

Bill No. CS for SB 2102

Amendment No. Barcode 440546

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Villalobos moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (8) of section 634.011, Florida Statutes, is amended to read:

634.011 Definitions.--As used in this part, the term:

(8) "Motor vehicle service agreement" or "service agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle 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; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. ~~and provided further, however,~~ Transactions exempt under s. 624.125 are

Bill No. CS for SB 2102

Amendment No. ____ Barcode 440546

1 ~~shall be~~ expressly excluded from this definition and are
2 exempt from the provisions of this part. The term "motor
3 vehicle service agreement" includes any contract or agreement
4 that which provides:

5 (a) For the coverage or protection defined in this
6 subsection and which is issued or provided in conjunction with
7 an additive product applied to the motor vehicle that which is
8 the subject of such contract or agreement; or-

9 (b) For payment of vehicle protection expenses.

10 1.a. "Vehicle protection expenses" means expenses
11 incurred by the service agreement holder for loss or damage to
12 a covered vehicle, including, but not limited to, applicable
13 deductibles under a motor vehicle insurance policy; temporary
14 vehicle rental expenses; expenses for a replacement vehicle
15 that is at least the same year, make, and model of the stolen
16 motor vehicle; sales taxes or registration fees for a
17 replacement vehicle that is at least the same year, make, and
18 model of the stolen vehicle; or other incidental expenses
19 specified in the agreement.

20 b. "Vehicle protection product" means a product or
21 system installed or applied to a motor vehicle or designed to
22 prevent the theft of the motor vehicle or assist in the
23 recovery of the stolen motor vehicle.

24 2. Vehicle protection expenses shall be payable in the
25 event of loss or damage to the vehicle as a result of the
26 failure of the vehicle protection product to prevent the theft
27 of the motor vehicle or to assist in the recovery of the
28 stolen motor vehicle. Vehicle protection expenses covered
29 under the agreement shall be clearly stated in the service
30 agreement form.

31 3. Motor vehicle service agreements providing for the

Bill No. CS for SB 2102

Amendment No. ____ Barcode 440546

1 payment of vehicle protection expenses shall:

2 a. Reimburse a service agreement holder for the
3 following expenses, at a minimum: deductibles applicable to
4 comprehensive coverage under the service agreement holder's
5 motor vehicle insurance policy; temporary vehicle rental
6 expenses; sales taxes and registration fees on a replacement
7 vehicle that is at least the same year, make, and model of the
8 stolen motor vehicle; and the difference between the benefits
9 paid to the service agreement holder for the stolen vehicle
10 under the service agreement holder's comprehensive coverage
11 and the actual cost of a replacement vehicle that is at least
12 the same year, make, and model of the stolen motor vehicle; or

13 b. Pay a preestablished flat amount to the service
14 agreement holder.

15
16 Payments shall not duplicate any benefits or expenses paid to
17 the service agreement holder by the insurer providing
18 comprehensive coverage under a motor vehicle insurance policy
19 covering the stolen motor vehicle.

20 Section 2. Subsection (1) of section 634.041, Florida
21 Statutes, is amended, and subsection (11) is added to that
22 section, to read:

23 634.041 Qualifications for license.--To qualify for
24 and hold a license to issue service agreements in this state,
25 a service agreement company must be in compliance with this
26 part, with applicable rules of the department, with related
27 sections of the Florida Insurance Code, and with its charter
28 powers and must comply with the following:

29 (1) Any service agreement company applying for a
30 license must be a solvent corporation formed under the laws of
31 this state or of another state or district of the United

Bill No. CS for SB 2102

Amendment No. ____ Barcode 440546

1 States and must meet minimum requirements under this section.

2 (11) A service agreement company offering service
3 agreements providing vehicle protection expenses may meet the
4 requirements for this part only by maintaining contractual
5 liability insurance in accordance with paragraph (8)(b), which
6 insurance must be issued by an insurance company not
7 affiliated with the service agreement company, unless the
8 insurance company had issued a contractual liability insurance
9 policy to a service agreement company on or before January 1,
10 2002. Service agreements providing vehicle protection
11 expenses may be sold only to a service agreement holder that
12 has in-force comprehensive motor vehicle insurance coverage
13 for the vehicle to be covered by the service agreement.

14 Section 3. Paragraph (c) is added to subsection (1) of
15 section 634.121, Florida Statutes, to read:

16 634.121 Filing of forms, required procedures,
17 provisions.--

18 (1) A service agreement form or related form may not
19 be issued or used in this state unless it has been filed with
20 and approved by the department. Upon application for a
21 license, the department shall require the applicant to submit
22 for approval each brochure, pamphlet, circular, form letter,
23 advertisement, or other sales literature or advertising
24 communication addressed or intended for distribution. The
25 department shall disapprove any document which is untrue,
26 deceptive, or misleading or which contains misrepresentations
27 or omissions of material facts.

28 (c) The department shall disapprove any service
29 agreement form providing vehicle protection expenses which
30 does not clearly indicate the method for calculating the
31 benefit to be paid or provided to the service agreement

Bill No. CS for SB 2102

Amendment No. ____ Barcode 440546

1 holder. All service agreement forms providing vehicle
2 protection expenses shall clearly indicate the term of the
3 service agreement, whether new or used cars are eligible for
4 the vehicle protection product, and that the service agreement
5 holder may not make any claim against the Florida Insurance
6 Guarantee Association for vehicle protection expenses. The
7 service agreement shall be provided to a service agreement
8 holder on a form that provides only vehicle protection
9 expenses. A service agreement form providing vehicle
10 protection expenses must state that the service agreement
11 holder must have in force at the time of loss comprehensive
12 motor vehicle insurance coverage as a condition precedent to
13 requesting payment of vehicle protection expenses.

14 Section 4. Subsection (5) of section 634.191, Florida
15 Statutes, is amended to read:

16 634.191 Grounds for discretionary refusal, suspension,
17 or revocation of license or appointment of salespersons.--The
18 department may, in its discretion, deny, suspend, revoke, or
19 refuse to renew or continue the license or appointment of any
20 salesperson if it finds that as to the salesperson any one or
21 more of the following applicable grounds exist under
22 circumstances for which such denial, suspension, revocation,
23 or refusal is not mandatory under s. 634.181:

24 (5) If, in the conduct of business under the license
25 or appointment, the salesperson has engaged in unfair methods
26 of competition or in unfair or deceptive acts or practices, as
27 such methods, acts, or practices are or may be defined under
28 this part IX of chapter 626, or has otherwise shown herself or
29 himself to be a source of injury or loss to the public or
30 detrimental to the public interest.

31 Section 5. Subsection (7) of section 634.406, Florida

Bill No. CS for SB 2102

Amendment No. ____ Barcode 440546

1 Statutes, is amended to read:

2 634.406 Financial requirements.--

3 (7) The department shall require that a contractual
4 liability policy insure 100 percent of an association's claims
5 exposure under all of the association's service warranty
6 contracts, wherever written, unless all of the following are
7 satisfied:

8 (a) The contractual liability policy contains a clause
9 that specifically names the service warranty contract holders
10 as sole beneficiaries of the contractual liability policy and
11 claims are paid directly to the person making a claim under
12 the contract;

13 (b) The contractual liability policy meets all other
14 requirements of this part, including subsection (3) of this
15 section, which are not inconsistent with this subsection;

16 (c) The association has been in existence for at least
17 5 years or the association is a wholly-owned subsidiary of a
18 corporation that has been in existence and has been licensed
19 as a service warranty association in the state for at least 5
20 years, and:

21 1. Is listed and traded on a recognized stock
22 exchange; is listed in NASDAQ (National Association of
23 Security Dealers Automated Quotation system) and publicly
24 traded in the over-the-counter securities market; is required
25 to file either of Forms 10-K, 100, or 20-G with the United
26 States Securities and Exchange Commission; or has American
27 Depository Receipts listed on a recognized stock exchange and
28 publicly traded or is the wholly-owned subsidiary of a
29 corporation that is listed and traded on a recognized stock
30 exchange; is listed in NASDAQ (National Association of
31 Security Dealers Automated Quotation system) and publicly

Bill No. CS for SB 2102

Amendment No. Barcode 440546

1 traded in the over-the-counter securities market; is required
2 to file Form 10-K, Form 100, or Form 20-G with the United
3 States Securities and Exchange Commission; or has American
4 Depository Receipts listed on a recognized stock exchange and
5 is publicly traded;

6 2. Maintains outstanding debt obligations, if any,
7 rated in the top four rating categories by a recognized rating
8 service;

9 3. Has and maintains at all times a minimum net worth
10 of not less than \$10 million as evidenced by audited financial
11 statements prepared by an independent certified public
12 accountant in accordance with generally accepted accounting
13 principles and submitted to the department annually; and

14 4. Is authorized to do business in this state; and

15 (d) The insurer issuing the contractual liability
16 policy:

17 1. Maintains and has maintained for the preceding 5
18 years, policyholder surplus of at least \$100 million and is
19 rated "A" or higher by A.M. Best Company or has an equivalent
20 rating by another rating company acceptable to the department;

21 2. Holds a certificate of authority to do business in
22 this state and is approved to write this type of coverage; and

23 3. Acknowledges to the department quarterly that it
24 insures all of the association's claims exposure under
25 contracts delivered in this state.

26
27 If all the preceding conditions are satisfied, then the scope
28 of coverage under a contractual liability policy shall not be
29 required to exceed an association's claims exposure under
30 service warranty contracts delivered in this state.

31 Section 6. This act shall take effect upon becoming a

Bill No. CS for SB 2102
Amendment No. ____ Barcode 440546

1 law.

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4 ===== T I T L E A M E N D M E N T =====

5 And the title is amended as follows:

6 Delete everything before the enacting clause

7

8 and insert:

9

An bill to be entitled

10 An act relating to service agreements; amending
11 s. 634.011, F.S.; revising the definition of
12 "motor vehicle service agreement"; amending s.
13 634.041, F.S.; revising the definition of
14 "corporation"; requiring service agreement
15 companies to maintain contractual liability
16 insurance and limiting those to whom vehicle
17 protection products may be sold; amending s.
18 634.121, F.S.; providing service agreement form
19 requirements; amending s. 634.191, F.S.;
20 revising the definition of unfair competition
21 or unfair or deceptive acts or practices for
22 purposes of disciplinary actions against a
23 salesperson; amending s. 634.406, F.S.;
24 revising the financial requirements for
25 warranty associations to qualify for
26 contractual liability policies covering claims
27 exposure under contracts delivered in this
28 state; providing an effective date.

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