

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 Commerce Committee

BILL: CS/CS/SB 2264

INTRODUCER: Committee on Banking & Insurance and Senator Lawson

SUBJECT: Motor Vehicle Warranty Associations

DATE: April 16, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mays	Deffenbaugh	BI	Fav/CS
2.	Pugh	Cooper	CM	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| 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. CS/CS/SB 2264 makes a number of changes to this chapter that impact warranty associations in general under Pat III of ch. 634, F.S., and motor vehicle manufacturers specifically, under Part I.

Briefly, CS/CS/SB 2264:

- Amends Part I of ch. 634, F.S., to create a definition of “motor vehicle manufacturer” that includes the subsidiaries and affiliates of an automobile manufacturer. It further defines “subsidiary” as used in this context.
- Exempts motor vehicle manufacturers from complying with certain financial solvency requirements that other companies selling automobile service warranties must comply with. However, motor vehicle manufacturers still would be required to file forms and rates, comply with the unfair trade practices statutes, and be subject to other provisions in this chapter and regulation by the Office of Insurance Regulation (OIR).
- Exempts motor vehicle manufacturers from submitting fingerprinting or background information for anyone except those serving as officers or directors of the applicant entity.

- Gives OIR the authority to develop by rule an abbreviated form for statistical reporting of sales of service agreements sold 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.
- Specifies that the warranty register required in s. 634.4165, F.S., of warranty associations selling service warranties for consumer products (and which are not motor vehicle service agreements or home warranties) must include the name and address of warranty holders, to the extent that the warranty holders provide that information.
- Requires that service warranty companies provide an alternate means for consumers to submit their name and address such as online registration, postcard remittance, or other methods acceptable to the OIR.
- Adds to the existing list of what constitutes an unfair or deceptive claim settlement practice by a service warranty association. The new prohibition would be against a service warranty association denying a claim solely because it was unable to confirm that a customer in fact purchased a warranty, because the association did not collect the customer's name and address

CS/CS/SB 2264 amends ss. 628.4615, 634.011, 634.041, 634.137, 634.271, 634.4165, and 634.436 of the Florida Statutes.

II. Present Situation:

Warranty regulation by the state

Chapter 634, F.S., governs the regulation of warranty associations, including motor vehicle service agreement companies, home warranties, and service warranty associations. Basically, service warranty contracts allow consumers to extend the product protection beyond the manufacturer's warranty terms.

Although a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, all warranty associations are regulated by OIR, which is administratively housed within the Department of Financial Services. 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 the price of warranties.

Motor vehicle service agreements

As regulated under Part I of ch. 634, F.S., motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Approximately 10 million automobile service contracts are sold annually, many by dealers at the time of sale and financing.¹ 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, either through the automobile manufacturer or through a company not affiliated with the manufacturer.

¹ FAQs on the website of the national Service Contract Industry Council. See <http://www.go-scic.com/insidepages/faqs.cfm>.

General service warranties

As regulated under Part III of ch. 634, F.S., service warranty associations must maintain certain office records, including a detailed warranty register of warranties in force.² Specifically, this provision requires each warranty on the register to include the name and address of the warranty holder.

Service warranty associations are any persons, other than an authorized insurer, issuing service warranties.³ Service warranties are defined as 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.⁴

Current exemptions from the general provisions in Part III of ch. 624, F.S., include:⁵

- Maintenance service contracts written for less than 1 year that 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;
- Motor vehicle service agreements regulated under part I of ch. 634, F.S., or exempt under s. 624.125, F.S.;
- Home warranties subject to regulation under part II of ch. 634, F.S.
- Contracts between consumers and condominium associations; and
- 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.

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. Representatives of service warranty associations also have stated that 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.

² Section 634.4165 (2), F.S.

³ Section 634.401 (14) F.S.

⁴ Section 634.401 (13) F.S.

⁵ Section 634.401(13)(a), F.S.

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 define a “motor vehicle manufacturer” as an entity that:

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

“Subsidiary” as used in this context is defined as an entity where at least 25 percent of its voting securities are directly or indirectly owned by a company that manufactures or produces motor vehicles and sells motor vehicles under its own label.

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 manufacturer’s products from specified financial solvency requirements. This section requires motor vehicle manufacturers selling warranties to maintain the licensure requirements of a service agreement company, but exempts such manufacturers from the financial solvency provisions such as minimum net assets of \$750,000 and maintaining a certain level of reserves.⁶

This section requires that 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.⁷ 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 develop by rule a new, abbreviated, statistical reporting form for the reporting of sales of service agreements by motor vehicle manufacturers. This form would be in lieu of the current detailed financial reports required under this section. Under current law, rules developed by OIR must be adopted by the Financial Services Commission, which is the Governor and Cabinet.

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 requires the inclusion of the name and address only to the extent that it has been provided by the warranty holder. However, the

⁶ Section 634.041(1) and (3)-(9), F.S., will not be required of “motor vehicle manufacturers.”

⁷ Section 634.041(2) and (10), F.S.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to an analysis performed by OIR, the impact to the private sector is unknown.⁸

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁸ On file with the Senate Commerce Committee.

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 the Commerce Committee on April 15, 2008:

Added a definition for “subsidiary,” which means an entity where at least 25 percent of its voting securities are directly or indirectly owned by a company that manufactures or produces motor vehicles and sells motor vehicles under its own label.

CS by the Banking and Insurance Committee 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 develop 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.