

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1234

SPONSOR: Banking and Insurance Committee and Senator Latvala

SUBJECT: Service Warranties

DATE: March 29, 1999 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|--------------------|-----------|---------------------|
| 1. | <u>Emrich</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | <u>AG</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

A warranty contract is a form of insurance that pays for repairs to goods after the expiration of the manufacturer's warranty. According to the Department of Insurance, there are 162 warranty associations in Florida: 52 motor vehicle service agreement companies, 15 home warranty associations, and 95 service warranty associations. Warranty associations are regulated by the department under chapter 634, F.S.

The Committee Substitute for Senate Bill 1234 makes the following changes regarding motor vehicle service agreements, home warranties, and service warranties:

- ◆ Clarifies that all funds or premiums remitted to a contractual liability insurer by a motor vehicle service agreement company must remain in the custody of the contractual liability insurer and be counted as an asset of that insurer. If a motor vehicle service agreement company also maintains a reserve to pay claims, the reserve may only be considered an asset of such service agreement company and may not be simultaneously counted as an asset of any other entity.
- ◆ Provisions of motor vehicle service agreements pertaining to limitations on benefits or rental car provisions would no longer be required to be set forth in conspicuous, boldfaced-type. However, the relevant section headings of the service agreements would be in conspicuous, boldfaced-type.
- ◆ All home warranty contracts would be required to state in conspicuous, boldfaced-type that coverage provided for the period that a home is for sale would not be provided free of charge under the home warranty.
- ◆ Expands the definition of "service warranty" to include maintenance service contracts that are greater than 1 year or maintenance service contracts written for 1 year or less which provide consumer discounts for parts and labor in excess of 20 percent.

- ◆ Disallows a service warranty association from using a policy from a surplus lines insurer to meet its requirements for contractual liability insurance.

This committee substitute substantially amends the following sections of the Florida Statutes: 634.041, 634.121, 634.312, 634.401, and 634.406.

II. Present Situation:

A warranty contract is a form of insurance that pays for repairs to goods after the expiration of the manufacturer's warranty. The Department of Insurance regulates the 162 warranty associations in Florida under chapter 634, Florida Statutes.

Motor Vehicle Service Agreement Companies

The 52 motor vehicle service agreement companies in Florida are regulated under part I of ch. 634, F.S., (ss. 634.011-634.281, F.S.). A motor vehicle service agreement is defined in s. 634.011, F.S., 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.

Motor vehicle service agreement companies must be licensed by the department to conduct business in the state and individual companies must maintain an unearned premium reserve consisting of assets equal to a minimum of 50 percent of unearned gross written premium on each service agreement and a ratio of gross written premium to net assets of 10 to 1. However, a motor vehicle service agreement company does not have to maintain reserves of 50 percent of unearned gross written premium if the company purchases and maintains a contractual liability insurance policy to insure 100 percent of its service contract obligations.

A motor vehicle service agreement company may not utilize both the 50 percent reserve of unearned gross written premium and the contractual liability insurance policy simultaneously. Companies that have previously sold service agreements covered by contractual liability policies have been able to convert to selling service agreements covered by the 50 percent reserve, or vice versa.

The department has the authority to suspend the license of a motor vehicle service agreement company when the ratio of gross written premiums to net assets exceeds 10 to 1, unless the company has over \$750,000 in net assets and uses a contractual liability insurance policy to cover 100 percent of its claims. Motor vehicle service agreement forms must be filed with the department to be used in the state. The purchaser of a motor vehicle service agreement must receive a copy of the motor vehicle service contract within 45 days of purchase. A motor vehicle service agreement must contain the following in conspicuous boldfaced type:

- ◆ 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
- ◆ The terms and conditions of any rental car provision.

Home Warranty Associations

The 15 home warranty associations are regulated in Florida under part II of ch. 634, F.S. (ss. 634.301-634.348, F.S.). A home warranty is defined in s. 634.301, F.S., as a contract or agreement offered in connection with the sale of a home, a loan of \$5,000 or more secured by residential property, or a home improvement of \$7,500 or more for residential property that is the subject of the warranty.

A home warranty may not be issued in the state unless the company is licensed by the department under s. 634.306, F.S., and the warranty form has been filed with the department. A home warranty may provide coverage during the period in which a home is listed for sale. The warranty company must charge the purchaser of the warranty a separate charge that equals at least 15 percent of the annual premium charged for the home warranty for listing period coverage (s. 634.331, F.S.). However, no provision of existing law requires home warranties to disclose to consumers in writing that the company must charge for listing period coverage.

Service Warranty Associations

The 95 service warranty associations in Florida are regulated under part III of ch. 634, F.S., (ss. 634.401-634.444, F.S.). A service warranty is defined under s. 634.401, F.S., as a warranty or contract agreement to repair or replace a consumer product in return for payment by the consumer. Maintenance service contracts written for one year which do not contain provisions for indemnification are not included in the definition of a service warranty.

III. Effect of Proposed Changes:

Section 1. Amends s. 634.041, F.S., regarding the qualifications for licensure for motor vehicle service agreement companies. Under current law, a service agreement company does not have to maintain an unearned premium reserve if it purchases contractual liability insurance that covers 100 percent of its claim exposure. The committee substitute requires that all funds or premiums remitted to a contractual liability insurer by a motor vehicle service agreement company must remain in the custody and control of the contractual liability insurer and be counted as an asset of that insurer. If a motor vehicle service agreement company also maintains a reserve to pay claims, the reserve may only be considered an asset of the service agreement company and may not be simultaneously counted as an asset of any other entity.

Section 2. Amends s. 634.121, F.S., to allow provisions of motor vehicle service agreements which pertain to restrictions or limitations on benefits offered or which relate to rental car provisions to be in regular type with the heading in boldfaced-type. Current law requires the entire restriction or rental car provision to be in boldfaced-type.

Section 3. Amends s. 634.312, F.S., relating to home warranty contracts, to require that a home warranty contract must state in conspicuous, boldfaced-type that the home warranty may not provide listing period coverage free of charge.

Section 4. Amends s. 634.401, F.S., relating to service warranty contracts, to expand the definition of “service warranty” to include maintenance service contracts that are greater than 1 year. Maintenance service contracts written for 1 year *or less* which provide a discount to the consumer for any combination of parts and labor in excess of 20 percent during the effective period of the contract are also included within the definition. Excluded from the service warranty provision are maintenance contracts written for 1 year or less which do not provide such discounts.

Section 5. Amends s. 634.406, F.S., relating to financial requirements for service warranty companies. Currently, a service warranty company may obtain contractual liability insurance from an authorized (Florida licensed) insurer or from “an insurer approved by the department as financially capable of meeting the obligations incurred pursuant to the policy.” The department has approved eligible surplus lines insurers for this purpose. The bill strikes the reference to other approved insurers which will have the effect of no longer allowing service warranty companies to obtain contractual liability insurance from eligible surplus lines insurers.

Section 6. Provides for an effective date of July 1, 1999.

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:

See Private Sector Impact, below.

B. Private Sector Impact:

As provided in Section 5, entities who provide certain types of maintenance service agreements will be required to comply with the licensure and other requirements under the

service warranty provisions under Part III of chapter 634, F.S., and to pay all application and licensure fees that currently apply.

Surplus lines insurance would no longer qualify as contractual liability insurance for service warranty associations.

C. Government Sector Impact:

There is no fiscal impact on the Department of Insurance.

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.
