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 Banking and Insurance

BILL:	SB 794
INTRODUCER:	Senator Brandes
SUBJECT:	Motor Vehicle Service Agreement Companies
DATE:	March 13, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Pre-meeting**
2.			CM	
3.			RC	

I. Summary:

SB 794 allows a motor vehicle service agreement company to meet its reserving requirement by securing contractual liability insurance from an authorized risk retention group. Current law only allows the purchase of contractual liability insurance from an authorized insurer. The bill requires a surplus of at least $15 million for insurers or risk retention groups that insure or cover 100 percent of a motor vehicle service agreement company's exposure. The bill also removes the prohibition that a motor vehicle service agreement company cannot have an affiliation with an insurer issuing coverage on the company's exposure for motor vehicle protection expenses.

II. Present Situation:

Motor Vehicle Service Agreement Companies

Motor vehicle service agreement companies are one type of warranty association and are governed by the provisions in part I, ch. 634, F.S. Motor vehicle service agreements generally provide vehicle owners with protection when the manufacturer's warranty expires. While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority concerning warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Motor vehicle service agreements indemnify the agreement holder against loss caused by failure of any mechanical or other component part, or any mechanical or other component part of the motor vehicle that does not function as it was originally intended. The term "motor vehicle service agreement" also includes any contract that provides: for coverage which is issued in conjunction with an additive product applied to the motor vehicle that is the subject of such agreement; for payment of vehicle protection expenses (such as meeting applicable deductibles

and providing for temporary replacement vehicle rental expenses); and for the payment for paintless dent-removal services.[1]

These companies are required to be licensed by the OIR prior to conducting business in Florida.[2] A company must meet the following conditions to qualify for licensure:[3]

- Be a solvent corporation;
- Prove to OIR that the management of the company is competent and trustworthy and can successfully and lawfully manage the company;
- Deposit $200,000 with the Department of Financial Services (DFS);[4]
- Have and maintain minimum net assets of at least $500,000, which must be kept in the United States;
- Keep and maintain an unearned premium reserve of at least 50 percent of the unearned gross written premium of each service agreement amortized pro rata over the life of the agreement, kept in a 10 to 1 ratio of gross written premium in force to net assets[5] (15 percent of this reserve must be deposited with the DFS).
    - This reserve is not required if the service agreement company holds a contractual liability policy and meets the following criteria:
        - The policy covers 100 percent of the claim exposure and is with an admitted insurer;
        - If the service agreement company fails to meet its contractual obligations, the insurer is bound[6] to cover all claims and refunds on agreements issued during the policy period, including those agreements that the company has yet to pay premium on;
        - If the service agreement is being fulfilled by the insurer and the company cancels the agreement, the insurer must issue the required pro rata refund (and representatives or agents must refund the commissions, pro rata);
        - There is a 90 day cancellation, termination, or non-renewal notice to OIR by the insurer; and
        - The company provides claim statistics to OIR.
- The service agreement company must be able to identify which allowed reserve requirement is being used to back each agreement. However, a company with at least $10 million in assets and an audited actuarial statement on file with OIR is granted authority to manage blocks of new agreements under either of the two allowed forms of reserving, i.e., the 50 percent reserve or contractual liability insurance substitute,

[1] s. 634.011(8), F.S.
[2] s. 634.031, F.S. The unauthorized transaction of motor vehicle service agreements is a first degree misdemeanor punishable by up to one year in jail and a $1,000 fine. s. 634.031(7), F.S.
[3] s. 634.041, F.S.
[4] s. 634.052, F.S. If the company maintains less than $750,000 in unearned gross premium, the deposit may be lowered to $100,000. Also, the deposit may be lowered to no less than $100,000 after the first year of business upon application to the DFS for a release of a portion of the deposit. For good cause shown after notice and a hearing, the OIR may require the deposit to be increased to no more than $500,000 to protect the company's customers and creditors. The deposit must be in the form of the various securities specified in s. 625.52, F.S.
[5] This ratio only applies to the direct written premiums covered by the reserve, i.e., that are retained and not covered by contractual liability insurance held by the service agreement company. s. 634.041(8)(a)2., F.S.
[6] Contractual liability insurance is casualty insurance. s. 624.605(1)(b), F.S. Casualty insurers are required to initially have at least $5,000,000 in surplus as to policyholders and subsequently must maintain $4,000,000 in surplus as to policy holders. ss. 624.407 and 624.408, F.S.

- It must file, under oath of two executive officers, any information requested in writing by OIR regarding its transactions and affairs, and
- Limitations on reserve requirements apply to service agreement companies that provide vehicle protection expenses through their agreements, including a prohibition on purchasing insurance from an affiliated insurer.[7]

The OIR is prohibited from licensing a company if it has violated any requirement of part I of ch. 634, F.S., or any rules interpreting and implementing that part within the previous 3 years. There are 89 motor vehicle service agreement companies active in Florida.[8]

Risk Retention Groups

Risk retention groups are authorized under state and federal law.[9] Except for requirements related to oversight of the formation and operations of the group; the regulation of these groups is preempted by federal law.[10]

A risk retention group is a corporation or limited liability association whose primary purpose is to share any or all of the liabilities of the members of the group. If they are organized under the law of any state or district of the United States, they may transact business in Florida.[11] They may not exclude businesses from membership solely for competitive advantage. The group must be solely owned by either:

- its members who receive insurance from the group; or
- by an organization whose members are the members of the group; however, the owning organization must be owned by those making up and receiving insurance from the group.

The group members must be engaged in business or activities that result in similar or related liabilities because of their similar, related or common business conditions.

Risk retention groups can only insure certain risks. They are limited to liability insurance and reinsurance of other risk retention groups that share the same common interests required to form a group. The term "risk retention group" must be included in the group's name. None of Florida's insurance insolvency guaranty funds are available for risk retention group insolvencies. There are 108 risk retention groups active in Florida.[12]

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[7] The service agreement company can use an affiliated insurer, if the insurer had issued them a policy prior to January 1, 2002. s. 634.041(11)(a), F.S.

[8] Florida Office of Insurance Regulation Active Company Search, http://www.floir.com/CompanySearch/, Select "Motor Vehicle Service Agreement Company" under "Company Type" (last visited March 11, 2017).

[9] 15 U.S.C. ss. 3901, et seq. (2016), and part XIX of ch. 627, F.S.

[10] 15 U.S.C. s. 3902 (2016). Rule 69-O-200.006, F.A.C., requires insurers writing contractual liability insurance to obtain a certificate of authority from OIR prior to doing so. Since risk retention groups from outside of Florida are not issued certificates of authority, the OIR asserts that they cannot offer contractual liability insurance in the state. Florida Office of Insurance Regulation, Agency Analysis of 2017 Senate Bill 794, p. 5 (Feb. 17, 2017). This rule may conflict with federal preemption regarding risk retention groups and would be resolved by the bill.

[11] Certain risk retention groups organized in Bermuda or the Cayman Islands prior to January 1, 1985, may also transact business in Florida. s. 627.942(9)(c)2., F.S.

[12] Florida Office of Insurance Regulation Active Company Search, http://www.floir.com/CompanySearch/, Select "Risk Retention Group" under "Company Type" (last visited March 10, 2017).

By forming or joining a risk retention group, a prospective member, such as a motor vehicle service agreement company, can take advantage of economic opportunities consistent with self-insurance. They may be able to save money by controlling overhead costs and profits that cannot be avoided through the purchase of insurance. They maintain or participate in the control of assets and investments dedicated to the reserves that will fund claims exposure. The availability of participation in risk retention groups provide business with another option to compete in the market and take advantage of economic opportunities.

III. Effect of Proposed Changes:

The bill revises how service warranty companies may meet their reserve requirement through the purchase of contractual liability insurance. It increases the minimum surplus to policyholders that is applicable to any insurer providing coverage for contractual liabilities of a motor vehicle service agreement company. The minimum surplus as to policyholders is increased from $4 million to $15 million.

The bill allows service warranty companies to meet their reserving requirements by participating in a risk retention group, if the group covers 100 percent of the claims exposure of the company, and maintains a surplus to policyholders minimum of $15 million.

Regarding service warranty companies that offer vehicle protection expenses in their agreements, the bill allows them to meet their reserve requirements related to contractual liability for vehicle protection expense claims through risk retention groups, rather than exclusively through the purchase of insurance. The bill also removes a prohibition on them utilizing an affiliated insurer to meet their reserve requirements.

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:

Insurers and risk retention groups providing contractual liability coverage on motor vehicle service warranties will need to maintain a surplus of at least $15 million dollars.

The bill may increase the amount of and options related to contractual liability coverage of motor vehicle service agreements.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The $15 million dollar surplus is intended to apply to both insurers and risk retention groups. As drafted, it could be interrupted as applying only to risk retention groups.

In its bill analysis,[13] the Office of Insurance Regulation points out that the term "surplus as to policyholders" in current law should be "surplus as regards policyholders."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 634.041of 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.

[13] Florida Office of Insurance Regulation, Agency Analysis of 2017 Senate Bill 794, p. 5 (Feb. 17, 2017)