

**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 Banking and Insurance Committee

BILL: CS/SB 2264

INTRODUCER: Committee on Banking and Insurance and Senator Lawson

SUBJECT: Service Warranty Associations

DATE: April 1, 2008

REVISED: 04/03/2008

|    | ANALYST     | STAFF DIRECTOR     | REFERENCE | ACTION        |
|----|-------------|--------------------|-----------|---------------|
| 1. | <u>Mays</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Fav/CS</u> |
| 2. | <u></u>     | <u></u>            | <u>CM</u> | <u></u>       |
| 3. | <u></u>     | <u></u>            | <u></u>   | <u></u>       |
| 4. | <u></u>     | <u></u>            | <u></u>   | <u></u>       |
| 5. | <u></u>     | <u></u>            | <u></u>   | <u></u>       |
| 6. | <u></u>     | <u></u>            | <u></u>   | <u></u>       |

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Chapter 634, F.S., governs the regulation of warranty associations, including motor vehicle service agreement companies and service warranty associations. The CS amends ch. 634, F.S., to create the definition of “motor vehicle manufacturer” to include subsidiaries and affiliates of an automobile manufacturer.

The CS exempts the “motor vehicle manufacturers” from complying with financial solvency requirements such as minimum net worth, reserves, and writing ratios. However, the “motor vehicle manufacturers” would still be required to file forms and rates, comply with the unfair trade practices statutes, and be subjected to other provisions in this chapter and regulation by the Office of Insurance Regulation (OIR).

The CS exempts the motor vehicle manufacturer from submitting fingerprinting or background information for anyone except those serving as officers or directors of the applicant entity. The CS grants OIR authority to adopt by rule an abbreviated form for statistical reporting of sales of service agreements by motor vehicle manufacturers. Therefore, motor vehicle manufacturers will be required to file the abbreviated form instead of submitting the detailed financial report required by current Florida law.

The CS amends the provision that requires the inclusion of the name and address by a service warranty association registry, but only to the extent that it has been provided by the warranty holder. The CS also requires companies to provide an alternate means for consumers to submit their name and address such as online registration, postcard remittance, or other method acceptable to the OIR.

The CS creates a new unfair claim settlement practice prohibiting a service warranty association that does not collect the name and address of a consumer from later denying a claim based solely on their inability to confirm the consumer purchased a contract.

This bill substantially amends ss. 628.4615, 634.011, 634.041, 634.137, 634.271, 634.4165, 634.436 of the Florida Statutes.

## II. Present Situation:

Chapter 634, F.S., governs the regulation of warranty associations, including motor vehicle service agreement companies and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms. According to representatives of service warranty associations, nationwide approximately one-third of all new car purchasers and nearly half of all used car purchasers buy a service contract.

Although 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). OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

A service warranty associations must maintain certain office records including a detailed warranty register of warranties in force.<sup>1</sup> Specifically, this provision requires each warranty on the register must include the name and address of the warranty holder.

Service warranty associations are any persons, other than an authorized insurer, issuing service warranties.<sup>2</sup> Service warranties are any warranty, guaranty, extended warranty or extended guaranty, maintenance service contract equal to or greater than 1 year in length, contract, agreement, or other written promise for a specific duration to perform the repair, replacement, or maintenance of a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.<sup>3</sup>

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<sup>1</sup> Section 634.4165 (2), F.S.

<sup>2</sup> Section 634.401 (14) F.S.

<sup>3</sup> Section 634.401 (13) F.S.

Certain exemptions include maintenance service contracts written for less than 1 year which do not contain provisions for indemnification and which do not provide a discount to the consumer for any combination of parts and labor in excess of 20 percent during the effective period of such contract and motor vehicle service agreements regulated under part I of Chapter 634, F.S., or exempt under s. 624.125, F.S. Home warranties subject to regulation under part II of chapter 634, F.S. are also excluded from this definition.<sup>4</sup>

Furthermore, the term “service warranty” does not include service contracts between consumers and condominium associations. All contracts that include coverage for accidental damage from handling must be covered by the contractual liability policy referred to in s. 634.406, (3) F.S.<sup>5</sup>

After purchasing a service warranty for a consumer product, such as a television or DVD player, many consumers do not wish to share their personal information for fear of solicitation or for privacy reasons. According to representatives of service warranty associations, the association does not need that information in order to honor a service warranty agreement because the only documents required to file a claim are the purchase receipt or the contract number, both of which are furnished to the consumer at the time of purchase.

According to representatives of service warranty associations, consumers are currently provided the option to enter their contact information online if they want the association to have their name and address.

According to representatives of service warranty associations, none of the other 49 states require this data; many states regulating service contracts require maintenance of this information only if provided by the consumer, at the consumer’s option.

### III. Effect of Proposed Changes:

**Section 1** amends s. 628.4615, F.S., to conform a cross reference.

**Section 2** amends s. 634.011, F.S., to create a definition for a “motor vehicle manufacturer.” It is defined as an entity that:

- Manufactures or produces motor vehicles and sells motor vehicles under its own label;
- Is a subsidiary of an entity that manufactures or produces motor vehicles; or
- Is a corporation which owns 100 percent of an entity that manufactures or produces motor vehicles.

The three ways by which a company could meet this definition will carve out entities that fall under the definition of “motor vehicle manufacturers” from existing financial requirements as amended in Section 3.

**Section 3** amends s. 634.023, F.S., to exempt a motor vehicle manufacturer’s service agreements on the motor vehicle manufacturer’s products from specified financial solvency requirements. The CS provides for motor vehicle manufacturers that sell warranties to maintain the licensure requirements of a service agreement company, but exempts such manufacturers from the

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<sup>4</sup> Section 634.401 (13) F.S.

<sup>5</sup> Section 634.401 (13) F.S.

financial solvency provisions such as minimum net worth of \$500,000, maintaining reserves, and writing ratios.<sup>6</sup> This section requires to be licensed as a service agreement company, a motor vehicle manufacturer must furnish OIR with satisfactory evidence that its management is competent and trustworthy can successfully manage its affairs, produce an annual report, and respond as reasonably as possible to written requests from OIR for information as to the manufacturers' transactions or affairs.<sup>7</sup> The section exempts the motor vehicle manufacturer from submitting fingerprinting or background information for anyone except those serving as officers or directors of the applicant entity.

**Section 4** amends s. 634.137, F.S., to require the OIR to adopt by rule a new, abbreviated, statistical reporting form for the reporting of sales of service agreements by motor vehicle manufacturers. This would be in lieu of the current detailed, financial reports required under this section. Even though the bill refers to the "office" adopting this rule, the Financial Services Commission must adopt rules for matters within the jurisdiction of the office.

**Section 5** amends s. 634.271, F.S., to conform a cross reference.

**Section 6** amends s. 634.4165, F.S., to revise the required information for a detailed warranty register of a service warranty association. The section would only require the inclusion of the name and address only to the extent that it has been provided by the warranty holder. The associations must provide another method for warranty holders to provide such information, such as internet registration or postcard remittance.

**Section 7** amends s. 634.436, F.S., to create a new unfair claim settlement practice. The section prohibits a service warranty association that does not collect the name and address of a consumer from later denying a claim based solely on their inability to confirm the consumer purchased a contract.

**Section 8** provides an effective date 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.

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<sup>6</sup> Section 634.041 (1) and (3)-(9), F.S., will not be required of "motor vehicle manufacturers"

<sup>7</sup> Section 634.041 (2) and (10), F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

According to the analysis performed by the Office of Insurance Regulation, the impact to the private sector is unknown.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Banking and Insurance on April 1, 2008**

The CS creates a definition for “motor vehicle manufactures” to include subsidiaries and affiliates of an auto manufacturer.

The CS adds exemptions for motor vehicle manufactures from complying with financial solvency requirements such as minimum net worth, reserves, and writing ratios. The motor vehicle manufacturers remain required to be licensed as a service agreement company. To be licensed as a service agreement company, a motor vehicle manufacturer must furnish OIR with satisfactory evidence that its management is competent and trustworthy can successfully manage its affairs, produce an annual report, and respond as reasonably as possible to written requests from OIR for information as to the manufacturers’ transactions or affairs.

The CS adds an exemption for the motor vehicle manufacturer from submitting fingerprinting or background information for anyone except those serving as officers or directors of the applicant entity.

The CS grants OIR authority to adopt by rule an abbreviated form for statistical reporting of sales of service agreements by motor vehicle manufacturers.

The CS requires companies to provide an alternate means for consumers to submit their name and address such as online registration, postcard remittance, or other method acceptable to the OIR.

The CS creates a new unfair claim settlement practice disallowing a service warranty association that does not collect the name and address of a consumer from later denying a claim based solely on their inability to confirm the consumer purchased a contract.

The CS adds conforming cross references to ss. 628.4615 and 634.271 F.S.

The CS revises the effective date from July 1, 2008 to upon becoming a law.

**B. Amendments:**

None.