

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 1120

INTRODUCER: Senator Abruzzo

SUBJECT: Motor Vehicle Service Agreement Companies

DATE: January 25, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	<b>Pre-meeting</b>
2.			CM	
3.			RC	

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**I. Summary:**

SB 1120 allows motor vehicle service agreements to warrant the following:

- The replacement of tires or wheels on a motor vehicle damaged as a result of encountering a road hazard;
- The replacement of a motor vehicle key or key fob; and
- Other services that may be approved by the Commissioner of Insurance Regulation.

The bill also:

- Clarifies that an “additive product” does not include a product applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle.
- Removes hail damage from being covered under a service agreement for paintless dent removal.

The effective date of the bill is July 1, 2016.

**II. Present Situation:**

Chapter 634, F.S., governs the regulation of warranty associations. Warranty associations include motor vehicle service agreement companies,<sup>1</sup> home warranty associations,<sup>2</sup> and service warranty associations.<sup>3</sup> Each type of warranty association product is governed by applicable provisions of ch. 631, F.S., and is exempt from all other provisions of the Florida Insurance Code unless otherwise specified.<sup>4</sup>

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<sup>1</sup> s. 634.011, F.S.

<sup>2</sup> s. 634.301, F.S.

<sup>3</sup> s. 634.401, F.S.

<sup>4</sup> ss. 634.023, 634.3025, and 634.4025, F.S.

Motor vehicle service agreements are defined as indemnifying 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.<sup>5</sup> Included in the definition are agreements that provide for coverage issued in conjunction with an additive product applied to the motor vehicle, payment of vehicle protection expenses, and payment for paintless dent-removal services.

While a motor vehicle service agreement is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, motor vehicle service agreements are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes disapproval of noncompliant forms,<sup>6</sup> investigation of complaints,<sup>7</sup> and monitoring of reserve requirements,<sup>8</sup> among other duties. The OIR is not, however, required to approve rates for such warranties.

### III. Effect of Proposed Changes:

The bill allows motor vehicle service agreements to warrant the following:

- The replacement of tires or wheels on a motor vehicle damaged as a result of encountering a "road hazard." The bill defines "road hazard" to mean a danger that is encountered while operating a motor vehicle, which includes but is not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, and composite scraps.
- The replacement of a motor vehicle key or key fob if the key or key fob is inoperable, lost, or stolen.
- Other services that may be approved by the Commissioner of Insurance Regulation consistent with this part.

The bill also:

- Clarifies that an "additive product" does not include a product applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle.
- Removes hail damage from being covered under a service agreement for paintless dent removal.

The effective date of the bill is July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>5</sup> s. 634.011(8), F.S.

<sup>6</sup> See s. 634.1213, F.S.

<sup>7</sup> See s. 634.141(2)(c), F.S.

<sup>8</sup> See s. 634.141(2)(d), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill expands coverage to other services which may be approved by the Commissioner of Insurance Regulation consistent with Part I. The bill's lack of minimal standards and guidelines for the commissioner in using his or her discretion raises separation of powers issues and possible inappropriate delegation of legislative power to an executive agency. Florida's separation of powers doctrine aims to avoid an excessive concentration of power in one branch of government. The constitution's language is very explicit. Article II, Section 3, provides, "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

The separation of powers doctrine prevents the Legislature from delegating its constitutional duties. *Florida State Bd. of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979). Legislative power involves the exercise of policy-related discretion over the content of law. *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937). The Florida Supreme Court, in *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978), provided a framework for measuring the constitutionality of legislative power delegations. The court adopted a formal interpretation of the delegation of powers doctrine. It acknowledged that, "where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine." *Id.* at 921 (*quoting CEEED v. California Coastal Zone Conservation Comm'n*, 43 Cal.App.3d 306, 325 (Cal. App. 4 Dist. 1974)). However, the court warned, "[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law." *Id.* at 918-19. *See also Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla. 1968) ("[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be").<sup>9</sup>

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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<sup>9</sup>See generally James P. Rhea and Patrick L. —Booter Imhof, *An Overview of the 1996 Administrative Procedure Act*, 48 FLA. L. REV. 1 (1996); Dan R. Stengle and James P. Rhea, *Putting the Genie Back in the Bottle: The Legislative Struggle to Contain Rulemaking by Executive Agencies*, 21 FLA. ST. U. L. REV. 415 (1993); Stephen T. Maher, *We're No Angels: Rulemaking and Judicial Review in Florida*, 18 FLA. ST. U. L. REV. 767 (1991).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The definition of road hazard is rather broad in that it is “a danger that is encountered while operating a motor vehicle.” Although the application of the term is limited to a road hazard that damages the tires or wheels on a motor vehicle, it may be advisable to narrow the definition to state that a road hazard does not include any damage caused by collision with another vehicle, vandalism, or other causes usually covered under the comprehensive or collision coverages provided by a motor vehicle insurance policy.

**VIII. Statutes Affected:**

This bill substantially amends section 634.011 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.