

By the Committee on Banking and Insurance; and Senator Brandes

597-02421-17

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1 A bill to be entitled
2 An act relating to motor vehicle service agreement
3 companies; amending s. 634.041, F.S.; revising
4 qualifications for a motor vehicle service agreement
5 company to obtain and maintain a license; amending s.
6 634.121, F.S.; requiring specified refunds by insurers
7 or service agreement companies if service agreements
8 are canceled by lenders, finance companies, or
9 creditors after a specified timeframe; providing a
10 limitation on such cancellations; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraph (b) of subsection (8) and paragraph
16 (a) of subsection (11) of section 634.041, Florida Statutes, are
17 amended to read:

18 634.041 Qualifications for license.—To qualify for and hold
19 a license to issue service agreements in this state, a service
20 agreement company must be in compliance with this part, with
21 applicable rules of the commission, with related sections of the
22 Florida Insurance Code, and with its charter powers and must
23 comply with the following:

24 (8)

25 (b) A service agreement company does not have to establish
26 and maintain an unearned premium reserve if it secures ~~purchases~~
27 and maintains contractual liability insurance in accordance with
28 the following:

29 1. Coverage of ~~The insurance covers~~ 100 percent of the ~~its~~

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30 claim exposure ~~and~~ is obtained from an insurer that is approved
31 by the office and that ~~which~~ holds a certificate of authority
32 under s. 624.401 to do business within this state, or such
33 coverage is secured through a risk retention group that is
34 authorized to do business within this state under s. 627.943 or
35 s. 627.944. Such insurer or risk retention group shall maintain
36 a surplus as regards policyholders of at least \$15 million.

37 2. If the service agreement company does not meet its
38 contractual obligations, the contractual liability insurance
39 policy binds its issuer to pay or cause to be paid to the
40 service agreement holder all legitimate claims and cancellation
41 refunds for all service agreements issued by the service
42 agreement company while the policy was in effect. This
43 requirement also applies to those service agreements for which
44 no premium has been remitted to the insurer.

45 3. If the issuer of the contractual liability policy is
46 fulfilling the service agreements covered by the contractual
47 liability policy and the service agreement holder cancels the
48 service agreement, the issuer must make a full refund of
49 unearned premium to the consumer, subject to the cancellation
50 fee provisions of s. 634.121(3). The sales representative and
51 agent must refund to the contractual liability policy issuer
52 their unearned pro rata commission.

53 4. The policy may not be canceled, terminated, or
54 nonrenewed by the insurer or the service agreement company
55 unless a 90-day written notice thereof has been given to the
56 office by the insurer before the date of the cancellation,
57 termination, or nonrenewal.

58 5. The service agreement company must provide the office

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59 with the claims statistics.

60
61 All funds or premiums remitted to an insurer by a motor vehicle
62 service agreement company under this part shall remain in the
63 care, custody, and control of the insurer and shall be counted
64 as an asset of the insurer; provided, however, this requirement
65 does not apply when the insurer and the motor vehicle service
66 agreement company are affiliated companies and members of an
67 insurance holding company system. If the motor vehicle service
68 agreement company chooses to comply with this paragraph but also
69 maintains a reserve to pay claims, such reserve shall only be
70 considered an asset of the covered motor vehicle service
71 agreement company and may not be simultaneously counted as an
72 asset of any other entity.

73 (11) (a) A service agreement company offering service
74 agreements providing vehicle protection expenses may meet the
75 requirements for this part only by maintaining contractual
76 liability insurance covering 100 percent of its vehicle
77 protection claim exposure in accordance with paragraph (8) (b) 7
78 ~~which insurance must be issued by an insurance company not~~
79 ~~affiliated with the service agreement company, unless the~~
80 ~~insurance company had issued a contractual liability insurance~~
81 ~~policy to a service agreement company on or before January 1,~~
82 2002. Service agreements providing vehicle protection expenses
83 may be sold only to a service agreement holder that has in-force
84 comprehensive motor vehicle insurance coverage for the vehicle
85 to be covered by the service agreement.

86 Section 2. Paragraph (b) of subsection (3) of section
87 634.121, Florida Statutes, is amended to read:

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88 634.121 Forms, required procedures, provisions.-

89 (3)

90 (b) After the service agreement has been in effect for 60
91 days, it may not be canceled by the insurer or service agreement
92 company unless:

93 1. There has been a material misrepresentation or fraud at
94 the time of sale of the service agreement;

95 2. The agreement holder has failed to maintain the motor
96 vehicle as prescribed by the manufacturer;

97 3. The odometer has been tampered with or disabled and the
98 agreement holder has failed to repair the odometer; or

99 4. For nonpayment of premium by the agreement holder, in
100 which case the service agreement company shall provide the
101 agreement holder notice of cancellation by certified mail.
102

103 If the service agreement is canceled by the insurer or service
104 agreement company, the return of premium must not be less than
105 100 percent of the paid unearned pro rata premium, less any
106 claims paid on the agreement. If, after 60 days, the service
107 agreement is canceled by the service agreement holder, lender,
108 finance company, or creditor, the insurer or service agreement
109 company shall return directly to the agreement holder not less
110 than 90 percent of the unearned pro rata premium, less any
111 claims paid on the agreement. Cancellations initiated by
112 lenders, creditors, or finance companies are valid only if
113 authorized by the terms of the service agreement. The service
114 agreement company remains responsible for full refunds to the
115 consumer on canceled service agreements. However, the
116 salesperson and agent are responsible for the refund of the

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117 unearned pro rata commission. A service agreement company may
118 effectuate refunds through the issuing salesperson or agent in
119 accordance with paragraphs (c) and (d).

120 Section 3. This act shall take effect July 1, 2017.