

# 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/CS/SB 2414

SPONSOR: Finance and Taxation Committee, Banking and Insurance Committee and Senator Diaz de la Portilla

SUBJECT: Warranty Associations

DATE: April 14, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	Fav/CS
2.	Keating	Johansen	FT	Fav/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The committee substitute creates an exemption from licensure for affiliates of domestic (Florida domiciled) companies administering warranty agreements if they do not issue, market, or cause to be marketed, warranty policies to residents of Florida and do not administer policies that were originally issued to a Florida resident who then moved out of state. Chapter 634 of the Florida Statutes regulates 3 types of warranty agreements that will be affected by the bill—motor vehicle service agreements, home warranties, and service warranties.

The committee substitute requires a domestic insurer or its wholly owned Florida licensed insurer to be the direct obligor of all motor vehicle service agreements issued by the affiliate, or, to issue a contractual liability insurance policy to the affiliate that meets the requirements of s. 634.041(8)(b), F.S.

The committee substitute requires a domestic insurer or its wholly owned Florida licensed insurer to be the direct obligor of all home warranty service agreements issued by the affiliate, or, to issue a contractual liability insurance policy to the affiliate that meets the requirements of s. 634.3077(3), F.S.

The committee substitute requires a domestic insurer or its wholly owned Florida licensed insurer to be the direct obligor of all service warranty agreements issued by the affiliate, or, to issue a contractual liability insurance policy to the affiliate that meets the requirements of s. 634.406(3), F.S.

The committee substitute also provides that if the Department of Financial Services determines, after notice and an opportunity for a hearing, the affiliate is not complying with the conditions of the exemption, the affiliate will be subject to licensure.

This bill substantially amends sections 634.031, 634.303 and 634.403 of the Florida Statutes.

## **II. Present Situation:**

### **Warranty Associations**

Chapter 634 of the Florida Statutes governs warranty associations in the state, and is divided into three parts for the regulation of three types of warranty association. Part I covers motor vehicle service agreement companies. Part II covers home warranty associations. Part III covers service warranty associations. An entity must have a license issued by the Department of Financial Services in order to transact, administer or market any of these 3 types of warranty association agreements. Under chapter 634, F.S., affiliates of Florida-domiciled (“domestic”) companies administering warranty policies (e.g., motor service vehicle agreements, home warranties, or service warranties) to residents outside of the state of Florida must be licensed by the Office of Insurance Regulation.

### **Motor Vehicle Service Agreements**

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 the failure of any mechanical or component part. (s. 634.011, F. S.) This type of agreement is generally not considered to be insurance 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. (44 C.J.S., 473-4, Section 1) Motor vehicle service agreements reimburse the service agreement holder for the costs of deductibles under the holder’s comprehensive auto insurance policy, temporary vehicle rental expenses, expenses and registration fees on a substantially similar replacement vehicle, and other specified expenses contained in the agreement. (s. 634.011(8), F. S.)

Motor vehicle service agreement companies may also market and sell vehicle theft protection agreements that provide certain guarantees associated with vehicle theft prevention products. (s. 634.011(8), F.S.) A theft prevention agreement may be sold when theft protection products such as car alarms and window-etched vehicle ID numbers are installed in motor vehicles. If the theft protection products fail to prevent the theft of the vehicle, the policyholder is paid specified incidental damages for the temporary or permanent loss of his or her vehicle.

### **Home Warranties**

A home warranty indemnifies the warranty holder against the cost of repairing or replacing any structural component or appliance of a home that is caused by wear and tear or an inherent defect of the structural component or appliance, or caused by the failure of an inspection to detect the likelihood of any such loss. (s. 634.301(4), F.S.) A home warranty may be offered in connection with the sale of residential property, in connection with a loan of \$5,000 or more secured by

residential property that is the subject of the warranty (but not connected to the sale of the property), or in connection with a home improvement loan of \$7,500 or more for residential property that is the subject of the warranty (but not connected to the sale of the property). Home warranties cannot indemnify the warranty holder against consequential damages caused by the failure of a structural component or appliance of a home; such coverage constitutes the transaction of insurance subject to all requirements of the insurance code.

### **Service Warranties**

A service warranty is any warranty, guaranty, extended warranty, extended guaranty, maintenance service contract greater than one year in length, contract agreement, or other written promise to indemnify against the cost or repair or replacement of a consumer product. (s. 634.401(14), F.S.) Service warranties may be sold by licensed persons other than authorized insurers.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 634.031, F.S., creating an exemption from licensure for affiliates of domestic insurers administering motor vehicle service agreement policies (as contained in part I of ch. 634, F.S.) to residents outside the state of Florida. Licensure is not necessary if the affiliate does not issue, market, or cause to be marketed, warranty policies to residents of Florida and does not administer policies that were originally issued to a Florida resident who then moved out of state.

The committee substitute requires a domestic insurer or its wholly owned Florida licensed insurer to be the direct obligor of all motor vehicle service agreements issued by the affiliate, or to issue a contractual liability insurance policy to the affiliate that meets the requirements of s. 634.041(8)(b), F.S. The bill also provides that the affiliate will be subject to licensure if the Department of Financial Services determines, after notice and an opportunity for a hearing, that the affiliate is not complying with the conditions of the exemption.

**Section 2.** Amends s. 634.303, F.S., creating an exemption from licensure for affiliates of domestic insurers administering home warranties (as contained in part II of ch. 634, F.S.) to residents outside the state of Florida. Licensure is not necessary if the affiliate does not issue, market, or cause to be marketed home warranty policies to residents of Florida, and does not administer policies that were originally issued to a Florida resident who then moved out of state.

The committee substitute requires a domestic insurer or its wholly owned Florida licensed insurer to be the direct obligor of all home warranty service agreements issued by the affiliate, or to issue a contractual liability insurance policy to the affiliate that meets the requirements of s. 634.3077(3), F.S. The bill also provides that the affiliate will be subject to licensure if the Department of Financial Services determines, after notice and an opportunity for a hearing, that the affiliate is not complying with the conditions of the exemption.

**Section 3.** Amends s. 634.403, F.S., creating an exemption from licensure for affiliates of domestic insurers administering service warranties (as contained in part III of ch. 634, F.S.) to residents outside the state of Florida. Licensure is not necessary if the affiliate does not issue,

market, or cause to be marketed, service warranty policies to residents of Florida and does not administer policies that were originally issued to a Florida resident who then moved out of state.

The committee substitute requires a domestic insurer or its wholly owned Florida licensed insurer to be the direct obligor of all service agreements issued by the affiliate, or to issue a contractual liability insurance policy to the affiliate that meets the requirements of s. 634.406(3), F.S. The bill also provides that the affiliate will be subject to licensure if the Department of Financial Services determines, after notice and an opportunity for a hearing, that the affiliate is not complying with the conditions of the exemption.

**Section 4.** Provides 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:

There are approximately 170 warranty providers licensed in Florida, with total license fee revenues of an estimated \$30,000. According to the Department of Financial Services, the fiscal impact from this exemption should be insignificant.

B. Private Sector Impact:

The bill has no impact on Florida residents who purchase warranty contracts. However, it potentially impacts residents of other states who purchase warranty contracts which are administered in Florida.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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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