

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1379

Warranty Associations

SPONSOR(S): Kelly

TIED BILLS:

IDEN./SIM. BILLS: SB 2618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Cooper	Cooper
2) Government Operations Appropriations Committee			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances 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, warranty associations are regulated by the Office of Insurance Regulation (OIR). The 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.

This bill reduces some regulatory oversight by OIR over warranty associations while specifying new prohibited acts and adding penalties. Among its key provisions, the bill:

- Exempts motor vehicle service agreements sold to nonconsumers from the Florida Insurance Code.
- Provides unlicensed activity by warranty associations is a first-degree misdemeanor.
- Prohibits false, deceptive or misleading advertising, under certain circumstances.
- Removes requirements to submit warranty service agreements to OIR for approval; provides OIR can order a form not to be used if it doesn't meet specified criteria.
- Switches from quarterly to annual financial reports requirements.
- Makes periodic OIR examinations discretionary, and provides factors to consider in choosing to conduct an examination.
- Provides there is no violation of knowingly overcharging, if the motor vehicle service agreement company refunds the excess premium within 45 days.
- Makes a failure to provide a complete sample copy of the terms and conditions of a service or warranty agreement prior to sale an unfair practice, but provides the terms may be provided online.
- Broadens the definition of home warranty service agreements.
- Allows premium increases in renewal home warranty contracts, if supported by claims history or claims cost data.
- Removes OIR's ability to require additional regular or special reports from home warranty associations.
- Repeals requirement for home warranty associations and motor vehicle service agreement companies to file rates with OIR.

The bill is not expected to have any fiscal impact on the public sector. It may have a positive fiscal impact on warranty providers.

The effective date of the bill is July 1, 2010.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While 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). The OIR's regulatory authority of warranty associations 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.

Motor Vehicle Service Agreements

Under current law, a motor vehicle service agreement indemnifies the vehicle owner (or holder of the 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. It also includes agreements that provide for: the coverage or protection which is issued or provided in conjunction with an additive product applied to the motor vehicle; payment of vehicle protection expenses; and, the payment for paintless dent-removal services.¹

To offer motor vehicle service agreements in Florida one must be licensed and pay an annual nonrefundable license fee to OIR. All applicants for licensure must meet certain solvency requirements and, once licensed, must report to OIR certain financial and statistical information on a quarterly basis. Companies are also required to file with the office the rates, rating schedules, or rating manuals used, including all modifications of rates and premiums, to be paid by the service agreement holder. The office does not have authority to approve rates but they are required to review and approve forms used in the state.²

Currently, OIR can discipline motor vehicle service agreement companies for a variety of offense including: material misstatement, misrepresentation, or fraud in obtaining licensure; willful misrepresentation of any

¹ s.634.011(8), F.S.

² ss. 634.011-634.289, F.S.

service agreement or willful deception with regard to any agreement; demonstrated lack of fitness or trustworthiness to engage in the service agreement business; and fraudulent or dishonest practices in the conduct of business under the license.³ Also, any individual who knowingly makes a false or otherwise fraudulent application for license or who knowingly violates any provision thereof can be charged with a second degree misdemeanor.⁴

The bill makes several changes in the regulatory framework of motor vehicle service agreements. It excludes from the definition of such arrangements, agreements that are sold to persons other than consumers, thereby exempting them from regulation under the Florida Insurance Code. It adds the penalty of a first degree misdemeanor for anyone operating a motor vehicle service agreement business without a license. Also added to prohibited acts for which companies and salespersons can be prosecuted are provisions relating to false, deceptive and misleading advertisements, and remitting premiums to unauthorized persons.

The bill amends current law regarding cancellation provisions of service agreements. Currently, any service agreement is cancelable by the purchaser within 60 days after purchase. The individual is also entitled to a refund which must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the agreement holder. After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

- 1) there has been a material misrepresentation or fraud at the time of sale of the service agreement;
- 2) the agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
- 3) the odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or
- 4) for nonpayment of premium by the agreement holder.⁵

Additionally, current law states that if the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium. The bill modifies this provision to allow the company to return paid unearned pro rata premium, *less any claims paid on the agreement*. Current law also provides that if, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company must return directly to the agreement holder not less than 90 percent of the unearned pro rata premium. The bill changes this requirement to allow companies to also deduct from the refund the amount of any claims paid on the agreement.

The bill eliminates rate filings for companies and removes the current requirement that companies file forms with OIR. However, the bill continues to authorize the office to order a service agreement company to stop using a form which does not comply with statutes and rules. The bill also replaces the current quarterly reporting requirement by companies with an annual one.

The bill changes current law regarding rebating. One exception to the prohibition to a salesperson rebating any portion of his or her commission is when the rebate is in accordance with a rebating schedule filed by the salesperson with the service agreement company issuing the agreement to which the rebate applies.⁶ The bill modifies that exception to state that the rebate must be in accordance with a schedule filed with and approved by the company, thereby giving them more oversight and control over the salesperson's actions.

Regarding examinations of companies by OIR, the bill eliminates mandatory examinations and instead allows permissive inspections. The bill also limits the ability of the office to initiate the examinations by requiring them to consider:

- 1) the amount of time that the company has been continuously licensed and operating under the same management and control;
- 2) the company's history of compliance with applicable law;
- 3) the number of consumer complaints against the company; and
- 4) the financial condition of the company, demonstrated by submitted financial reports.

³ s. 634.181, F.S.

⁴ s. 634.251, F.S.

⁵ s. 634.121(5), F.S.

⁶ s. 634.1815, F.S.

Finally regarding motor service agreement companies, the bill addresses two issues relating to illegal dealings in premiums and excess charges and to the failure to provide terms and conditions prior to sale. First, the bill eliminates the prohibition against knowingly collecting a premium or charge in excess or less than the amount as specified in the motor vehicle service agreement if the excess is refunded to the agreement holder within 45 days after receipt of the agreement by the company or if the licensed sales representative's commission is reduced by the amount of any premium undercharge. Second, the bill makes the failure to provide a consumer, upon request, a complete sample copy of the terms and conditions of the service agreement prior to the sale an unfair method of competition and unfair or deceptive act or practice. However, the bill allows compliance to be based upon the actual furnishing of such copy or by directing the consumer to a website that displays the copy.

Home Warranty Associations

Home warranty associations are organizations, other than authorized insurers, that issue home warranties. A home warranty is a contract or agreement: 1) offered in connection with the sale of residential property; 2) offered in connection with a loan of \$5,000 or more which is secured by residential property that is the subject of the warranty, but not in connection with the sale of such property; or, 3) offered in connection with a home improvement of \$ 7,000 or more for residential property that is the subject of the property, but not in connection with the sale of such property; whereby the warranty holder is indemnified against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.⁷

The bill deletes the definition of home improvement and eliminates any requirement that the agreement can only be offered in connection with the sale of residential property. This change should allow home warranties to be offered in a broader context.

The bill amends the grounds for suspension or revocation of a license as regards issuing renewal contracts whereby the cost of renewal exceeds the then-current cost for a new warranty contract. It provides that a renewal premium increase is permissible if supported by claims history or claims cost data.

Because the regulatory framework of home warranty associations is similar to the oversight of motor vehicle service agreement companies, the bill makes comparable changes. It makes the providing of home warranties without a license a misdemeanor of the first degree. It repeals rate filings and eliminates form approval by OIR. It authorizes OIR to order an association to stop using noncompliant forms. The bill also makes the restrictions on OIR for examinations of motor service agreement companies apply to home warranty associations. Similarly, the bill imposes the same requirements on home warranty associations. Similarly, the bill imposes the same requirements on home warranty associations regarding the furnishing of sample copies of the agreement while also allowing the associations to fulfill the requirement by directing a consumer to the company's website. The bill also makes the same change regarding rebating for home warranty associations as it did for motor vehicle service agreement companies.

Regarding cancellation provisions and return of unearned pro rata premium, the current law states that any home warranty agreement may be canceled by the purchaser within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium is based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium.⁸

⁷ s. 634.301(3), F.S.

⁸ s. 634.312(8), F.S.

The bill changes the last provision regarding cancellation by the association to allow them to refund the unearned pro rata premium, less any claim paid on the agreement. This change is a significant difference from the change in law permitted for motor vehicle service agreement companies which also allows deductions in refunds for when the company cancels the contract. Those entities can only cancel for limited reasons, all perpetuated by the consumer – fraud or misrepresentation, failure to maintain the vehicle, odometer tampering, or failure to pay premium. On the other hand, home warranty associations under current law can apparently cancel for any reason and with this change will be able to deduct claims paid from the amount of refunds without any condition placed on their cancellation of the agreement.

Service Warranty Associations

Service warranty associations are entities, other than insurers, which issue service warranties. A service warranty is an agreement or maintenance service contract equal to or greater than 1 year in length to repair, replace, or maintain 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.⁹

Currently the term “indemnify” means in part to undertake the repair or replacement of a consumer product. The bill changes this definition to allow compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means.

As with the other two types of warranty associations, service warranty entities must meet regulatory requirements for licensure, form submission and approval, quarterly reporting and examination by OIR¹⁰. Like the changes for the other associations, the bill creates a first degree misdemeanor for providing or offering to provide a service warranty without first being licensed. The bill also eliminates the requirement for form filing and approval. The OIR will no longer be able to require quarterly financial reports and the same limitations on OIR regarding examinations for the other warranty companies are also included for service warranty associations. Likewise, the bill allows service warranty providers to disclose policy terms to consumers in the same manner as the others. It also makes the same change regarding rebating as it did for the two other warranty associations.

Finally, regarding cancellation provisions and premium refunds, the bill makes the same change for service warranty providers as it does for home warranty associations. Thus, if the contract is cancelled by the provider the return of premium must be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder.

B. SECTION DIRECTORY:

Section 1: Amends s. 628.4615, F.S., relating to specialty insurers to correct a cross-reference.

Section 2: Amends s. 634.011, F.S., relating to definitions concerning motor vehicle service agreement companies.

Section 3: Amends s. 634.031, F.S., relating to the license required for motor vehicle service agreement companies.

Section 4: Amends s. 634.041, F.S., relating to qualifications for license for motor vehicle service agreement companies to correct cross references.

Section 5: Amending s. 634.095, F.S., relating to prohibited acts by motor vehicle service agreement companies.

Section 6: Amends s. 634.121, F.S., relating to forms used by motor vehicle service agreement companies.

⁹ s. 634.401(13), F.S.

¹⁰ ss. 634.401-634.444, F.S.

Section 7: Amends s. 634.1213, F.S., relating to noncompliant forms used by motor vehicle service agreement companies.

Section 8: Amends s. 634.137, F.S., relating to financial and statistical reporting requirements for motor vehicle service agreement companies.

Section 9: Amends s. 634.141, F.S., relating to examination of motor vehicle service agreement companies.

Section 10: Amends s. 634.1815, F.S., relating to rebating by motor vehicle service agreement companies.

Section 11: Amends s. 634.282, F.S., relating to the definition of unfair methods of competition and unfair or deceptive acts or practices concerning motor vehicle service agreement companies.

Section 12: Amends s. 634.301, F.S., as amended by section 1 of chapter 2007-235, relating to definitions concerning home warranty associations.

Section 13: Amends s. 634.303, F.S., relating to the license required for home warranty associations.

Section 14: Amends s. 634.308, F.S., relating to grounds for suspension or revocation of a license for home warranty associations.

Section 15: Amends s. 634.312, F.S., relating to forms used by home warranty associations.

Section 16: Amends s. 634.3123, F.S., relating to noncompliant forms used by home warranty associations.

Section 17: Amends s. 634.314, F.S., relating to examination of home warranty associations.

Section 18: Amends s. 634.3205, F.S., relating to rebating by home warranty associations.

Section 19: Amends s. 634.336, F.S., relating to the definition of unfair methods of competition and unfair or deceptive acts or practices concerning home warranty associations.

Section 20: Amends s. 634.344, F.S., relating to the prohibition of coercion of a debtor by home warranty associations.

Section 21: Amends s. 634.401, F.S., relating to definitions concerning service warranty associations.

Section 22: Amends s. 634.403, F.S., relating to the license required for service warranty associations.

Section 23: Amends s. 634.406, F.S., relating to financial requirements concerning service warranty associations.

Section 24: Amends s. 634.414, F.S., relating to cancellation provisions required concerning service warranty associations.

Section 25: Amends s. 634.4145, F.S., relating to noncompliant forms used by service warranty associations.

Section 26: Amends s. 634.415, F.S., relating to tax on premiums, annual statements, and reports concerning service warranty associations.

Section 27: Amends s. 634.416, F.S., relating to examination of service warranty associations.

Section 28: Amends s. 634.4225, F.S., relating to rebating by service warranty associations.

Section 29: Amends s. 634.436, F.S., relating to the definition of unfair methods of competition and unfair or deceptive acts or practices concerning service warranty associations.

Section 30: Amends s. 634.136, F.S., relating to office records required of motor vehicle service agreement companies. This section deletes obsolete requirements for motor vehicle service agreement companies to maintain memorandum journals showing certain agreement and contract forms.

Section 31: Amends s. 634.313, F.S., relating to tax on premiums, annual statements, and reports concerning home warranty associations.

Section 32: Repeals s. 634.1216, F.S., relating to rate filings of motor vehicle service agreement companies and repeals s. 634.3126, F.S., relating to rate filings of home warranty associations.

Section 33: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

According to OIR, any regulatory changes made by the bill “will be absorbed by existing resources.” They also note that “with the deletion of quarterly reports and form filings, essential resources will be utilized in other areas within the Office.”¹¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The industry may achieve some cost savings with the discontinuance of quarterly reporting and form filings. Consumers due refunds of unearned pro rata premium will, with the changes in the bill, receive less than they would otherwise if claims had been filed for repairs or replacements pursuant to the contracts.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. It does not reduce the percentage of a state tax shared with counties or municipalities. The bill also does not reduce the authority that municipalities have to raise revenue.

¹¹ Office of Insurance Regulation 2010-Bill analysis, HB 1379, March 19, 2010. (On file with the Insurance, Business & Financial Affairs Policy Committee.)

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its analysis of HB 1379, OIR made the following comment:

“This legislation will allow the Office to focus its regulatory resources more effectively while maintaining sufficient authority to monitor and address issues in this market.”¹²

Line 849 contains a scrivener’s error. The word “cancellation” is misspelled.

Line 426 changes a current law reference to “any applicable rule of the commission” to “rule of the office.” This is incorrect. The Financial Services Commission adopts rules, not OIR.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹² *Id.*