

By the Committees on Commerce; Banking and Insurance; and  
Senator Lawson

577-07679-08

20082264c2

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

577-07679-08

20082264c2

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

577-07679-08

20082264c2

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  
77 For purposes of this subsection, an entity qualifies as a  
78 subsidiary if 25 percent or more of its voting securities are  
79 directly or indirectly owned by an entity that manufactures or  
80 produces motor vehicles and sells motor vehicles under its own  
81 name or label.

82 Section 3. Subsection (12) is added to section 634.041,  
83 Florida Statutes, to read:

84 634.041 Qualifications for license.--To qualify for and  
85 hold a license to issue service agreements in this state, a  
86 service agreement company must be in compliance with this part,  
87 with applicable rules of the commission, with related sections of

577-07679-08

20082264c2

88 the Florida Insurance Code, and with its charter powers and must  
89 comply with the following:

90 (12) A motor vehicle manufacturer complying with the  
91 provisions of this part must be an entity formed under the laws  
92 of this state or of another state or district of the United  
93 States and need comply only with subsections (2) and (10). A  
94 motor vehicle manufacturer need not submit fingerprints,  
95 background information, or biographical statements for any  
96 individual except those serving as officers or directors of the  
97 applicant entity. A motor vehicle manufacturer need not comply  
98 with s. 634.081(5). Motor vehicle manufacturers are subject to  
99 all other applicable provisions of this part.

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

102 634.137 Financial and statistical reporting requirements.--

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

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

109 634.271 Civil remedy.--

110 (5) The penalty provisions in ss. 520.12 and 521.006, as  
111 well as the statutory penalty in subsection (1), do not apply to  
112 any violation of this part or chapters 520 and 521 relating to or  
113 in connection with the sale or failure to disclose in a retail  
114 installment contract or lease, prior to April 23, 2002, of a  
115 vehicle protection product, or contract or agreement that  
116 provides for payment of vehicle protection expenses, as defined

577-07679-08

20082264c2

117 in s. 634.011(8)(b)1. ~~s. 634.011(7)(b)1.~~, so long as the sale of  
118 such product, contract, or agreement was otherwise disclosed to  
119 the consumer in writing at the time of the purchase or lease.  
120 However, in the event of a violation for which such statutory  
121 penalties do not apply, the court shall award actual damages and  
122 costs, including reasonable attorney's fees. Nothing in this  
123 subsection shall be construed to require the application of the  
124 referenced statutory penalty provisions where this subsection is  
125 not applicable.

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

128 634.4165 Office records required.--As a minimum requirement  
129 for permanent office records, each licensed service warranty  
130 association shall maintain:

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

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

144 634.436 Unfair methods of competition and unfair or  
145 deceptive acts or practices defined.--The following methods,

577-07679-08

20082264c2

146 acts, or practices are defined as unfair methods of competition  
147 and unfair or deceptive acts or practices:

148 (5) UNFAIR CLAIM SETTLEMENT PRACTICES.--

149 (a) Attempting to settle claims on the basis of an  
150 application or any other material document which was altered  
151 without notice to, or knowledge or consent of, the warranty  
152 holder;

153 (b) Making a material misrepresentation to the warranty  
154 holder for the purpose and with the intent of effecting  
155 settlement of such claims, loss, or damage under such contract on  
156 less favorable terms than those provided in, and contemplated by,  
157 such contract; ~~or~~

158 (c) Committing or performing with such frequency as to  
159 indicate a general business practice any of the following  
160 practices:

161 1. Failure properly to investigate claims;

162 2. Misrepresentation of pertinent facts or contract  
163 provisions relating to coverages at issue;

164 3. Failure to acknowledge and act promptly upon  
165 communications with respect to claims;

166 4. Denial of claims without conducting reasonable  
167 investigations based upon available information;

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

171 6. Failure to promptly provide a reasonable explanation to  
172 the warranty holder of the basis in the contract in relation to  
173 the facts or applicable law for denial of a claim or for the  
174 offer of a compromise settlement; or.

577-07679-08

20082264c2

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

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