

STORAGE NAME: h1749.in

DATE: March 25, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1749

RELATING TO: Service warranties

SPONSOR(S): Representative Farkas

COMPANION BILL(S): SB 1234 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3) JUDICIARY
 - (4)
 - (5)
-

I. SUMMARY:

A warranty contract is a form of insurance that pays for repairs to goods after the expiration of the manufacturer's warranty. According to the Department of Insurance, there are 162 warranty associations in Florida: 52 motor vehicle service agreement companies, 15 home warranty associations, and 95 service warranty associations. Warranty associations are regulated by the DOI under Chapter 634, Florida Statute.

HB 1749 makes changes regarding motor vehicle service agreements, home warranties, and service warranties.

An insurer that provides contractual liability coverage for 100 percent of the claims of a motor vehicle service agreement would be prohibited from delegating the responsibility for maintaining the claims reserve to the service agreement company. A service agreement company could use reserves to back some motor vehicle service agreements and use contractual liability insurance to back others, if certain conditions are met.

A motor vehicle service agreement company would be required to maintain a ratio of *unearned* gross written premium to net assets of no more than 10 to 1. Current law requires a 10 to 1 ratio, based on gross written premium.

Certain provisions of the service agreement contract would no longer be required to be set forth in conspicuous, boldfaced type.

A home warranty contract would be required to state in conspicuous, boldfaced type that coverage provided for the period that a home is for sale would not be provided under the home warranty free of charge.

Companies that offer discounts of more than 40 percent for parts and labor for work done in connection with a maintenance service contract would be required to be licensed as a service warranty association. Maintenance service contracts that provide only regular scheduled maintenance would be excluded from the definition of service warranty.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

A warranty contract is a form of insurance that pays for repairs to goods after the expiration of the manufacturer's warranty. According to the Department of Insurance, there are 162 warranty associations in Florida: 52 motor vehicle service agreement companies, 15 home warranty associations, and 95 service warranty associations. Warranty associations are regulated by the DOI under Chapter 634, Florida Statutes.

Motor Vehicle Service Agreement Companies

Motor vehicle service agreement companies are regulated under ss. 634.011 - 634.281, F.S. A motor vehicle service agreement is defined in s. 634.011, F.S., as a contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement against loss caused by failure of any mechanical or other component part.

Motor vehicle service agreement companies must be licensed through the DOI to conduct business in the state. A motor vehicle service agreement company must maintain an unearned premium reserve consisting of assets equal to a minimum of 50 percent of unearned gross written premium on each service agreement and a ratio of gross written premium to net assets of 10 to 1. A motor vehicle service agreement company does not have to maintain reserves of 50 percent of unearned gross written premium if the company purchases and maintains a contractual liability insurance policy to insure 100 percent of its service contract obligations.

A motor vehicle service agreement company may not utilize both the 50 percent reserve of unearned gross written premium and the contractual liability insurance policy simultaneously. Companies that have previously sold service agreements backed by contractual liability policies have been able to convert to selling service agreements backed by the 50 percent reserve, or vice versa.

The DOI has the authority to suspend the license of a motor vehicle service agreement company when the ratio of gross written premiums to net assets exceeds 10 to 1, unless the company has over \$750,000 in net assets and uses a contractual liability insurance policy to cover 100 percent of its claims.

Motor vehicle service agreement forms must be filed with the DOI to be used in the state. The purchaser of a motor vehicle service agreement must receive a copy of the motor vehicle service contract within 45 days of purchase. A motor vehicle service agreement must contain the following in conspicuous boldfaced type:

- ◆ A statement that a motor vehicle service agreement is assignable in a consumer transaction and all conditions on the right of such transfer.
- ◆ Any statement or clause that places limitations or restrictions on the service agreement;
- ◆ A statement of the intention of the motor vehicle service agreement company to use remanufactured or used replacement parts; and
- ◆ The terms and conditions of any rental car provision.

Home Warranty Associations

Home warranty associations are regulated in Florida under ss. 634.301 - 634.348, F.S. A home warranty is defined in s. 634.301, F.S., as a contract or agreement offered in connection with the sale of a home, a loan of \$5,000 or more secured by residential property, or a home improvement of \$7,500 or more.

A home warranty may not be issued in the state unless the company is licensed by the DOI under s. 634.306, F.S., and the warranty form has been filed with the DOI.

STORAGE NAME: h1749.in

DATE: March 25, 1999

PAGE 3

A home warranty may provide coverage during the period in which a home is listed for sale. The warranty company must charge the purchaser of the warranty a separate charge that equals at least 15 percent of the annual premium charged for the home warranty for listing period coverage.

Service Warranty Associations

Service warranty associations are regulated under ss. 634.401 - 634.444, F.S. A service warranty is defined under s. 634.401, F.S., as a warranty or contract agreement to repair or replace a consumer product in return for payment by the consumer. Maintenance service contracts written for one year which do not contain provisions for indemnification are not included in the definition of service warranty.

B. EFFECT OF PROPOSED CHANGES:

Motor Vehicle Service Companies

An insurer that provides contractual liability coverage for 100 percent of the claims of a motor vehicle service agreement would be prohibited from delegating the responsibility for maintaining the claims reserve to the service agreement company. The insurer would also be required to maintain adequate reserves to cover all claims exposure of the service agreement company for the duration of the policy. These reserves could not be reported by the motor vehicle service agreement company as an asset.

A service agreement company could use reserves to back some motor vehicle service agreements and use contractual liability insurance to back others. A service agreement company could simultaneously use reserves and insurance if the following conditions are met:

- ◆ Each contractual liability insurance policy clearly states the service agreements covered;
- ◆ The premiums written under contractual liability insurance and the premiums written under 50 percent reserves are reported to the DOI separately;
- ◆ The company submits to the DOI for approval a plan for using both 50 percent reserves and contractual liability insurance; and
- ◆ Each salesperson appointed by the motor vehicle service agreement company would be required to sell agreements either backed by 50 percent reserves or a contractual liability insurance policy. The service agreement company would be required to maintain records indicating what type of contract each salesperson transacts.

A motor vehicle service agreement company would be required to maintain a ratio of *unearned* gross written premium to net assets of no more than 10 to 1. Current law requires the ratio to be based on gross written premium. According to the DOI, this change would be the equivalent of changing the required ratio of gross written premium to net assets to 20 to 1. In contrast, the ratio of gross written premium to net assets required currently for home warranty associations is 6 to 1 and for service warranty associations it is 5 to 1.

Certain provisions of the service agreement contract would no longer be required to be set forth in conspicuous, boldfaced type. Any restrictions or limitations of the service agreement contract could be set forth in regular type with a boldfaced heading. A rental car provision that is included in the service agreement contract could also be set forth in regular type with a boldfaced heading.

Home Warranty Associations

A home warranty contract would be required to state in conspicuous, boldfaced type that coverage provided for the period that a home is for sale would not be provided under the home warranty free of charge.

Service Warranty Associations

Companies that offer discounts of more than 40 percent for parts and labor for work done in connection with a maintenance service contract would be required to be licensed as a service warranty association. For example, Company A offers a maintenance service contract and in connection with that contract, offers a discount of over 40 percent for all parts and labor for the period of the maintenance service contract. Company A would have to be licensed as a service warranty association.

Maintenance service contracts that provide only regular scheduled maintenance would be excluded from the definition of service warranty.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 634.041, 634.081, 634.121, 634.312, 634.401, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 634.041, F.S., regarding the qualifications for licensure for service warranty companies. An insurer that provides contractual liability coverage for 100 percent of the claims would be prohibited from delegating the responsibility for maintaining the claims reserve to the service agreement company. The insurer would also be required to maintain adequate reserves to cover all claims exposure of the service agreement company for the duration of the policy.

A service agreement company could use reserves to back some motor vehicle service agreements and use contractual liability insurance to back others. A service agreement company could simultaneously use reserves and insurance if the following conditions are met:

- ◆ Each contractual liability insurance policy clearly states the service agreements covered;
- ◆ The premiums written under contractual liability insurance and the premiums written under 50 percent reserves are reported to the DOI separately;
- ◆ The company submits to the DOI for approval a plan for using both 50 percent reserves and contractual liability insurance; and
- ◆ Each salesperson appointed by the motor vehicle service agreement company would be required to sell agreements either backed by 50 percent reserves or a contractual liability insurance policy. The service agreement company would be required to maintain records indicating what type of contract each salesperson transacts.

Section 2. Amends s. 634.081, F.S. A motor vehicle service agreement company would be required to maintain a ratio of *unearned* gross written premium to net assets of no more than 10 to 1. Current law requires a 10 to 1 ratio, based on gross written premium.

Section 3. Amends s. 634.121, F.S., to authorize the motor vehicle service agreement company to set forth certain restrictions or limitations of the motor vehicle service agreement contract in regular type with a boldface heading, rather than boldface type.

Section 4. Amends s. 634.312, F.S., to require that a home warranty contract must state in conspicuous, boldfaced type that the home warranty may not provide free of charge coverage for the period that the home is listed for sale free of charge.

Section 5. Amends s.634.401, F.S. Companies that offer discounts of more than 40 percent for parts and labor for work done in connection with a maintenance service contract would be required to be licensed as a service warranty association.

Maintenance service contracts that provide only regular scheduled maintenance would be excluded from the definition of service warranty.

Section 6. Provides for an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

STORAGE NAME: h1749.in

DATE: March 25, 1999

PAGE 8

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Meredith Woodrum Snowden

Stephen Hogge