

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2278

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and
Senator Atwater

SUBJECT: Motor Vehicle Service Agreements

DATE: April 16, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	Fav/3 amendments
2.	Kruse	Maclure	CM	Favorable/CS
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute revises motor vehicle service agreements to provide coverage benefits for “vehicle protection expenses” in the form of a preestablished flat amount. The committee substitute also provides that motor vehicle service agreements paying a flat amount of \$5,000 or less do not duplicate benefits payable under a comprehensive motor vehicle insurance policy. If a motor vehicle service agreement provides vehicle protection expenses of a flat amount, the form for the service agreement must clearly state the preestablished flat amount of coverage. The form will not be approved by the Office of Insurance Regulation unless it clearly states the preestablished flat amount. The committee substitute also requires a motor vehicle service agreement company that offers vehicle protection service agreements paying vehicle protection expenses to maintain contractual liability insurance covering 100 percent of its vehicle protection claim exposure. Additionally, the committee substitute allows a motor vehicle service agreement company that maintains an unearned premium reserve on all of its current service agreements to offer vehicle protection service agreements paying vehicle protection expenses if it maintains contractual liability insurance on any future service agreements providing vehicle protection expenses. The company must continue to maintain the 50-percent reserve for all other types of service agreements.

This committee substitute substantially amends the following sections of the Florida Statutes: 634.011, 634.041, and 634.121.

II. Present Situation:

Licensure of Motor Vehicle Service Agreement Companies

Motor vehicle service agreement companies are regulated under part I, ch. 634, F.S. A motor vehicle service agreement company must be licensed through the Department of Insurance (department) to conduct business in the state. In order to be licensed, a company must meet financial solvency, marketing and sales requirements, and be examined by the department every 3 years. The financial solvency provisions generally require a company to have and maintain minimum net assets of \$500,000.¹ The solvency provisions, among other things, also require a company to maintain an unearned premium reserve consisting of unencumbered assets equal to a minimum of 50 percent of the unearned gross written premium on each service agreement, and require amortization of this reserve pro rata over the duration of the service agreement. These assets must be held in the form of cash or invested in securities.² However, a motor vehicle service agreement company does not have to maintain reserves of 50 percent of its unearned gross written premiums if the company complies with the following:

- The company must purchase and maintain a contractual liability insurance policy to insure 100 percent of its service contract obligations.
- If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect.
- If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of any unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(5), F.S. The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.
- The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice has been given to the department by the insurer before the date of the cancellation, termination, or nonrenewal.
- The service agreement company must provide the department with claims statistics.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company must remain in the care, custody, and control of the insurer and must be counted as an asset of the insurer. However, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If a motor vehicle service agreement company chooses to comply with the requirements listed above but also maintains a reserve to pay claims, such reserve may only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.³

¹ Section 634.041(6), F.S.

² Section 634.041(8)(a)1., F.S.

³ Section 634.041(8)(b)1.-5., F.S.

A motor vehicle service agreement company wishing to offer vehicle protection service agreements must meet the requirements set forth in the list described above and certain requirements when purchasing contractual liability insurance coverage. The contractual liability insurance must be issued by an insurance company not affiliated with the service agreement company, unless the insurance company has issued a contractual liability insurance policy to a service agreement company on or before January 1, 2002. Additionally, service agreements providing vehicle protection expenses may be sold only to a service agreement holder that has in-force comprehensive motor vehicle insurance coverage for the vehicle to be covered by the service agreement.⁴

Sale of Insurance

A motor vehicle service agreement company must abide by s. 634.231, F.S., which states that “[n]othing in the Florida Insurance Code or in this part shall be deemed to authorize any motor vehicle service agreement company to transact any insurance business other than that of motor vehicle service agreement as herein defined or otherwise to engage in any other type of insurance unless the company is authorized under a certificate of authority issued by the department under the provisions of the Florida Insurance Code.”

Motor Vehicle Service Agreement

A motor vehicle service agreement is defined 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 or any mechanical or other component part that does not function as it was originally intended.⁵ The term “motor vehicle service agreement” includes any contract or agreement that provides:

- For the coverage or protection defined in s. 634.011(8), F.S., and which is issued or provided in conjunction with an additive product applied to the motor vehicle that is the subject of such contract or agreement; or
- For payment of vehicle protection expenses.⁶

A vehicle protection expense means an expense incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses specified in the agreement.⁷

⁴ Section 634.041(11), F.S.

⁵ Section 634.011(8), F.S.

⁶ Section 634.011(8)(a) and (b), F.S.

⁷ Section 634.011(8)(b)1.a., F.S.

Motor Vehicle Theft Protection Agreement

A motor vehicle service agreement company may sell a type of motor vehicle service agreement, a vehicle theft protection agreement, when theft protection products such as car alarms, window-etched vehicle ID numbers, and other applications are installed in motor vehicles. Several provisions of ch. 634, F.S., apply to this type of sale. “Vehicle protection product” means a product or system installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.⁸ Vehicle protection expenses are payable in the event of loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in the recovery of the stolen motor vehicle.⁹ Agreements providing for the payment of vehicle protection expenses must:

- At a minimum, provide reimbursement for: deductibles applicable to comprehensive coverage under the service agreement holder’s motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; and the difference between the benefits paid to the service agreement holder for the stolen vehicle under the service agreement holder’s comprehensive coverage and the actual cost of a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; or
- Pay a preestablished flat amount to the service agreement holder.

Payments may not duplicate any benefits or expenses paid to the service agreement holder by an insurer providing comprehensive coverage under a motor vehicle insurance policy.¹⁰

Forms and Record Keeping

A motor vehicle service agreement form must be filed with and approved by the department.¹¹ A service agreement form must be disapproved by the department if the form does not provide the following: a clear indication of the method used for calculating the benefits to be paid; the term of the agreement; whether new or used cars are eligible for the vehicle protection product; and an indication that the service agreement holder must have comprehensive vehicle insurance coverage in force at the time of loss in order to request payment of vehicle protection expenses.¹² A motor vehicle service agreement form must also contain the following in conspicuous boldfaced type:¹³

- 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

⁸ Section 634.011(8)(b)1.b., F.S.

⁹ Section 634.011(8)(b)2., F.S.

¹⁰ Section 634.011(8)(b)3.a. and b., F.S.

¹¹ Section 634.121(1), F.S.

¹² Section 634.121(1)(c), F.S.

¹³ Section 634.121, F.S.

- The terms and conditions of any rental car provision.

A motor vehicle service agreement company must maintain a detailed service agreement register, in numerical order by service agreement number, of agreements in force. The register must include the following information: service agreement number; date of issue; issuing dealer; name of agreement holder; description of motor vehicle service agreement period and mileage; gross premium; commission to salespersons; commission to dealer; and net premium.¹⁴

III. Effect of Proposed Changes:

Section 1 expands the definition of “vehicle protection expenses” in s. 634.011(8), F.S., to include “a preestablished flat amount payable for the loss of or damage to a vehicle.” This expansion of the definition will permit a motor vehicle service agreement company to sell an agreement, covering losses resulting from the failure of an anti-theft device, that pays a specified dollar amount to the service agreement holder in the event the service agreement holder’s vehicle is stolen. Previously, an agreement could only provide reimbursement for specified expenses incurred by the service agreement holder from the theft of the car. The committee substitute also states that, if a motor vehicle service agreement form provides for the payment of a preestablished flat amount, the agreement must clearly identify the preestablished flat amount.

Additionally, this section provides an exception to current law, which does not allow the duplication of benefits or expenses if the service agreement holder has a motor vehicle insurance policy covering the stolen vehicle. This section provides that the payment of vehicle protection expenses at a preestablished flat amount of \$5,000 or less does not duplicate any benefits or expenses payable under any comprehensive motor vehicle insurance policy.

Section 2 amends s. 634.041(11), F.S., by requiring a motor vehicle service agreement company that offers vehicle protection service agreements paying vehicle protection expenses to maintain contractual liability insurance covering 100 percent of its vehicle protection claim exposure. This section also allows a motor vehicle service agreement company maintaining an unearned premium reserve on all other types of service agreements to offer vehicle protection service agreements paying vehicle protection expenses if it maintains contractual liability insurance on all service agreements providing vehicle protection expenses and continues to maintain a 50-percent reserve for all service agreements not providing vehicle protection expenses. Previously, motor vehicle service agreement companies that maintained an unearned premium reserve could not offer vehicle protection service agreements without converting all of their agreements to contractual liability insurance coverage. A company that maintains the 50-percent reserve and contractual liability insurance must distinguish in the service agreement register, required under s. 634.136(4), F.S., between service agreements providing vehicle protection expenses and other service agreements not providing vehicle protection expenses.

Section 3 modifies the form for service agreements by providing that the form must also indicate the preestablished flat amount payable if the form is for a motor vehicle service agreement that pays a flat amount. The current form only requires that it state the method for calculating the benefit to be paid or provided to the service agreement holder.

¹⁴ Section 634.136(4), F.S.

Section 4 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute provides a consumer the additional option of purchasing a flat amount of theft protection when purchasing a motor vehicle service agreement. The preestablished flat amount may provide a degree of certainty to the consumer regarding what benefits will be paid in the event the consumer's car is stolen. Additionally, the practical effect of the committee substitute is to expand the number of motor vehicle service agreement companies that may offer vehicle protection service agreements because of the division of liability coverage allowed, under the committee substitute, within a company between service agreements not offering vehicle protection expenses and service agreements offering vehicle protection expenses.

Additionally, consumers, when purchasing a vehicle theft agreement, may not be aware that their current comprehensive automobile policy may already provide benefits in the event the consumer's car is stolen.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
