

Warranties, prepaid dent removal service

Number: INFORMAL

Date: January 16, 2004

The Honorable Gaston I. Cantens
Representative, District 114
Suite 205 C
1405 Southwest 107th Avenue
Miami, Florida 33174

Dear Representative Cantens:

This is in response to your request for assistance in determining whether a corporation providing a prepaid paintless dent removal service to new and used car buyers is providing a warranty or insurance plan.

You have provided materials reflecting that the corporation is offering a "ding protection plan" that will enable consumers to protect their vehicles from unsightly dings or dents by purchasing prepaid paintless dent removal repairs in 3, 4 or 5 year terms. With a predetermined expiration date, the plan entitles the purchaser to five repairs within the designated time period, with each repair consisting of up to three "quarter" size dings, two "golf ball" size dings, or one "baseball" size ding per panel with no visible paint damage and no puncture in the metal.

Whether the plan you have described is a warranty or type of insurance is a mixed question of law and fact that may not properly be resolved by this office. I would note, however, that Part III, Chapter 634, Florida Statutes, regulates service warranty associations. Section 634.401(14), Florida Statutes, defines a "service warranty" as

"any warranty, guaranty, extended warranty or extended guaranty, maintenance service contract greater than 1 year in length or which does not meet the exemption in paragraph (a), contract agreement, or other written promise to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge by the consumer[.]"[1]

In this instance, it would appear that the corporation is obligating itself to repair dents occurring within the specified time period in exchange for the payment of a fee by the consumer. Section 634.402, Florida Statutes, directs the Department of Financial Services to administer the provisions of Part III, Chapter 634, Florida Statutes. Moreover, the department is authorized to issue an immediate order to cease and desist to any person who provides service warranties without an appropriate license.[2] Ultimately it would be within the jurisdiction of the Department of Financial Services to consider whether the offering of such services constitutes a warranty or insurance plan subject to regulation under Florida law.

I trust that these informal comments will be of assistance to you in responding to your constituent.

Sincerely,

Charlie Crist
Attorney General

CC/tls

[1] Section 624.401(14)(a), Florida Statutes, states:

"Maintenance service contracts written for 1 year or less 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, motor vehicle service agreements, transactions exempt under s. 624.125, and home warranties subject to regulation under parts I and II of this chapter are excluded from this definition[.]"

[2] See s. 634.403, Florida Statutes.