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Banking and Insurance:

Provides that motor vehicle service agreements that provide for a flat amount payment of \$5,000 or less on a vehicle with a purchase price of \$25,000 or above do not duplicate benefits payable under a comprehensive motor vehicle insurance policy. Likewise, motor vehicle service agreements that provide a flat amount of \$2,500 or less on a vehicle with a purchase price of less than \$25,000 do not duplicate benefits payable under a comprehensive motor vehicle insurance policy.

#2 by Banking and Insurance:

Amends subsection (11) of s. 634.041, and re-designates it as subsection (11)(a). New subsection (11)(a) requires service agreement companies providing vehicle protection expenses to maintain contractual liability insurance covering 100 percent of its vehicle protection claim exposure. Creates subsection (b) of s. 634.041, F.S., which allows a service agreement company that maintains an unearned premium reserve on all service agreements to offer vehicle protection agreements. The vehicle protection agreements may only be offered if the company maintains contractual liability insurance only on all service agreements providing vehicle protection expenses and continues to maintain a 50 percent reserve on all other types of service agreements. Service agreement companies using this arrangement must distinguish between vehicle protection expenses and other service agreements in the service agreement register as required by s. 634.436(4), F.S.

#3 by Banking and Insurance:

Technical correction of a grammatical error.