

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

11 The Committee on Insurance offered the following:

13 **Amendment (with title amendment)**

14 On page 9, line 16 through page 32, line 19  
15 remove from the bill: all of said lines

17 and insert in lieu thereof:

18 (e) Uses any advertisement that would mislead or  
19 otherwise cause a reasonable person to believe mistakenly that  
20 the state or federal government is responsible for the motor  
21 vehicle service agreement sales activity of any person or  
22 stands behind any person's credit or that any person, the  
23 state, or the federal government guarantees any returns on  
24 motor vehicle service agreements or is a source of payment of  
25 any motor vehicle service agreement obligation of or sold by  
26 any person.

27 (2) FALSE INFORMATION AND ADVERTISING

28 GENERALLY.--Knowingly making, publishing, disseminating,  
29 circulating, or placing before the public, or causing,  
30 directly or indirectly, to be made, published, disseminated,  
31 circulated, or placed before the public:

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- 1           (a) In a newspaper, magazine, or other publication;  
2           (b) In the form of a notice, circular, pamphlet,  
3 letter, or poster;  
4           (c) Over any radio or television station; or  
5           (d) Over the Internet, electronically, or in any other  
6 way,  
7  
8 an advertisement, announcement, or statement containing any  
9 assertion, representation, or statement with respect to the  
10 business of motor vehicle service agreements, which assertion,  
11 representation, or statement is untrue, deceptive, or  
12 misleading.  
13           (3) DEFAMATION.--Knowingly making, publishing,  
14 disseminating, or circulating, directly or indirectly, or  
15 aiding, abetting, or encouraging the making, publishing,  
16 disseminating, or circulating of, any oral or written  
17 statement, or any pamphlet, circular, article, or literature,  
18 which is false or maliciously critical of, or derogatory to,  
19 any person and which is calculated to injure such person.  
20           (4) BOYCOTT, COERCION, AND INTIMIDATION.--Entering  
21 into any agreement to commit, or by any concerted action  
22 committing, any act of boycott, coercion, or intimidation  
23 resulting in, or tending to result in, unreasonable restraint  
24 of, or monopoly in, the business of motor vehicle service  
25 agreements.  
26           (5) FALSE STATEMENTS AND ENTRIES.--  
27           (a) Knowingly:  
28           1. Filing with any supervisory or other public  
29 official;  
30           2. Making, publishing, disseminating, or circulating;  
31           3. Delivering to any person;

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- 1           4. Placing before the public; or  
2           5. Causing, directly or indirectly, to be made,  
3 published, disseminated, circulated, delivered to any person,  
4 or placed before the public,  
5  
6 any false statement.  
7           (b) Knowingly making any false entry of a material  
8 fact in any book, report, or statement of any person, or  
9 knowingly failing to make a true entry of any material fact  
10 pertaining to the business of such person in any book, report,  
11 or statement of such person.  
12           (6) UNFAIR DISCRIMINATION.--Knowingly making or  
13 permitting any unfair discrimination between individuals of  
14 the same actuarially supportable class and essentially the  
15 same hazard, in the amount of premium, policy fees, or rates  
16 charged for any motor vehicle service agreement, in any of the  
17 terms or conditions of such agreement, or in any other manner  
18 whatsoever.  
19           (7) UNLAWFUL REBATES.--Except as otherwise expressly  
20 provided by law, or in an applicable filing with the  
21 department, knowingly:  
22           (a) Permitting, or offering to make, or making, any  
23 contract or agreement as to such contract other than as  
24 plainly expressed in the motor vehicle service agreement  
25 issued thereon;  
26           (b) Paying, allowing, or giving, or offering to pay,  
27 allow, or give, directly or indirectly, as inducement to such  
28 motor vehicle service agreement, any unlawful rebate of  
29 premiums payable on the agreement, any special favor or  
30 advantage in the benefits thereon, or any valuable  
31 consideration or inducement not specified in the agreement;

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1           (c) Giving, selling, or purchasing, or offering to  
2 give, sell, or purchase, as an inducement to such motor  
3 vehicle service agreement or in connection therewith, any  
4 stocks, bonds, or other securities of any insurance company,  
5 service agreement company, or other corporation, association,  
6 or partnership, or any dividends or profits accrued thereon,  
7 or anything of value not specified in the motor vehicle  
8 service agreement.

9           (8) UNFAIR CLAIM SETTLEMENT PRACTICES.--

10           (a) Attempting to settle claims on the basis of an  
11 application or any other material document which was altered  
12 without notice to, or knowledge or consent of, the service  
13 agreement holder;

14           (b) Making a material misrepresentation to the service  
15 agreement holder for the purpose and with the intent of  
16 effecting settlement of such claims, loss, or damage under  
17 such contract on less favorable terms than those provided in,  
18 and contemplated by, such contract; or

19           (c) Committing or performing with such frequency as to  
20 indicate a general business practice any of the following  
21 practices:

22           1. Failure to adopt and implement internal standards  
23 for the investigation of claims;

24           2. Misrepresentation of pertinent facts or contract  
25 provisions relating to coverages at issue;

26           3. Failure to acknowledge and act promptly upon  
27 communications with respect to claims;

28           4. Denial of claims without conducting reasonable  
29 investigations based upon available information;

30           5. Failure to affirm or deny full or partial coverage  
31 of claims and, as to partial coverage, the dollar amount or

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1 extent of coverage, or failure to provide a written statement  
2 that the claim is being investigated, upon written request of  
3 the service agreement holder within 30 days after  
4 proof-of-loss statements have been completed;

5 6. Failure to promptly provide a reasonable  
6 explanation to the service agreement holder of the basis in  
7 the contract in relation to the facts or applicable law for  
8 denial of a claim or for the offer of a compromise settlement;

9 7. Failure to promptly notify the service agreement  
10 holder of any additional information necessary for the  
11 processing of a claim; or

12 8. Failure to clearly explain the nature of the  
13 requested information and the reasons such information is  
14 necessary.

15 (9) FAILURE TO MAINTAIN PROCEDURES FOR HANDLING  
16 COMPLAINTS.--Failing to maintain a complete record of all  
17 complaints received since the date of the last examination.  
18 For purposes of this paragraph, "complaint" means any written  
19 communication primarily expressing a grievance.

20 (10) DISCRIMINATORY REFUSAL TO ISSUE A  
21 CONTRACT.--Refusing to issue a contract solely because of an  
22 individual's race, color, creed, marital status, sex, or  
23 national origin.

24 (11) MISREPRESENTATION IN SERVICE AGREEMENT  
25 APPLICATIONS.--Knowingly making a false or fraudulent written  
26 or oral statement or representation on, or relative to, an  
27 application or negotiation for a motor vehicle service  
28 agreement for the purpose of obtaining a fee, commission,  
29 money, or other benefit from any insurer, service agreement  
30 company, agent, broker, salesperson, or individual.

31 (12) FREE SERVICE AGREEMENTS.--

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1           (a) Advertising, offering, or providing a free motor  
2 vehicle service agreement as an inducement to the purchase or  
3 sale of real or personal property or of services directly or  
4 indirectly connected with such real or personal property.

5           (b) For the purposes of this subsection, a "free"  
6 motor vehicle service agreement is:

7           1. A motor vehicle service agreement for which no  
8 identifiable and additional charge is made to the purchaser of  
9 such real property, personal property, or services.

10           2. A motor vehicle service agreement for which an  
11 identifiable or additional charge is made in an amount less  
12 than the cost of such motor vehicle service agreement as to  
13 the seller or other person, other than the service agreement  
14 company, providing the same.

15           3. Using the word "free" or words which imply the  
16 provision of a motor vehicle service agreement without a cost  
17 in connection with the advertising or offering for sale of any  
18 kind of goods, merchandise, or services.

19           (13) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED  
20 CHARGES FOR MOTOR VEHICLE SERVICE AGREEMENTS.--

21           (a) Knowingly collecting any sum as a premium or  
22 charge for a motor vehicle service agreement, which is not  
23 then provided, or is not in due course to be provided, subject  
24 to acceptance of the risk by a service agreement company or an  
25 insurer, by a motor vehicle service agreement issued by a  
26 service agreement company or an insurer as permitted by this  
27 part.

28           (b) Knowingly collecting as a premium or charge for a  
29 motor vehicle service agreement any sum in excess of or less  
30 than the premium or charge applicable to such motor vehicle  
31 service agreement, in accordance with the applicable

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1 classifications and rates as filed with the department, and as  
2 specified in the motor vehicle service agreement.

3 (14) INTERLOCKING OWNERSHIP AND MANAGEMENT.--

4 (a) Any motor vehicle service agreement company may  
5 retain, invest in, or acquire the whole or any part of the  
6 capital of any other motor vehicle service agreement company,  
7 or have a common management with any other motor vehicle  
8 service agreement company, unless such retention, investment,  
9 acquisition, or common management is inconsistent with any  
10 other provision of this part, or unless by reason thereof the  
11 business of such insurers with the public is conducted in a  
12 manner which substantially lessens competition generally in  
13 the insurance business.

14 (b) Any person otherwise qualified may be a director  
15 of two or more motor vehicle service agreement companies which  
16 are competitors, unless the effect thereof is substantially to  
17 lessen competition between motor vehicle service agreement  
18 companies generally or materially tend to create a monopoly.

19 (15) FALSE CLAIMS; OBTAINING OR RETAINING MONEY  
20 DISHONESTLY.--

21 (a) Any salesperson who causes to be presented to any  
22 motor vehicle service agreement company a false claim for  
23 payment, knowing the same to be false; or

24 (b) Any salesperson who represents any motor vehicle  
25 service agreement company or collects or does business without  
26 the authority of the motor vehicle service agreement company,  
27 secures cash advances by false statements, or fails to turn  
28 over when required, or satisfactorily account for, all  
29 collections of such motor vehicle service agreement company,

30  
31 shall, in addition to the other penalties provided in this

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1 act, commit a misdemeanor of the second degree, punishable as  
2 provided in s. 775.082 or s. 775.083.

3 (16) SLIDING.--Sliding is the act or practice of:

4 (a) Representing to the applicant that a specific  
5 ancillary coverage or product is required by law in  
6 conjunction with the purchase of a motor vehicle service  
7 agreement when such coverage or product is not required;

8 (b) Representing to the applicant that a specific  
9 ancillary coverage or product is included in the motor vehicle  
10 service agreement contract applied for without an additional  
11 charge when such charge is required; or

12 (c) Charging an applicant for a specific ancillary  
13 coverage or product, in addition to the cost of the motor  
14 vehicle service agreement coverage applied for, without the  
15 informed consent of the applicant.

16  
17 No provision of this section shall be deemed to prohibit a  
18 service agreement company or a licensed insurer from giving to  
19 service agreement holders, prospective service agreement  
20 holders, and others for the purpose of advertising, any  
21 article of merchandise having a value of not more than \$25.

22 Section 8. Section 634.2825, Florida Statutes, is  
23 created to read:

24 634.2825 Motor vehicle service agreement cost  
25 specified in "price package".--

26 (1) When the premium or charge for a motor vehicle  
27 service agreement or involving such property or merchandise is  
28 included in the overall purchase price or financing of the  
29 purchase of merchandise or property, the vendor or lender  
30 shall separately state and identify the amount charged and to  
31 be paid for the motor vehicle service agreement, and the



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1 classifications, if any, upon which based; and the inclusion  
2 or exclusion of the cost of a motor vehicle service agreement  
3 in such purchase price or financing shall not increase,  
4 reduce, or otherwise affect any other factor involved in the  
5 cost of merchandise, property, or financing as to the  
6 purchaser or borrower.

7 (2) This section does not apply to transactions which  
8 are subject to the provisions of part I of chapter 520,  
9 entitled "The Motor Vehicle Retail Sales Finance Act."

10 Section 9. Section 634.283, Florida Statutes, is  
11 created to read:

12 634.283 Power of department to examine and  
13 investigate.--The department has the power to examine and  
14 investigate the affairs of every person involved in the  
15 business of motor vehicle service agreements in this state in  
16 order to determine whether such person has been or is engaged  
17 in any unfair method of competition or in any unfair or  
18 deceptive act or practice prohibited by s. 634.2815.

19 Section 10. Section 634.284, Florida Statutes, is  
20 created to read:

21 634.284 Prohibited practices; hearings, witnesses,  
22 appearances, production of books, and service of process.--

23 (1) Whenever the department has reason to believe that  
24 any person has engaged, or is engaging, in this state in any  
25 unfair method of competition or any unfair or deceptive act or  
26 practice as defined in s. 634.282, or is engaging in the  
27 business of motor vehicle service agreements without being  
28 properly licensed as required by this part, and that a  
29 proceeding by the department in respect thereto would be in  
30 the interest of the public, the department shall conduct or  
31 cause to have conducted a hearing in accordance with chapter

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1 120.

2 (2) The department, a duly empowered hearing officer,  
3 or an administrative law judge shall, during the conduct of  
4 such hearing, have those powers enumerated in s. 120.569;  
5 however, the penalty for failure to comply with a subpoena or  
6 with an order directing discovery is limited to a fine not to  
7 exceed \$1,000 per violation.

8 (3) A statement of charges, notice, or order under  
9 this part may be served by anyone duly authorized by the  
10 department, either in the manner provided by law for service  
11 of process in civil actions or by certifying and mailing a  
12 copy thereof to the person affected by such statement, notice,  
13 order, or other process at her or his residence or principal  
14 office or place of business. The verified return by the person  
15 so serving such statement, notice, order, or other process,  
16 setting forth the manner of the service is proof of the same;  
17 and the return postcard receipt for such statement, notice,  
18 order, or other process, certified and mailed as provided in  
19 this subsection, is proof of service of the same.

20 Section 11. Section 634.285, Florida Statutes, is  
21 created to read:

22 634.285 Cease and desist and penalty orders.--After  
23 the hearing provided for in s. 634.284, the department shall  
24 enter a final order in accordance with s. 120.569. If it is  
25 determined that the person charged has engaged in an unfair or  
26 deceptive act or practice or the unlawful transaction of a  
27 service agreement business, the department also shall issue an  
28 order requiring the violator to cease and desist from engaging  
29 in such method of competition, act, or practice or the  
30 unlawful transaction of service agreement business. Further,  
31 the department may, at its discretion, order any one or more

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1 of the following penalties:

2 (1) The suspension or revocation of such person's  
3 license, or eligibility for any license, if the person knew,  
4 or reasonably should have known, that she or he was in  
5 violation of this part.

6 (2) If it is determined that the person charged has  
7 provided or offered to provide motor vehicle service  
8 agreements without proper licensure, the imposition of an  
9 administrative penalty not to exceed \$1,000 for each service  
10 agreement contract offered or effectuated.

11 Section 12. Section 634.286, Florida Statutes, is  
12 created to read:

13 634.286 Appeals from orders of the department.--Any  
14 person subject to an order of the department under s. 634.285  
15 may obtain a review of such order by filing an appeal  
16 therefrom in accordance with the provisions and procedures for  
17 appeal from the orders of the department in general under s.  
18 120.68.

19 Section 13. Section 634.287, Florida Statutes, is  
20 created to read:

21 634.287 Penalty for violation of cease and desist  
22 order.--Any person who violates a cease and desist order of  
23 the department under s. 634.285 while such order is in effect,  
24 after notice and hearing as provided in s. 634.284, is  
25 subject, at the discretion of the department, to any one or  
26 more of the following penalties:

27 (1) A monetary penalty of not more than \$50,000 as to  
28 all matters determined in such hearing.

29 (2) The suspension or revocation of such person's  
30 license or eligibility to hold a license.

31 Section 14. Section 634.288, Florida Statutes, is

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1 created to read:

2 634.288 Civil liability.--The provisions of this part  
3 are cumulative to rights under the general civil and common  
4 law, and no action of the department will abrogate such rights  
5 to damages or other relief in any court.

6 Section 15. Effective January 1, 2002, section  
7 634.3077, Florida Statutes, is amended to read:

8 634.3077 Financial requirements.--

9 (1) An association licensed under this part shall  
10 maintain a funded, unearned premium reserve account,  
11 consisting of unencumbered assets, equal to a minimum of 25  
12 percent of the gross written premiums received by it from all  
13 warranty contracts in force. Such assets shall be held in the  
14 form of cash or invested in securities for investments as  
15 provided in part II of chapter 625.

16 (2) An association shall maintain, at a minimum, net  
17 assets equal to one-sixth of the written premiums it receives  
18 for the issuance and delivery of any binder or warranty in  
19 force. Net assets may be less than one-sixth of the premiums  
20 written provided the association has net assets of not less  
21 than \$500,000 and maintains a funded, unearned premium reserve  
22 account consisting of unencumbered assets equal to a minimum  
23 of 40 percent of the gross written premiums received by it  
24 from all warranty contracts in force which shall be held in  
25 the form of cash or invested in securities for investments as  
26 provided in part II of chapter 625.

27 ~~(3) In computing the net asset requirement, goodwill;~~  
28 ~~franchises; customer lists; patents or trademarks; receivables~~  
29 ~~from or advances to officers, directors, employees,~~  
30 ~~salespersons, or affiliated companies; and assets deposited~~  
31 ~~outside the United States shall be deducted from the net~~

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1 ~~assets of the association.~~

2       (3)~~(4)~~ An association shall not be required to set up  
3 an unearned premium reserve if it has purchased contractual  
4 liability insurance which demonstrates to the satisfaction of  
5 the department that 100 percent of its claim exposure is  
6 covered by such insurance. Such contractual liability  
7 insurance shall be obtained from an insurer that holds a  
8 certificate of authority to do business within the state or  
9 from an insurer approved by the department as financially  
10 capable of meeting the obligations incurred pursuant to the  
11 policy. For purposes of this subsection, the contractual  
12 liability policy shall contain the following provisions:

13           (a) In the event that the home warranty association is  
14 unable to fulfill its obligation under its contracts issued in  
15 this state for any reason, including insolvency, bankruptcy,  
16 or dissolution, the contractual liability insurer will pay  
17 losses and unearned premiums under such plans directly to  
18 persons making claims under such contracts.

19           (b) The insurer issuing the policy shall assume full  
20 responsibility for the administration of claims in the event  
21 of the inability of the association to do so.

22           (c) The policy may not be canceled or not renewed by  
23 either the insurer or the association unless 60 days' written  
24 notice thereof has been given to the department by the insurer  
25 before the date of such cancellation or nonrenewal.

26       (4)~~(5)~~ An association that purchases contractual  
27 liability insurance on the warranties that it issues shall  
28 provide the department with claim statistics required to be  
29 filed by associations not purchasing such insurance.

30       Section 16. Effective January 1, 2002, section  
31 634.3078, Florida Statutes, is created to read:

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1           634.3078 Assets and liabilities.--  
2           (1) ASSETS.--In any determination of the financial  
3 condition of a home warranty association, there shall be  
4 allowed as assets only those assets that are owned by the home  
5 warranty association company and which assets consist of:  
6           (a) Cash in the possession of the home warranty  
7 association, or in transit under its control, including the  
8 true balance of any deposit in a solvent bank, savings and  
9 loan association, or trust company which is domiciled in the  
10 United States.  
11           (b) Investments, securities, properties, and loans  
12 acquired or held in accordance with this part, and in  
13 connection therewith the following items:  
14           1. Interest due or accrued on any bond or evidence of  
15 indebtedness which is not in default and which is not valued  
16 on a basis including accrued interest.  
17           2. Declared and unpaid dividends on stock and shares,  
18 unless the amount of the dividends has otherwise been allowed  
19 as an asset.  
20           3. Interest due or accrued upon a collateral loan  
21 which is not in default in an amount not to exceed 1 year's  
22 interest thereon.  
23           4. Interest due or accrued on deposits or certificates  
24 of deposit in solvent banks, savings and loan associations,  
25 and trust companies domiciled in the United States, and  
26 interest due or accrued on other assets, if such interest is  
27 in the judgment of the department a collectible asset.  
28           5. Interest due or accrued on current mortgage loans,  
29 in an amount not exceeding in any event the amount, if any, of  
30 the excess of the value of the property less delinquent taxes  
31 thereon over the unpaid principal; but in no event shall

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1 interest accrued for a period in excess of 90 days be allowed  
2 as an asset.

3 6. Rent due or accrued on real property if such rent  
4 is not in arrears for more than 3 months. However, in no event  
5 shall rent accrued for a period in excess of 90 days be  
6 allowed as an asset.

7 7. The unaccrued portion of taxes paid prior to the  
8 due date on real property.

9 (c) Furniture, fixtures, furnishings, vehicles, and  
10 equipment, if the original cost of each item is at least \$200,  
11 which cost shall be amortized in full over a period not to  
12 exceed 5 calendar years, unless otherwise approved by the  
13 department.

14 (d) Part inventories maintained for the purpose of  
15 servicing products warranted. Part inventories must be listed  
16 at cost. Home warranty associations companies are required to  
17 maintain records to support valuation of part inventories.

18 (e) The liquidation value of prepaid expenses.

19 (f) Other assets or receivables, not inconsistent with  
20 the provisions of this section, deemed by the department to be  
21 available for the payment of losses and claims, at values to  
22 be determined by the department.

23  
24 The department, upon determining that a home warranty  
25 association's asset has not been evaluated according to  
26 applicable law or that it does not qualify as an asset, shall  
27 require the home warranty association to properly reevaluate  
28 the asset or replace the asset with an asset suitable to the  
29 department within 30 days of written notification by the  
30 department of this determination, if the removal of the asset  
31 from the organization's assets would impair the company's

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1 solvency.

2 (2) ASSETS NOT ALLOWED.--In addition to assets  
3 impliedly excluded by the provisions of subsection (1), the  
4 following assets expressly shall not be allowed as assets in  
5 any determination of the financial condition of a home  
6 warranty association:

7 (a) Goodwill, agreement holder lists, patents, trade  
8 names, agreements not to compete, and other like intangible  
9 assets.

10 (b) Any note or account receivable from or advances to  
11 officers, directors, or controlling stockholders, whether  
12 secured or not, and advances to employees, agents, or other  
13 persons on personal security only.

14 (c) Stock of the home warranty association owned by it  
15 directly or owned by it through any entity in which the  
16 organization owns or controls, directly or indirectly, more  
17 than 25 percent of the ownership interest.

18 (d) Leasehold improvements, stationery, and  
19 literature, except that leasehold improvements made prior to  
20 October 1, 2001, shall be allowed as an asset and shall be  
21 amortized over the shortest of the following periods:

22 1. The life of the lease.

23 2. The useful life of the improvements.

24 3. The 3-year period following October 1, 2001.

25 (e) Furniture, fixtures, furnishings, vehicles, and  
26 equipment, other than those items authorized under paragraph  
27 (1)(c).

28 (f) Notes or other evidences of indebtedness which are  
29 secured by mortgages or deeds of trust which are in default  
30 and beyond the express period specified in the instrument for  
31 curing the default.



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- 1           (g) Bonds in default for more than 60 days.  
2           (h) Deferred costs other than the liquidation value of  
3 prepaid expenses except for those companies that reserve 100  
4 percent of gross written premium.  
5           (i) Any note, account receivable, advance, or other  
6 evidence of indebtedness, or investment in:  
7           1. The parent of the home warranty association;  
8           2. Any entity directly or indirectly controlled by the  
9 home warranty association's parent;  
10           3. An affiliate of the parent or the home warranty  
11 association; or  
12           4. Officers, directors, shareholders, employees, or  
13 salespersons of the home warranty association; however,  
14 premium receivables under 45 days old may be considered an  
15 admitted asset.  
16  
17 The department may, however, allow all or a portion of such  
18 asset, at values to be determined by the department, if deemed  
19 by the department to be available for the payment of losses  
20 and claims.  
21           (3) LIABILITIES.--In any determination of the  
22 financial condition of a home warranty association,  
23 liabilities to be charged against its assets shall include,  
24 but not be limited to:  
25           (a) The amount, in conformity with generally accepted  
26 accounting principles, necessary to pay all of its unpaid  
27 losses and claims incurred for or on behalf of an agreement  
28 holder, on or prior to the end of the reporting period,  
29 whether reported or unreported.  
30           (b) Taxes, expenses, and other obligations due or  
31 accrued at the date of the statement.

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1           (c) Reserve for unearned premiums.

2  
3           The department, upon determining that the home warranty  
4           association has failed to report liabilities that should have  
5           been reported, shall require a correct report which reflects  
6           the proper liabilities to be submitted by the home warranty  
7           association to the department within 10 working days of  
8           receipt of written notification.

9           Section 17. Effective January 1, 2002, subsection (7)  
10          is added to section 634.312, Florida Statutes, to read:

11                 634.312 Filing, approval of forms.

12           (7) All home warranty contracts must disclose any  
13           exclusions, restrictions, or limitations on the benefits  
14           offered or the coverage provided by the home warranty contract  
15           in boldfaced type, and must contain, in boldfaced type, a  
16           statement on the front page of the contract substantially  
17           similar to the following: "Certain items and events are not  
18           covered by this contract. Please refer to the exclusions  
19           listed on page \_ of this document."

20           Section 18. Subsection (5) is added to section  
21          634.313, Florida Statutes, to read:

22                 634.313 Tax on premiums; annual statement; reports.--

23           (5) The department may by rule require each home  
24           warranty association to submit to the department, as the  
25           department may designate, all or part of the information  
26           contained in the financial reports required by this section in  
27           a computer-readable form compatible with the electronic data  
28           processing system specified by the department.

29           Section 19. Section 634.318, Florida Statutes, is  
30          amended to read:

31                 634.318 License and appointment of sales

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1 representatives.--Sales representatives for home warranty  
2 associations and insurers shall be licensed, appointed,  
3 renewed, continued, reinstated, or terminated in the same  
4 manner as prescribed in chapter 626 for insurance  
5 representatives in general, except they shall be exempt from  
6 the fingerprinting, photo identification card, education, and  
7 examination provisions. License, appointment, and other fees  
8 shall be those as prescribed in s. 624.501. No employee or  
9 sales representative of a home warranty association or insurer  
10 may directly or indirectly solicit or negotiate insurance  
11 contracts, or hold herself or himself out in any manner to be  
12 an insurance agent or solicitor, unless so qualified,  
13 licensed, and appointed therefor under the insurance code. A  
14 home warranty association is not required to be licensed as a  
15 sales representative to solicit, sell, issue, or otherwise  
16 transact the home warranty agreements issued by the home  
17 warranty association.

18 Section 20. Section 634.331, Florida Statutes, is  
19 amended to read:

20 634.331 Coverage of property for sale.--A home  
21 warranty may provide coverage of residential property during  
22 the listing period of such property for a period not to exceed  
23 12 months, provided that the home warranty company charges the  
24 warranty purchaser a separately identifiable charge for the  
25 listing list period coverage in an amount equal to at least 15  
26 percent of the annual premium charged for the home warranty  
27 and the charge for such coverage is due at the earlier of the  
28 end of the listing period or the date the sale of the  
29 residential property is closed.

30 Section 21. Subsection (6) is added to section  
31 634.415, Florida Statutes, to read:

Amendment No. 1 (for drafter's use only)

1           634.415 Tax on premiums; annual statement; reports;  
2 quarterly statements.--

3           (6) The department may by rule require each service  
4 warranty association to submit to the department, as the  
5 department may designate, all or part of the information  
6 contained in the financial statements and reports required by  
7 this section in a computer-readable form compatible with the  
8 electronic data processing system specified by the department.

9           Section 22. Section 634.419, Florida Statutes, is  
10 amended to read:

11           634.419 License and appointment required.--No person  
12 or entity shall solicit, negotiate, advertise, or effectuate  
13 service warranty contracts in this state unless such person or  
14 entity is licensed and appointed as a sales representative.  
15 Sales representatives shall be responsible for the actions of  
16 persons under their supervision. However, a service warranty  
17 association licensed as such under this part shall not be  
18 required to be licensed and appointed as a sales  
19 representative to solicit, negotiate, advertise or effectuate  
20 its products.

21           Section 23. Subsection (8) is added to section  
22 634.436, Florida Statutes, to read:

23           634.436 Unfair methods of competition and unfair or  
24 deceptive acts or practices defined.--The following methods,  
25 acts, or practices are defined as unfair methods of  
26 competition and unfair or deceptive acts or practices:

27           (8) FREE SERVICE WARRANTIES.--

28           (a) Advertising, offering, or providing a free service  
29 warranty as an inducement to the purchase or sale of real or  
30 personal property or of services directly or indirectly  
31 connected with such real or personal property.

Amendment No. 1 (for drafter's use only)

1           (b) For the purposes of this subsection, a "free"  
2 service warranty is:

3           1. A service warranty for which no identifiable and  
4 additional charge is made to the purchaser of such real  
5 property, personal property, or services.

6           2. A service warranty for which an identifiable or  
7 additional charge is made in an amount less than the cost of  
8 such service warranty as to the seller or other person, other  
9 than the service warranty association, providing the same.

10           3. Using the word "free" or words which imply the  
11 provision of a service warranty without a cost in connection  
12 with the advertising or offering for sale of any kind of  
13 goods, merchandise, or services.

14           Section 24. Section 624.124, Florida Statutes, is  
15 amended to read:

16           624.124 Motor vehicle services; exemption from  
17 code.--Any person may, in exchange for fees, dues, charges, or  
18 other consideration, provide any of the following services  
19 related to the ownership, operation, use, or maintenance of a  
20 motor vehicle without being deemed an insurer and without  
21 being subject to the provisions of this code:

22           (1) Towing service.

23           (2) Procuring from an insurer group coverage for bail  
24 and arrest bonds or for accidental death and dismemberment.

25           (3) Emergency service.

26           (4) Procuring prepaid legal services, or providing  
27 reimbursement for legal services, except that this shall not  
28 be deemed to be an exemption from chapter 642.

29           (5) Offering assistance in locating or recovering  
30 stolen or missing motor vehicles.

31           (6) Paying emergency living and transportation

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1 expenses of the owner of a motor vehicle when the motor  
2 vehicle is damaged.

3  
4 For purposes of this section, "motor vehicle" has the same  
5 meaning specified by s. 634.011~~(7)(6)~~.

6 Section 25. Paragraph (a) of subsection (1) of section  
7 628.4615, Florida Statutes, is amended to read:

8 628.4615 Specialty insurers; acquisition of  
9 controlling stock, ownership interest, assets, or control;  
10 merger or consolidation.--

11 (1) For the purposes of this section, the term  
12 "specialty insurer" means any person holding a license or  
13 certificate of authority as:

14 (a) A motor vehicle service agreement company  
15 authorized to issue motor vehicle service agreements as those  
16 terms are defined in s. 634.011~~(8)(7)~~and~~(9)(8)~~;

17 Section 26. Section 634.289, Florida Statutes, is  
18 created to read:

19 634.289 Rules.--The department may adopt rules, in  
20 accordance with chapter 120, to identify specific methods of  
21 competition or acts or practices which are prohibited by s.  
22 634.282, but these rules shall not enlarge upon or extend the  
23 provisions of that section.

24 Section 27. Section 634.302, Florida Statutes, is  
25 created to read:

26 634.302 Powers of department; rules.--The department  
27 shall administer this part, and, to that end, it has authority  
28 to adopt rules pursuant to ss. 120.536(1) and 120.54 to  
29 implement the provisions of this part. Such rules may include  
30 rules to identify specific methods of competition or acts or  
31 practices which are prohibited by s. 634.336, but the rules

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1 shall not enlarge upon or extend the provisions of that  
2 section.

3 Section 28. Section 634.402, Florida Statutes, is  
4 amended to read:

5 634.402 Powers of department; rules.--The department  
6 shall administer this part, and to that end it has authority  
7 to adopt rules pursuant to ss. 120.536(1) and 120.54 to  
8 implement the provisions of this part. Such rules may identify  
9 specific methods of competition or acts or practices which are  
10 prohibited by s. 634.436, but shall not enlarge upon or extend  
11 the provisions of that section.

12 Section 29. This act shall take effect upon becoming a  
13 law, except as otherwise provided herein.

14  
15

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

17 And the title is amended as follows:

18 On page 1, line 19 through page 3, line 28  
19 remove from the title of the bill: all of said lines

20

21 and insert in lieu thereof:

22 repealing s. 634.281, F.S., which provides that  
23 service agreement companies and their  
24 salespersons shall be subject to pt. IX of ch.  
25 626, F.S., relating to service agreement  
26 companies and their salespersons; creating s.  
27 634.2815, F.S.; prohibiting engaging in any  
28 trade practice determined to be an unfair  
29 method of competition or an unfair or deceptive  
30 act or practice involving the business of motor  
31 vehicle service agreements; creating s.

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1           634.282, F.S.; defining unfair methods of  
2           competition and unfair or deceptive acts or  
3           practices; creating s. 634.2825, F.S.;  
4           requiring vendors and lenders to separately  
5           state and identify the amount charged and to be  
6           paid for a motor vehicle service agreement;  
7           providing applicability; creating s. 634.283,  
8           F.S.; providing power of the Department of  
9           Insurance to examine and investigate the  
10          affairs of persons involved in the business of  
11          motor vehicle service agreements in the state;  
12          creating s. 634.284, F.S.; authorizing the  
13          department to conduct hearings with respect to  
14          specified prohibited practices; providing a  
15          fine for failure to comply with a subpoena or  
16          an order directing discovery; creating s.  
17          634.285, F.S.; providing for the issuance of  
18          cease and desist orders by the department;  
19          providing specified penalties; creating s.  
20          634.286, F.S.; providing for appeals of orders  
21          of the department; creating s. 634.287, F.S.;  
22          providing penalties for violation of a cease  
23          and desist order of the department; creating s.  
24          634.288, F.S.; providing for civil liability;  
25          amending s. 634.3077, F.S.; eliminating  
26          specified assets to be deducted in computing  
27          the net asset requirement of a home warranty  
28          association; creating s. 634.3078, F.S.;  
29          specifying allowable assets and liabilities  
30          with respect to the determination of the  
31          financial condition of a service warranty



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1 association; amending s. 634.313, F.S.;

2 providing for submission of annual statements

3 and financial reports to the Department of

4 Insurance in a computer-readable form; amending

5 s. 634.312, F.S.; filing and approval of forms;

6 amending s. 634.318, F.S.; providing that a

7 home warranty association is not required to be

8 licensed as a salesperson to solicit, sell,

9 issue, or otherwise transact the home warranty

10 agreements issued by the association; amending

11 s. 634.331, F.S.; revising terminology with

12 respect to coverage of property for sale;

13 amending s. 634.415, F.S.; providing for

14 submission of statements and reports to the

15 Department of Insurance in a computer-readable

16 form; amending s. 634.419, F.S.; providing that

17 a service warranty association is not required

18 to be licensed as a sales representative to

19 solicit, sell, or issue service warranty

20 agreements issued by the association; amending

21 s. 634.436, F.S.; including advertising,

22 offering, or providing a free service warranty

23 as an inducement to specified purchases or

24 sales among acts or practices which constitute

25 unfair methods of competition and unfair or

26 deceptive acts or practices; amending ss.

27 624.124 and 628.4615, F.S.; correcting cross

28 references; creating s. 634.289, F.S.; relating

29 to rulemaking authority; amending s. 634.302,

30 F.S.; relating to rulemaking authority;

31 amending s. 634.402, F.S.; relating to

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