

By the Committee on Banking and Insurance; and Senator Lawson

597-06355-08

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1 A bill to be entitled

2 An act relating to motor vehicle warranty associations;  
3 amending s. 628.4615, F.S., relating to specialty  
4 insurers; conforming a cross-reference to changes made by  
5 the act; amending s. 634.011, F.S.; defining the term  
6 "motor vehicle manufacturer" for purposes of part I of ch.  
7 634, F.S.; amending s. 634.041, F.S.; exempting motor  
8 vehicle manufacturers applying for licensure as service  
9 agreement companies from certain licensing requirements  
10 and limitations on claims liabilities; amending s.  
11 634.137, F.S.; authorizing the Office of Insurance  
12 Regulation to develop an abbreviated form for statistical  
13 reporting of sales of service agreements by motor vehicle  
14 manufacturers in lieu of certain other financial reports;  
15 amending s. 634.271, F.S.; conforming a cross-reference;  
16 amending s. 634.4165, F.S.; requiring warranty service  
17 associations that do not collect the names and addresses  
18 of warranty holders at the time of sale to provide an  
19 alternative method for warranty holders to provide such  
20 information; amending s. 634.436, F.S.; prohibiting  
21 warranty service associations that do not collect the  
22 names and addresses of warranty holders from denying a  
23 warranty holder's claim on the basis that the association  
24 cannot confirm that the warranty holder in fact purchased  
25 the warranty; providing an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

28  
29 Section 1. Subsection (1) of section 628.4615, Florida

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30 Statutes, is amended to read:

31 628.4615 Specialty insurers; acquisition of controlling  
32 stock, ownership interest, assets, or control; merger or  
33 consolidation.--

34 (1) For the purposes of this section, the term "specialty  
35 insurer" means any person holding a license or certificate of  
36 authority as:

37 (a) A motor vehicle service agreement company authorized to  
38 issue motor vehicle service agreements as those terms are defined  
39 in s. 634.011 ~~s. 634.011(7) and (8)~~;

40 (b) A home warranty association authorized to issue "home  
41 warranties" as those terms are defined in s. 634.301(3) and (4);

42 (c) A service warranty association authorized to issue  
43 "service warranties" as those terms are defined in s. 634.401(13)  
44 and (14);

45 (d) A prepaid limited health service organization  
46 authorized to issue prepaid limited health service contracts, as  
47 those terms are defined in chapter 636;

48 (e) An authorized health maintenance organization operating  
49 pursuant to s. 641.21;

50 (f) An authorized prepaid health clinic operating pursuant  
51 to s. 641.405;

52 (g) A legal expense insurance corporation authorized to  
53 engage in a legal expense insurance business pursuant to s.  
54 642.021;

55 (h) A provider which is licensed to operate a facility  
56 which undertakes to provide continuing care as those terms are  
57 defined in s. 651.011(2), (4), (5), and (6);

58 (i) A multiple-employer welfare arrangement operating

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59 | pursuant to ss. 624.436-624.446;

60 |       (j) A premium finance company authorized to finance  
61 | insurance premiums pursuant to s. 627.828; or

62 |       (k) A corporation authorized to accept donor annuity  
63 | agreements pursuant to s. 627.481.

64 |       Section 2. Present subsections (7) through (16) of section  
65 | 634.011, Florida Statutes, are renumbered as subsections (8)  
66 | through (17), respectively, and a new subsection (7) is added to  
67 | that section, to read:

68 |       634.011 Definitions.--As used in this part, the term:

69 |       (7) "Motor vehicle manufacturer" means an entity that:

70 |       (a) Manufactures or produces motor vehicles and sells motor  
71 | vehicles under its own name or label;

72 |       (b) Is a subsidiary of an entity that manufactures or  
73 | produces motor vehicles; or

74 |       (c) Is a corporation that owns 100 percent of an entity  
75 | that manufactures or produces motor vehicles.

76 |       Section 3. Subsection (12) is added to section 634.041,  
77 | Florida Statutes, to read:

78 |       634.041 Qualifications for license.--To qualify for and  
79 | hold a license to issue service agreements in this state, a  
80 | service agreement company must be in compliance with this part,  
81 | with applicable rules of the commission, with related sections of  
82 | the Florida Insurance Code, and with its charter powers and must  
83 | comply with the following:

84 |       (12) A motor vehicle manufacturer complying with the  
85 | provisions of this part must be an entity formed under the laws  
86 | of this state or of another state or district of the United  
87 | States and need comply only with subsections (2) and (10). A

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88 motor vehicle manufacturer need not submit fingerprints,  
89 background information, or biographical statements for any  
90 individual except those serving as officers or directors of the  
91 applicant entity. A motor vehicle manufacturer need not comply  
92 with s. 634.081(5). Motor vehicle manufacturers are subject to  
93 all other applicable provisions of this part.

94 Section 4. Subsection (6) is added to section 634.137,  
95 Florida Statutes, to read:

96 634.137 Financial and statistical reporting requirements.--

97 (6) The office shall develop by rule an abbreviated form  
98 for motor vehicle manufacturers to use in submitting statistical  
99 reporting of sales of service agreements in this state in lieu of  
100 the financial reports required in subsections (1) and (2).

101 Section 5. Subsection (5) of section 634.271, Florida  
102 Statutes, is amended to read:

103 634.271 Civil remedy.--

104 (5) The penalty provisions in ss. 520.12 and 521.006, as  
105 well as the statutory penalty in subsection (1), do not apply to  
106 any violation of this part or chapters 520 and 521 relating to or  
107 in connection with the sale or failure to disclose in a retail  
108 installment contract or lease, prior to April 23, 2002, of a  
109 vehicle protection product, or contract or agreement that  
110 provides for payment of vehicle protection expenses, as defined  
111 in s. 634.011(8)(b)1. ~~s. 634.011(7)(b)1.~~, so long as the sale of  
112 such product, contract, or agreement was otherwise disclosed to  
113 the consumer in writing at the time of the purchase or lease.  
114 However, in the event of a violation for which such statutory  
115 penalties do not apply, the court shall award actual damages and  
116 costs, including reasonable attorney's fees. Nothing in this

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117 subsection shall be construed to require the application of the  
118 referenced statutory penalty provisions where this subsection is  
119 not applicable.

120 Section 6. Subsection (2) of section 634.4165, Florida  
121 Statutes, is amended to read:

122 634.4165 Office records required.--As a minimum requirement  
123 for permanent office records, each licensed service warranty  
124 association shall maintain:

125 (2) A detailed warranty register of warranties in force, by  
126 unique identifier. The register shall include the unique  
127 identifier, date of issue, issuing sales representative, name of  
128 warranty holder and the location of the property to the extent  
129 the name and address have been furnished by the warranty holder,  
130 warranty period, gross premium, commission to sales  
131 representative, and net premium. Associations not collecting the  
132 name and address of the warranty holder at the time of sale must  
133 provide another method for warranty holders to provide such  
134 information, such as Internet registration, return postcard, or  
135 other means acceptable to the office.

136 Section 7. Subsection (5) of section 634.436, Florida  
137 Statutes, is amended to read:

138 634.436 Unfair methods of competition and unfair or  
139 deceptive acts or practices defined.--The following methods,  
140 acts, or practices are defined as unfair methods of competition  
141 and unfair or deceptive acts or practices:

142 (5) UNFAIR CLAIM SETTLEMENT PRACTICES.--

143 (a) Attempting to settle claims on the basis of an  
144 application or any other material document which was altered  
145 without notice to, or knowledge or consent of, the warranty

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146 holder;

147 (b) Making a material misrepresentation to the warranty  
148 holder for the purpose and with the intent of effecting  
149 settlement of such claims, loss, or damage under such contract on  
150 less favorable terms than those provided in, and contemplated by,  
151 such contract; ~~or~~

152 (c) Committing or performing with such frequency as to  
153 indicate a general business practice any of the following  
154 practices:

155 1. Failure properly to investigate claims;

156 2. Misrepresentation of pertinent facts or contract  
157 provisions relating to coverages at issue;

158 3. Failure to acknowledge and act promptly upon  
159 communications with respect to claims;

160 4. Denial of claims without conducting reasonable  
161 investigations based upon available information;

162 5. Failure to affirm or deny coverage of claims upon  
163 written request of the warranty holder within a reasonable time  
164 after proof-of-loss statements have been completed; or

165 6. Failure to promptly provide a reasonable explanation to  
166 the warranty holder of the basis in the contract in relation to  
167 the facts or applicable law for denial of a claim or for the  
168 offer of a compromise settlement: or.

169 (d) Denying a claim solely on the basis that the  
170 association was not able to confirm that the warranty holder in  
171 fact purchased a service warranty because the association did not  
172 obtain the name and address as set forth in s. 634.4165(2).

173 Section 8. This act shall take effect upon becoming a law.