

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.)

Prepared By: Banking and Insurance Committee

BILL: CS/SB 2006

SPONSOR: Banking and Insurance Committee and Senator Garcia

SUBJECT: Motor Vehicle Service Agreements

DATE: March 29, 2005

REVISED: _____

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

I. Summary:

Committee Substitute for Senate Bill 2006 permits the inclusion in motor vehicle service agreements of painless dent-removal services performed by a company whose primary business is painless dent removal. Painless dent removal is the process of removing dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish. It does not include services that involve replacing vehicle body panels, sanding, bonding, or painting.

Currently, a motor vehicle service agreement company must establish an unearned premium reserve or purchase contractual liability insurance in order to qualify for licensure. The company may either utilize contractual liability coverage that covers 100 percent of its claims exposure, or maintain an unearned premium reserve of at least 50 percent of its unearned gross written premium from service agreements. The service agreement company cannot utilize both the 50 percent reserve and contractual liability insurance simultaneously. The committee substitute would create an exception to this rule that permits a licensed motor vehicle service agreement company that maintains net assets of \$7.5 million or greater to use either a 50 percent reserve or contractual liability coverage for specific blocks of new service. "Specific new blocks of service agreements" are the service agreements sold by a single designated licensed salesperson. The service agreement must distinguish how each individual service agreement is covered, and the service agreement company must maintain in its register information regarding whether the agreement is covered by contractual liability insurance or the unearned premium reserve account.

This bill substantially amends the following sections of the Florida Statutes: 634.011, 634.041, and 634.136

II. Present Situation:

Paintless Dent Removal

Paintless dent removal is a process whereby dents to the exterior panels of automobiles are repaired to form the metal back to its original shape. One means of doing this is to work from behind the vehicle panel using specialized tools. As its name suggests, repainting of the dented portion of the vehicle is not needed in paintless dent removal, nor is sanding or filler.

Paintless dent removal services are utilized both by commercial businesses such as auto dealers, rental car companies and insurers as well as retail consumers. One of the larger paintless dent removal companies sells its services to retail consumers at retail locations and auto dealerships. Representatives from this company indicate that retail consumers often pay an advance flat fee in return for a pledge to repair a specified number of dents. However, the Office of Insurance Regulation has notified this company that its product may be an insurance product requiring that it be sold by a licensed insurance company.

Warranty Associations and Motor Vehicle Service Agreements

Warranty associations are regulated by the Office of Insurance Regulation (OIR) under ch. 634, F.S., and include motor vehicle service agreement companies. However, the Department of Financial Services is authorized to regulate the salespersons and representatives who sell warranties (as part of the department's authority to license and regulate insurance agents).

Motor vehicle service agreement companies sell motor vehicle service agreements that indemnify a service agreement holder for a motor vehicle against loss caused by failure of any mechanical or other component part that does not function as it was originally intended.¹ A second type of motor vehicle service agreement covers vehicle protection expenses and pays a pre-established flat amount for the loss of or damage caused when a vehicle protection product fails to prevent the theft of a motor vehicle. Motor vehicle service agreement companies are regulated exclusively under part I, ch. 634, F.S., except as otherwise provided in that part.²

Motor vehicle service agreement companies must be licensed through the Office of Insurance Regulation (OIR or Office) to conduct business in the state. 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 1.³ 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. The OIR has the authority to suspend the license of a motor vehicle service

¹ Section 634.011(7), F.S.

² Section 634.023(1), F.S.

³ S. 634.041, F.S.

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.⁴

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:⁵

- 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 OIR; however, a company's rates need only be filed with the office. 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 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.

III. Effect of Proposed Changes:

Section 1. Amends s. 634.011, F.S., to amend the definition of "motor vehicle service agreement" to include paintless dent-removal services performed by a company whose primary business is paintless dent removal. The bill defines "paintless dent-removal" as the process of removing dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish. It does not include services that involve replacing vehicle body panels, sanding, bonding, or painting.

Section 2. Amends s. 634.041 to allow a licensed motor vehicle service agreement company that maintains net assets of \$7.5 million or greater to use either an unearned premium reserve equal to 50 percent of the unearned gross written premium on each service agreement amortized (reduced) over the duration of the service agreement, or contractual liability coverage for specific blocks of new service. "Specific new blocks of service agreements" are the service agreements sold by a single designated licensed salesperson. The service agreement must distinguish how each individual service agreement is covered.

⁴ S. 624.081, F.S.

⁵ S. 634.121, F.S.

Section 3. Amends s. 634.136, F.S., to require that a service agreement company must maintain in its register information regarding whether the agreement is covered by contractual liability insurance or the unearned premium reserve account.

Section 4. The bill takes effect July 1, 2005.

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:

The committee substitute should have a positive financial impact on paintless dent-removal businesses, as their services could be included in motor vehicle service agreements.

The committee substitute will provide greater flexibility for motor vehicle service agreement companies to decide whether to use an unearned premium reserve or contractual liability insurance to fund new contracts.

C. Government Sector Impact:

Representatives from the Office of Insurance Regulation have indicated concern that the use of both the 50 percent reserve and contractual liability insurance by motor vehicle service agreement companies could mask the sum total of its liabilities arising from agreements sold to consumers, a situation that will make monitoring the financial condition of such companies more difficult.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill permits painless dent removal services to be sold as a motor vehicle service agreement. To the extent that other dent removal techniques exist that can remedy the same problem, they would not be afforded the opportunity to sell their services in this matter under the bill.

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

VIII. Summary of Amendments:

None.

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