

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825 CS

Motor Vehicle Service Agreements

SPONSOR(S): Evers

TIED BILLS:

IDEN./SIM. BILLS: SB 2006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	11 Y, 0 N	Smith	Reese
2) Insurance Committee	14 Y, 0 N	Sayler	Cooper
3) State Resources Council	9 Y, 0 N, w/CS	Smith	Hamby
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Florida law defines a Motor Vehicle Service Agreement as any contract or agreement covering the holder against losses incurred from the mechanical failure of a motor vehicle part or component. Additionally, motor vehicle service agreements include coverage for additive products as well as payments for vehicle protection products and expenses.

The bill amends the definition of "motor vehicle service agreements" to include paintless dent removal services by paintless dent removal providers. The bill amends the qualifications a service agreement company must meet to issue service agreements in the state.

The bill creates a new product that may be sold in Florida by motor vehicle service agreement companies.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates and regulates a new form of motor vehicle service agreement not previously available in the State. It allows any licensed motor vehicle service agreement company to sell paintless dent removal as a motor vehicle service agreement.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Current Law

Warranty associations are regulated by the Office of Insurance Regulation (OIR) under chapter 634, F.S., and include motor vehicle service agreement companies, home warranty associations, and service warranty associations. The Department of Financial Services (DFS) is authorized to regulate the salespersons and representatives who sell warranties (as part of the department's authority to license and regulate insurance agents).

Motor vehicle service agreement companies sell Motor Vehicle Service Agreements (MVSA) that indemnify a service agreement holder for a motor vehicle against loss caused by failure of any mechanical or other component part that does not function as it was originally intended. Motor vehicle service agreement companies are regulated exclusively under part I, Ch. 634, F.S., except as otherwise provided in that part. Motor vehicle service agreement companies must file their rates and premiums with OIR, but the rates are not subject to disapproval by OIR.

Under the Florida Insurance Code, a MVSA, by definition, is considered to be "insurance" and a person or company selling an MSVA is considered to be an "insurer."¹ Any person or corporation wishing to transact, administer, or market the sale of a MVSA in Florida must be authorized via annual licensure for the kind of service it is intending to sell.²

To qualify for licensure in Florida, a service agreement company must hold a minimum reserve of 50% of the unearned gross written premium.³ A company may also back a service agreement with contractual liability insurance but, may not however, use both forms of coverage simultaneously for any single service agreement.⁴ The company may use either form of insurance for separately sold service agreements, so long as the company is able to distinguish which insurance is presently covering a particular agreement.⁵

However, persons selling service agreements are not considered "insurers" when an agreement is issued subsequent to the sale of parts and/or service by the provider, when the total premium does not exceed \$50 annually or for the term of the agreement, when the difference in price of a part and/or service does not exceed \$50 annually or for the term of the agreement, or when the person does not issue any other agreements that, when combined, do not exceed \$50 annually or for the term of the agreement.⁶ Any agreements fulfilling these requirements are also not considered to be MVSA's.⁷

¹ s. 624.02, F.S.; s. 624.03, F.S.

² s. 634.031 (1) (2) (3) (4), F.S.

³ s. 634.041 (8) (a) (1), F.S.

⁴ s. 634.041 (9), F.S.

⁵ Id.

⁶ s. 624.125, F.S.

⁷ s. 634.011 (7), F.S.

A MVSA may arise out of the ownership, operation and use of a motor vehicle. It covers only the vehicle listed on the specific service agreement.⁸ It is designed to extend an auto manufacturer's warranty to cover mechanical malfunctions through the time specified within the service contract.⁹

The current definition of a MVSA is not intended to preclude the usual, free-of-charge performance guarantees offered by manufacturers or dealer during the sale of a motor vehicle.¹⁰ In addition to the service agreements provided by definition, MVSA's also include coverage for additive products as well as payment of vehicle protection expenses.¹¹

Currently, a paintless dent removal service agreement is not considered to be a MVSA.¹²

Paintless Dent Removal

Paintless dent removal service is the process of removing dents, dings, creases, and/or hail damage from vehicles without affecting the original paint finish. For example, this process may involve using a powerful suction-cup to pull-out the small dent. Paintless dent removal does not include services that involve vehicle panel replacement, sanding, bonding, or painting.

As with other service warranties, persons holding a paintless dent removal service agreement would expect the coverage to be honored regardless of the location of the vehicle.¹³ The service agreement is guaranteed by the motor vehicle service agreement company, which in turn makes payment for the dent removal performed by a motor vehicle repair shop or mobile paintless dent remover.¹⁴

Those persons performing paintless dent removal services fall within the definition of "motor vehicle repair" as it relates to "all maintenance of and modifications and repairs to motor vehicles... including, but not limited to...body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops."¹⁵ Therefore, those providing paintless dent removal services would fall under the governance of the Florida Motor Vehicle Repair Act and would be required to register with the Department of Agriculture and Consumer Services.¹⁶

EFFECT OF PROPOSED CHANGES

The bill amends the definition of Motor Vehicle Service Agreements to include paintless dent removal services by a paintless dent removal provider. Paintless dent removal would be defined as: the process of removing dents, dings, creases, and hail damage from vehicles without affecting the original paint finish, but not including services that involve vehicle panel replacement, sanding, bonding, or painting.

This bill defines a paintless dent removal provider as a company whose primary business is to provide paintless dent removal services. Any licensed motor vehicle service agreement company would be able to sell these paintless dent removal MVSA's.

The bill amends the qualifications for licensure to issue service agreements to allow service agreement companies with minimum net assets of \$7.5 million to use the 50 % reserve and contractual liability coverage for specific blocks of new service agreements. *Specific blocks of new service agreements*

⁸ s. 634.011 (7), F.S.

⁹ Office of Insurance Regulation, Legislative Analysis, HB 825

¹⁰ s. 634.011 (7), F.S.

¹¹ s. 634.011 (7) (a) (b), F.S.

¹² Id.

¹³ Personal communication, K. Mark Deubner, C.L.O. *Dent Zone International, Inc.*

¹⁴ Id.

¹⁵ s. 559.902 (8), F.S.

¹⁶ Id.

means the service agreements sold by a single designated licensed salesperson. A service agreement must distinguish how each individual service agreement is covered. The bill also requires service agreement companies to document which coverage is used on all service agreements they sell.

The bill amends the qualifications required to sell service agreements in the state

C. SECTION DIRECTORY:

Section 1. Amends s. 634.011 (7), F.S. to include paintless dent removal service by a paintless dent removal provider. Defines paintless dent removal services; defines paintless dent removal provider.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill results in an indeterminate increase in revenue. Corporations licensed to specifically issue motor vehicle service agreements are subject to an annual \$100 fee,¹⁷ paid to the Office of Insurance Regulation and deposited into the Insurance Regulatory Trust Fund.¹⁸

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Office of Insurance Regulation (OIR) notes that the bill "creates a new MVSA product and/or endorsement provision." There would be licensure and renewal costs for companies that are not currently authorized to cover paintless dent removal services. Such fees would include an annual \$100 license continuance fee¹⁹ as well as holding authorized securities with a market value no less than \$200,000 (no less than \$100,000 for companies with a gross written premium of \$750,000 or less) as a required deposit for licensure.²⁰ All paintless dent removal providers providing MVSA would be subject to a 3 year examination (new companies licensed for 3 years or less are subject to annual examination) at a cost not to exceed \$25,000.²¹

This change will allow paintless dent removal service agreements to be sold by motor vehicle service agreement companies.

D. FISCAL COMMENTS:

See comments above.

¹⁷ s. 634.071, F.S.

¹⁸ s. 634.221, F.S.

¹⁹ s. 634.071, F.S.

²⁰ s. 634.052, F.S.

²¹ s. 624.316 (2) (a) (f), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Office of Insurance Regulation in their bill analysis, suggested broadening the definition of “paintless dent removal provider” to include businesses that already offer paintless dent removal services (i.e. – an auto dealership or auto body shop), where these services are not their primary business.²²

At line 88, OIR recommends: strike the word “primary” and “consists of” and insert the word “includes”.

2. "Paintless dent removal provider" means a company whose primary business includes ~~consists of~~ providing paintless dent removal services.

In response to OIR’s recommendation, a dent remover industry representative indicated that a broader definition was unnecessary since this bill’s definition would assure a higher quality product and protect consumers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2005, Representative Evers, the bill’s sponsor, offered an amendment adding language to the bill concerning the qualifications for issuing service agreements. The amendment was voted on and unanimously adopted by the Council.

²² Office of Insurance Regulation, Legislative Analysis, HB 825