

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 Rules

BILL: CS/SB 1120

INTRODUCER: Banking and Insurance Committee and Senator Abruzzo

SUBJECT: Motor Vehicle Service Agreement Companies

DATE: February 16, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Matiyow</u> | <u>Knudson</u> | <u>BI</u> | Fav/CS |
| 2. | <u>Harmsen</u> | <u>McKay</u> | <u>CM</u> | Favorable |
| 3. | <u>Matiyow</u> | <u>Phelps</u> | <u>RC</u> | Favorable |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1120 allows the following two new motor vehicle service agreement warranties:

- Replacement of tires or wheels on a motor vehicle that were damaged as a result of encountering a road hazard; and
- Replacement of a motor vehicle key or key fob.

The bill also amends current statute to clarify that motor vehicle service agreement warranties for paintless dent-removal cover damages caused by any harm, not just hail damage.

The bill further 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.

The provisions of this bill take effect on July 1, 2016.

II. Present Situation:

Warranty Associations

Warranty associations, which include motor vehicle service agreement companies,¹ home

¹ Section 634.011, F.S.

warranty associations,² and service warranty associations,³ are governed under ch. 634 of the Florida Insurance Code. Service warranties, also known as “extended warranties,” are contracts between a company and consumer that are designed to protect the consumer from certain losses due to failure or improper functioning of a mechanical or other component of the warranted object, e.g., car, air conditioner, or large appliance.⁴ Service warranties are not considered traditional insurance products.⁵ Therefore, warranty associations are not required to submit their rates for approval by the Office of Insurance Regulation (OIR) like traditional insurance companies.⁶

Service warranty associations are generally regulated by the OIR, but are exempt from all other provisions of the Florida Insurance Code unless otherwise specified.⁷ The OIR’s regulatory authority includes, among other duties, the licensure of warranty associations,⁸ disapproval of noncompliant service agreement forms,⁹ annual review of a warranty association’s statistical reports,¹⁰ investigation of consumer complaints made against a warranty association,¹¹ and observation of a warranty association’s compliance with monetary reserve requirements.¹²

Motor Vehicle Service Agreements

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.¹³ The three specific types of motor vehicle service agreements included under the definition of a motor vehicle service agreement are:

- Agreements that provide for coverage issued in conjunction with an additive product¹⁴ that is applied to the motor vehicle;¹⁵
- Agreements that provide for payment of vehicle protection expenses, contingent upon the use of a vehicle protection product (product or system designed to prevent theft, or assist in recovery of the motor vehicle);¹⁶ and

² Section 634.301, F.S.

³ Section 634.401, F.S.

⁴ Florida Department of Financial Services, *Motor Vehicle Service Agreements Overview*, available at <http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/MotorVehicleServiceAgreementsOverview.htm> (last accessed Feb. 5, 2016).

⁵ Section 634.023, F.S. Kenneth E. Spahn, *Service Warranty Associations: Regulating Service Contracts as “Insurance” Under Florida’s Chapter 634*, 25 Stetson Law Rev. 597, 614-615, available at <http://www.stetson.edu/law/lawreview/media/service-warranty-associations-regulating-service-contracts-as-insurance-under-floridas-chapter-634-25-3.pdf> (last accessed Feb. 5, 2016).

⁶ Section 634.121(11), F.S.

⁷ Sections 634.023, 634.3025, and 634.4025, F.S.

⁸ Sections 634.041 and 634.061-634.081, F.S.

⁹ Section 634.1213, F.S.

¹⁰ Section 634.137, F.S.

¹¹ Section 634.141(2)(c), F.S.

¹² Section 634.141(2)(d), F.S.

¹³ Section 634.011(8), F.S.

¹⁴ Section 634.011(2), F.S., defines an “additive product” as “any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle.”

¹⁵ Section 634.011(8)(a), F.S.

¹⁶ Section 634.011(8)(b), F.S.

- Agreements that indemnify the consumer for paintless dent-removal services by companies whose primary business is such service.¹⁷

Warranties under the Uniform Commercial Code

Extended warranty motor vehicle service agreements are distinct from the basic manufacturer's warranty traditionally offered by motor vehicle manufacturers. A basic motor vehicle warranty is generally provided for in Florida's Uniform Commercial Code,¹⁸ which defines a warranty as any writing or promise made by the vehicle manufacturer which relates to the nature of the material or workmanship of the vehicle, and affirms or promises that such material or workmanship is free of defects.¹⁹

Basic warranties are not considered insurance for several reasons, namely because they are a product given to the consumer for no extra cost, and because warranties only cover defects that are under the manufacturers' control, whereas insurance or service agreements are separate contracts that indemnify consumers against harm or loss unrelated to defects found in the vehicle.²⁰ As a result, basic warranties are regulated by the Florida Attorney General's Office,²¹ and the Federal Trade Commission.²²

III. Effect of Proposed Changes:

Section 1 amends s. 634.011, F.S., to allow motor vehicle service agreements to warrant two new services:

- The replacement of tires or wheels on a motor vehicle damaged as a result of encountering a "road hazard." The bill defines "road hazard" as 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. A "road hazard" specifically 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 an automobile physical damage policy; and
- The replacement of a motor vehicle key or key fob if the key or key fob is inoperable, lost, or stolen.

The bill also:

- Amends the definition of "additive product" to exclude products applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle; and

¹⁷ Section 634.011(8)(c), Florida Statutes.

¹⁸ See ch. 681, F.S., "Motor Vehicle Warranty Enforcement Act."

¹⁹ Section 681.102(22), F.S.

²⁰ Kenneth E. Spahn, *Service Warranty Associations: Regulating Service Contracts as "Insurance" Under Florida's Chapter 634*, 25 Stetson Law Rev. 597, 610-614, available at <http://www.stetson.edu/law/lawreview/media/service-warranty-associations-regulating-service-contracts-as-insurance-under-floridas-chapter-634-25-3.pdf> (last accessed Feb. 5, 2016).

²¹ Section 681.102(6), F.S.

²² 15 U.S.C. §2302; United States Federal Trade Commission, *Consumer Information: Warranties*, available at <http://www.consumer.ftc.gov/articles/0252-warranties> (last accessed Feb. 5, 2016).

- Removes “hail damage” from the definition of “paintless dent-removal” to clarify that a motor vehicle service warranty for paintless dent-removal may be performed on any dent, ding, or crease, whether or not the cause was hail damage.

Section 2 of the bill provides an effective date of July 1, 2016.

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 will enable service warranty associations to offer service warranties for the replacement of tires or wheels that are damaged as a result of encountering a road hazard, for removal of dents by the process of paintless dent-removal, and for replacement of a motor vehicle key or key fob. This may enable consumers to more easily purchase such service warranties, which may prove economically beneficial to certain consumers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.)

CS by Banking and Insurance on January 26, 2016:

- Removes lines 96-97 regarding other services approved by the Commissioner of Insurance.
- Clarifies the definition of “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 an automobile physical damage policy.

- B. **Amendments:**

None.