

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 832

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; Senators Flores and Diaz de la Portilla

SUBJECT: Motor Vehicle Sales

DATE: April 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 832 prohibits a finance company that is owned, affiliated, or contracts with an automobile manufacturer from denying or charging an additional fee or surcharge on a motor vehicle finance contract, solely because that contract includes a competing third-party automotive-related product that is of similar nature, scope and quality to an automotive-related product offered by the finance company or its affiliates. The bill provides that a violation of its provisions is not a criminal violation of ch. 545, F.S., which regulates the relationship between motor vehicle manufacturers and dealers.

Additionally, the bill amends s. 320.27, F.S., pertaining to the licensure of motor vehicle dealers, to delete an exemption from licensure requirements for motor vehicle brokers.

II. Present Situation:

Motor Vehicle Service Agreement

Motor vehicle service agreements indemnify the service agreement holder (owner) of the motor vehicle listed on the service agreement from losses caused by the failure or improper function of any mechanical or other component part arising out of the ownership, operation, and use of the motor vehicle.¹ Such products can include:

¹ Section 634.011(8), F.S.

- *Mechanical and electrical coverage* – This product covers the cost of replacement and repair, beyond the manufacturer’s warranty, for limited mechanical and electrical components of an automobile. The coverage is often limited to the time of ownership or by the mileage of the automobile.
- *Tire & Wheel replacement coverage* – This product covers the cost of replacement or repair to a damaged wheel or tire. Such coverage is often limited to the time of ownership or by the mileage of the automobile.
- *Paint-less dent removal* – This product removes dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include services that involve the replacement of vehicle body panels or sanding, bonding, or painting. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Lost key replacement* – This product covers the cost of replacing a lost smart key with a new key that has been programmed by the manufacturer. The costs of replacing today’s smart keys can range from \$200 to more than \$400 for a new key that has been programmed by the manufacturer.²
- *Anti-theft deterrent etch coverage* – This is a vehicle protection product³ where the Vehicle Identification Number (VIN) is etched into the glass of an automobile making those parts easier to identify after a theft.
- *Vehicle theft recovery coverage* – This is a vehicle protection product⁴ where a device is installed in the automobile that allows a vehicle monitoring service to locate the automobile through the use of global positioning satellites (GPS) in the event of a theft.

Other automotive-related products offered by automobile dealers not regulated under ch. 634, F.S., may include:

- *Basic Maintenance coverage* – This product covers the labor cost of servicing an automobile, as well as any costs for replacing parts and fluids based on normal use of the vehicle. Such coverage is often limited to time of ownership and mileage of the automobile.
- *Appearance protection* – This product is a film or spray applied to an automobile to help protect against damage from the elements as well as dents and scratches that can occur through normal use of the automobile.
- *Auto detailing service* – This product is for periodic interior and exterior car cleaning service. Such coverage is often limited to a number of cleanings per given month or year.

Service agreements that cover motor vehicles used for commercial purposes and sold to persons other than consumers are excluded from the definition and are exempt from regulation under the Florida Insurance Code.⁵

Any motor vehicle service agreement may be canceled by the owner within 60 days after purchase. The owner is entitled to a refund of 100 percent of the gross premium paid minus any claims paid on the service agreement.⁶ An administrative fee of not more than 5 percent of the

² Donna Freedman, *Lost your car key? That’ll be \$400*, MSN, April 22, 2013, <http://money.msn.com/saving-money-tips/post.aspx?post=e297a885-9af3-4274-8228-89b9c7eb0680> .

³ Section 634.011(8)(b)1.b.

⁴ *Id.*

⁵ Section 634.011(8), F.S.

⁶ Section 634.121(3)(a), F.S.

gross premium paid by the owner may be assessed. Once a motor vehicle service agreement has been in effect for 60 days it may not be canceled by the insurer or service agreement company unless: there has been a material misrepresentation or fraud at the time of sale of the service agreement, the owner has failed to maintain the motor vehicle as prescribed by the manufacturer, the odometer has been tampered with or disabled and the owner has failed to repair the odometer, or for nonpayment of premium by the owner.⁷ If the insurer or service agreement company cancels the service agreement, the refund to the owner must be at least 100 percent of the paid unearned pro rata premium minus any claims paid on the agreement. However, if the agreement is canceled after 60 days by the owner, the insurer or service agreement company must return directly to the owner at least 90 percent of the unearned pro rata premium minus any claims paid on the agreement.⁸ A full refund to the owner on canceled service agreements remains the responsibility of the service agreement company; however, the salesperson and agent are responsible for refunding the unearned pro rata commission. Under current law, the company may effectuate refunds through the issuing salesperson or agent.⁹

The Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) may, within their respective regulatory jurisdictions, examine and investigate every person involved in the business of motor vehicle service agreements in this state to determine whether a person is engaged in any unfair method of competition or in any unfair or deceptive acts or practices that are prohibited by s. 634.2815, F.S.¹⁰

The OIR conducts financial examinations of motor vehicle service agreement companies using part II of ch. 634, F.S. The OIR may examine the companies as often as may be warranted for the protection of policyholders and the public interest, but an examination may cover a period of only the most 5 recent years.¹¹ Criteria are provided for the OIR to consider in determining whether to conduct an examination of a company. The examinations may be conducted by an independent certified public accountant, actuary, investment specialist, information technology specialist, or reinsurance specialist, with the costs paid for by the companies.¹² Section 634.141, F.S., authorizes the establishment of rules whereby a motor vehicle service company may be exempted from examination. Motor vehicle service agreement companies that meet certain criteria and file an exemption fee of \$2,000 to be deposited in the Regulatory Trust Fund may be exempt from examination.¹³

Guaranteed Asset Protection (GAP)

A Guaranteed Asset Protection (GAP) product is a form of debt cancellation product. These products are generally sold in conjunction with an automobile loan and state that the lending institution for the loan will waive the difference between the value of the vehicle and the

⁷ Section 634.121(3)(b), F.S.

⁸ Section 634.121(3)(b)(4), F.S.

⁹ *Id.*

¹⁰ Section 634.283, F.S.

¹¹ Section 634.141, F.S.

¹² Section 624.316(2)(e), F.S.

¹³ The Office of Insurance Regulation, Rule 69O-200.014, FAC.

outstanding balance of the loan or lease, if the loan or lease balance is greater than the vehicle value. The product is not an insurance product regulated under the Florida Insurance Code.¹⁴

Under current law,¹⁵ a motor vehicle retail installment seller,¹⁶ a sales finance company,¹⁷ a retail lessor,¹⁸ and any assignee of such an entity may offer, for a fee or otherwise, optional guaranteed asset protection products. The purchase of a guaranteed asset protection product may not be required as a condition for making the loan. In order to offer any guaranteed asset protection product those authorized to do so must comply with the following:

- The cost of any guaranteed asset protection product, with respect to any loan covered by the guaranteed asset protection product, may not exceed the amount of the indebtedness.
- Any contract or agreement pertaining to a guaranteed asset protection product shall be governed by s. 520.07, F.S.
- A guaranteed asset protection product is considered an obligation of any person that purchases or otherwise acquires the loan contract covering the product.
- An entity providing guaranteed asset protection products shall provide readily understandable disclosures that explain in detail eligibility requirements, conditions, refunds, and exclusions. The disclosures must provide that the purchase of the product is optional. The disclosures must be in plain language and of a typeface and size that are easy to read.
- An entity must provide a copy of the executed guaranteed asset protection product contract to the buyer. The entity bears the burden of proving the contract was provided to the buyer.
- An entity may not offer a contract for a guaranteed asset protection product that contains terms giving the entity the right to unilaterally modify the contract unless:
 - The modification is favorable to the buyer and is made without additional charge to the buyer; or
 - The buyer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes in effect.

If a contract for a guaranteed asset protection product is canceled, the issuer shall refund to the buyer any unearned fees paid for the contract unless the contract provides otherwise. A refund is not due to a consumer who receives a benefit under such product. In order to receive a refund, the buyer must notify the issuer of the event terminating the contract and request a refund within 90 days after the occurrence of the event terminating the contract. An issuer may offer a buyer a contract that does not provide for a refund only if the issuer also offers that buyer a bona fide option to purchase a comparable contract that provides for a refund.¹⁹

III. Effect of Proposed Changes:

Section 1 of the bill defines:

- “Affiliated finance company” as a finance company which is affiliated with or controlled by a manufacturer or wholesale distributor through common ownership, officers, directors, or management; or has a contractual agreement with a manufacturer or wholesale distributor to

¹⁴ Section 520.02(7), F.S.

¹⁵ Section 520.07(11), F.S.

¹⁶ Section 520.02(11), F.S.

¹⁷ Section 520.02(19), F.S.

¹⁸ Section 521.003(8), F.S.

¹⁹ Section 520.07(11), F.S.

finance, via sale or lease, motor vehicles produced or distributed by such manufacturer or wholesale distributor.

- “Automotive related product” as a motor vehicle service agreement, as defined in s. 634.011, F.S., or a guaranteed asset protection product, as defined in s. 520.02, F.S., or other non-tangible ancillary product that is purchased or otherwise provided as part of the sale or lease of a motor vehicle by a dealer.
- “Third party provider” as a provider of an automotive related product that is not an affiliated finance company, manufacturer, or wholesale distributor.
- “Vehicle contract” as a conditional sales contract, retail installment sales contract, chattel mortgage, lease agreement, promissory note, or any other financial obligation arising from the retail sale or lease of a motor vehicle.

The bill also revises the definitions of:

- “Person” to include a limited liability company.
- “Dealer” to mean franchised motor vehicle dealer, as defined in s. 320.27(1)(c)1, F.S.
- “Finance company” to mean a person engaged in the business of financing the sale or lease of motor vehicles, or engaged in the business of purchasing or acquiring vehicle contracts.

Section 2 of the bill provides that an affiliated finance company may not, solely because the vehicle contract contains a third party’s automotive related product:

- Refuse to purchase or accept the assignment of the vehicle contract from a dealer; or
- Charge a dealer an additional fee or surcharge for the purchase of, or acceptance of the assignment of, the vehicle contract.

The prohibitions of the bill only apply to third party automotive-related products that are of similar nature, scope, and quality to an automotive-related product offered by the affiliated finance company or a wholesaler or manufacturer that is affiliated with the finance company.

When determining similar nature, scope, and quality of a competing third party product, the affiliated finance company may review the financial capacity of the third party provider’s ability to meet all its obligations, inclusive of any contractual liability insurance policies, and the third party provider’s history of compliance with any applicable state and federal regulations.

Violations are exempt from the criminal penalties in s. 545.12, F.S.

Section 3 of the bill amends s. 320.27, F.S., pertaining to the licensure of motor vehicle dealers, to delete an exemption from licensure requirements for motor vehicle brokers. A motor vehicle broker is a person who procures or offers to procure motor vehicles for the general public through solicitations or advertisements but who does not store, display, or own any of the vehicles. The number of motor vehicle brokers who will be affected or required to become licensed as a motor vehicle dealer is not known.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill prohibits a finance company that is affiliated with a motor vehicle manufacturer from using the inclusion of certain third-party automotive-related products in a motor vehicle finance contract as the sole basis to refuse to purchase or accept the assignment of the contract or to charge the dealer an additional fee.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 545.01 of the Florida Statutes.

This bill creates section 545.045 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on April 8, 2014:

The CS/CS differs from the earlier version of the bill by:

- Removing a provision that prohibits an affiliated finance company from applying less favorable terms on a motor vehicle contract solely because that contract includes a competing third party automotive-related product of similar nature, scope and quality to a product offered by the finance company or its affiliates; and
- Deleting a definition of a motor vehicle broker from the statutes and from the explanation or what a motor vehicle dealer does not include.

CS by Banking and Insurance on March 5, 2014:

- Adds a new definition for “affiliated finance company” and “third party provider.”
- When determining similar nature, scope, and quality, the CS allows the affiliated finance company to review the financial capacity of the third party provider’s ability to meet all its obligations, as well as the third party provider’s history of compliance with any applicable state and federal regulations.
- The CS exempts violations from the criminal penalties in ch. 545, F.S.

- B. **Amendments:**

None.