

By Representative Berfield

1 A bill to be entitled
2 An act relating to warranty associations;
3 amending s. 634.011, F.S.; defining "additive
4 product"; revising the definitions of "motor
5 vehicle service agreement" and "salesperson";
6 amending s. 634.044, F.S.; including part
7 inventories among the allowable assets of a
8 service agreement company; amending s. 634.137,
9 F.S.; providing for submission of financial
10 reports to the Department of Insurance in a
11 computer-readable form; amending s. 634.171,
12 F.S.; providing that a motor vehicle service
13 agreement company is not required to be
14 licensed as a salesperson to solicit, sell,
15 issue, or otherwise transact the motor vehicle
16 service agreements issued by the company;
17 repealing s. 634.281, F.S., which provides that
18 service agreement companies and their
19 salespersons shall be subject to pt. X of ch.
20 626, F.S., relating to viatical settlements;
21 creating s. 634.2815, F.S.; prohibiting
22 engaging in any trade practice determined to be
23 an unfair method of competition or an unfair or
24 deceptive act or practice involving the
25 business of motor vehicle service agreements;
26 creating s. 634.282, F.S.; defining unfair
27 methods of competition and unfair or deceptive
28 acts or practices; creating s. 634.2825, F.S.;
29 requiring vendors and lenders to separately
30 state and identify the amount charged and to be
31 paid for a motor vehicle service agreement;

1 providing applicability; creating s. 634.283,
2 F.S.; providing power of the Department of
3 Insurance to examine and investigate the
4 affairs of persons involved in the business of
5 motor vehicle service agreements in the state;
6 creating s. 634.284, F.S.; authorizing the
7 department to conduct hearings with respect to
8 specified prohibited practices; providing a
9 fine for failure to comply with a subpoena or
10 an order directing discovery; creating s.
11 634.285, F.S.; providing for the issuance of
12 cease and desist orders by the department;
13 providing specified penalties; creating s.
14 634.286, F.S.; providing for appeals of orders
15 of the department; creating s. 634.287, F.S.;
16 providing penalties for violation of a cease
17 and desist order of the department; creating s.
18 634.288, F.S.; providing for civil liability;
19 amending s. 634.301, F.S.; revising the
20 definition of "home warranty"; amending s.
21 634.3077, F.S.; eliminating specified assets to
22 be deducted in computing the net asset
23 requirement of a home warranty association;
24 creating s. 634.3078, F.S.; specifying
25 allowable assets and liabilities with respect
26 to the determination of the financial condition
27 of a service warranty association; amending s.
28 634.313, F.S.; providing for submission of
29 annual statements and financial reports to the
30 Department of Insurance in a computer-readable
31 form; amending s. 634.318, F.S.; providing that

1 a home warranty association is not required to
2 be licensed as a salesperson to solicit, sell,
3 issue, or otherwise transact the home warranty
4 agreements issued by the association; amending
5 s. 634.331, F.S.; revising terminology with
6 respect to coverage of property for sale;
7 amending s. 634.336, F.S.; including
8 advertising, offering, or providing a free home
9 warranty as an inducement to specified
10 purchases or sales among acts or practices
11 which constitute unfair methods of competition
12 and unfair or deceptive acts or practices;
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; providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsections (2) through (16) of section
2 634.011, Florida Statutes, are renumbered as subsections (3)
3 through (17), respectively, present subsections (7) and (13)
4 are amended, and a new subsection (2) is added to said
5 section, to read:

6 634.011 Definitions.--As used in this part, the term:

7 (2) "Additive product" means any fuel supplement, oil
8 supplement, or any other supplement product added to a motor
9 vehicle for the purpose of increasing or enhancing the
10 performance or improving the longevity of such motor vehicle.

11 (8)(7) "Motor vehicle service agreement" or "service
12 agreement" means any contract or agreement indemnifying the
13 service agreement holder for the motor vehicle listed on the
14 service agreement and arising out of the ownership, operation,
15 and use of the motor vehicle against loss caused by failure of
16 any mechanical or other component part, or any mechanical or
17 other component part that does not function as it was
18 originally intended; however, nothing in this part shall
19 prohibit or affect the giving, free of charge, of the usual
20 performance guarantees by manufacturers or dealers in
21 connection with the sale of motor vehicles; and provided
22 further, however, transactions exempt under s. 624.125 shall
23 be expressly excluded from this definition and are exempt from
24 the provisions of this part. The term "motor vehicle service
25 agreement" includes any contract or agreement which provides
26 the coverage or protection defined in this subsection and is
27 issued or provided in conjunction with an additive product
28 applied to the motor vehicle which is the subject of such
29 contract or agreement.

30 (14)(13) "Salesperson" means any dealership,
31 corporation, partnership, or sole proprietorship employed or

1 otherwise retained by an insurer or motor vehicle service
2 agreement company for the purpose of selling or issuing motor
3 vehicle service agreements or for the purpose of soliciting or
4 retaining other salespersons.

5 Section 2. Subsection (1) of section 634.044, Florida
6 Statutes, is amended to read:

7 634.044 Assets and liabilities.--

8 (1) ASSETS.--In any determination of the financial
9 condition of a service agreement company, there shall be
10 allowed as assets only those assets that are owned by the
11 service agreement company and which assets consist of:

12 (a) Cash in the possession of the service agreement
13 company, or in transit under its control, including the true
14 balance of any deposit in a solvent bank, savings and loan
15 association, or trust company which is domiciled in the United
16 States.

17 (b) Investments, securities, properties, and loans
18 acquired or held in accordance with this part, and in
19 connection therewith the following items:

20 1. Interest due or accrued on any bond or evidence of
21 indebtedness which is not in default and which is not valued
22 on a basis including accrued interest.

23 2. Declared and unpaid dividends on stock and shares,
24 unless the amount of the dividends has otherwise been allowed
25 as an asset.

26 3. Interest due or accrued upon a collateral loan
27 which is not in default in an amount not to exceed 1 year's
28 interest thereon.

29 4. Interest due or accrued on deposits or certificates
30 of deposit in solvent banks, savings and loan associations,
31 and trust companies domiciled in the United States, and

1 interest due or accrued on other assets, if such interest is
2 in the judgment of the department a collectible asset.

3 5. Interest due or accrued on current mortgage loans,
4 in an amount not exceeding in any event the amount, if any, of
5 the excess of the value of the property less delinquent taxes
6 thereon over the unpaid principal; but in no event shall
7 interest accrued for a period in excess of 90 days be allowed
8 as an asset.

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

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

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

20 (d) Part inventories maintained for the purpose of
21 servicing products warranted. Part inventories must be listed
22 at cost. Service agreement companies are required to maintain
23 records to support valuation of part inventories.

24 (e)~~(d)~~ The liquidation value of ~~or~~ prepaid expenses.

25 (f)~~(e)~~ Other assets or receivables, not inconsistent
26 with the provisions of this section, deemed by the department
27 to be available for the payment of losses and claims, at
28 values to be determined by the department.

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30 The department, upon determining that a service agreement
31 company's asset has not been evaluated according to applicable

1 law or that it does not qualify as an asset, shall require the
2 service agreement company to properly reevaluate the asset or
3 replace the asset with an asset suitable to the department
4 within 30 days of written notification by the department of
5 this determination, if the removal of the asset from the
6 organization's assets would impair the company's solvency.

7 Section 3. Subsection (5) is added to section 634.137,
8 Florida Statutes, to read:

9 634.137 Financial and statistical reporting
10 requirements.--

11 (5) The department may by rule require each motor
12 vehicle service agreement company to submit to the department,
13 as the department may designate, all or part of the
14 information contained in the financial reports required by
15 this section in a computer-readable form compatible with the
16 electronic data processing system specified by the department.

17 Section 4. Section 634.171, Florida Statutes, is
18 amended to read:

19 634.171 Salesperson to be licensed and
20 appointed.--Salespersons for motor vehicle service agreement
21 companies and insurers shall be licensed, appointed, renewed,
22 continued, reinstated, or terminated as prescribed in chapter
23 626 for insurance representatives in general. However, they
24 shall be exempt from all other provisions of chapter 626
25 including fingerprinting, photo identification, education, and
26 examination provisions. License, appointment, and other fees
27 shall be those prescribed in s. 624.501. A licensed and
28 appointed salesperson shall be directly responsible and
29 accountable for all acts of her or his employees and other
30 representatives. Each service agreement company or insurer
31 shall, on forms prescribed by the department, within 30 days

1 after termination of the appointment, notify the department of
2 such termination. No employee or salesperson of a motor
3 vehicle service agreement company or insurer may directly or
4 indirectly solicit or negotiate insurance contracts, or hold
5 herself or himself out in any manner to be an insurance agent
6 or solicitor, unless so qualified, licensed, and appointed
7 therefor under the Florida Insurance Code. A motor vehicle
8 service agreement company is not required to be licensed as a
9 salesperson to solicit, sell, issue, or otherwise transact the
10 motor vehicle service agreements issued by the motor vehicle
11 service agreement company.

12 Section 5. Section 634.281, Florida Statutes, is
13 repealed:

14 ~~634.281 Unfair trade practices.--Service agreement~~
15 ~~companies and their salespersons shall be subject to the~~
16 ~~provisions of part X of chapter 626.~~

17 Section 6. Section 634.2815, Florida Statutes, is
18 created to read:

19 634.2815 Unfair methods of competition and unfair or
20 deceptive acts or practices prohibited.--No person may engage
21 in this state in any trade practice which is defined in this
22 part as, or determined pursuant to s. 634.282 to be, an unfair
23 method of competition or an unfair or deceptive act or
24 practice involving the business of motor vehicle service
25 agreements.

26 Section 7. Section 634.282, Florida Statutes, is
27 created to read:

28 634.282 Unfair methods of competition and unfair or
29 deceptive acts or practices defined.--The following methods,
30 acts, or practices are defined as unfair methods of
31 competition and unfair or deceptive acts or practices:

1 (1) MISREPRESENTATION AND FALSE
2 ADVERTISING.--Knowingly making, issuing, circulating, or
3 causing to be made, issued, or circulated, any estimate,
4 illustration, circular, statement, sales presentation,
5 omission, or comparison which:
6 (a) Misrepresents the benefits, advantages,
7 conditions, or terms of any motor vehicle service agreement.
8 (b) Is misleading or is a misrepresentation as to the
9 financial condition of any person.
10 (c) Uses any name or title of any contract
11 misrepresenting the true nature thereof.
12 (d) Is a misrepresentation for the purpose of
13 inducing, or tending to induce, the lapse, forfeiture,
14 exchange, conversion, or surrender of any motor vehicle
15 service agreement.
16 (2) FALSE INFORMATION AND ADVERTISING
17 GENERALLY.--Knowingly making, publishing, disseminating,
18 circulating, or placing before the public, or causing,
19 directly or indirectly, to be made, published, disseminated,
20 circulated, or placed before the public:
21 (a) In a newspaper, magazine, or other publication;
22 (b) In the form of a notice, circular, pamphlet,
23 letter, or poster;
24 (c) Over any radio or television station; or
25 (d) Over the Internet, electronically, or in any other
26 way,
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28 an advertisement, announcement, or statement containing any
29 assertion, representation, or statement with respect to the
30 business of motor vehicle service agreements, which assertion,
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1 representation, or statement is untrue, deceptive, or
2 misleading.
3 (3) DEFAMATION.--Knowingly making, publishing,
4 disseminating, or circulating, directly or indirectly, or
5 aiding, abetting, or encouraging the making, publishing,
6 disseminating, or circulating of, any oral or written
7 statement, or any pamphlet, circular, article, or literature,
8 which is false or maliciously critical of, or derogatory to,
9 any person and which is calculated to injure such person.
10 (4) BOYCOTT, COERCION, AND INTIMIDATION.--Entering
11 into any agreement to commit, or by any concerted action
12 committing, any act of boycott, coercion, or intimidation
13 resulting in, or tending to result in, unreasonable restraint
14 of, or monopoly in, the business of motor vehicle service
15 agreements.
16 (5) FALSE STATEMENTS AND ENTRIES.--
17 (a) Knowingly:
18 1. Filing with any supervisory or other public
19 official;
20 2. Making, publishing, disseminating, or circulating;
21 3. Delivering to any person;
22 4. Placing before the public; or
23 5. Causing, directly or indirectly, to be made,
24 published, disseminated, circulated, delivered to any person,
25 or placed before the public,
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27 any false statement.
28 (b) Knowingly making any false entry of a material
29 fact in any book, report, or statement of any person, or
30 knowingly failing to make a true entry of any material fact
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1 pertaining to the business of such person in any book, report,
2 or statement of such person.

3 (6) UNFAIR DISCRIMINATION.--Knowingly making or
4 permitting any unfair discrimination between individuals of
5 the same actuarially supportable class and essentially the
6 same hazard, in the amount of premium, policy fees, or rates
7 charged for any motor vehicle service agreement, in any of the
8 terms or conditions of such agreement, or in any other manner
9 whatsoever.

10 (7) UNLAWFUL REBATES.--Except as otherwise expressly
11 provided by law, or in an applicable filing with the
12 department, knowingly:

13 (a) Permitting, or offering to make, or making, any
14 contract or agreement as to such contract other than as
15 plainly expressed in the motor vehicle service agreement
16 issued thereon;

17 (b) Paying, allowing, or giving, or offering to pay,
18 allow, or give, directly or indirectly, as inducement to such
19 motor vehicle service agreement, any unlawful rebate of
20 premiums payable on the agreement, any special favor or
21 advantage in the benefits thereon, or any valuable
22 consideration or inducement not specified in the agreement;

23 (c) Giving, selling, or purchasing, or offering to
24 give, sell, or purchase, as an inducement to such motor
25 vehicle service agreement or in connection therewith, any
26 stocks, bonds, or other securities of any insurance company,
27 service agreement company, or other corporation, association,
28 or partnership, or any dividends or profits accrued thereon,
29 or anything of value not specified in the motor vehicle
30 service agreement.

31 (8) UNFAIR CLAIM SETTLEMENT PRACTICES.--

- 1 (a) Attempting to settle claims on the basis of an
2 application or any other material document which was altered
3 without notice to, or knowledge or consent of, the service
4 agreement holder;
- 5 (b) Making a material misrepresentation to the service
6 agreement holder for the purpose and with the intent of
7 effecting settlement of such claims, loss, or damage under
8 such contract on less favorable terms than those provided in,
9 and contemplated by, such contract; or
- 10 (c) Committing or performing with such frequency as to
11 indicate a general business practice any of the following
12 practices:
- 13 1. Failure to adopt and implement internal standards
14 for the investigation of claims;
- 15 2. Misrepresentation of pertinent facts or contract
16 provisions relating to coverages at issue;
- 17 3. Failure to acknowledge and act promptly upon
18 communications with respect to claims;
- 19 4. Denial of claims without conducting reasonable
20 investigations based upon available information;
- 21 5. Failure to affirm or deny full or partial coverage
22 of claims and, as to partial coverage, the dollar amount or
23 extent of coverage, or failure to provide a written statement
24 that the claim is being investigated, upon written request of
25 the service agreement holder within 30 days after
26 proof-of-loss statements have been completed;
- 27 6. Failure to promptly provide a reasonable
28 explanation to the service agreement holder of the basis in
29 the contract in relation to the facts or applicable law for
30 denial of a claim or for the offer of a compromise settlement;
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1 7. Failure to promptly notify the service agreement
2 holder of any additional information necessary for the
3 processing of a claim; or
4 8. Failure to clearly explain the nature of the
5 requested information and the reasons such information is
6 necessary.
7 (9) FAILURE TO MAINTAIN PROCEDURES FOR HANDLING
8 COMPLAINTS.--Failing to maintain a complete record of all
9 complaints received since the date of the last examination.
10 For purposes of this paragraph, "complaint" means any written
11 communication primarily expressing a grievance.
12 (10) DISCRIMINATORY REFUSAL TO ISSUE A
13 CONTRACT.--Refusing to issue a contract solely because of an
14 individual's race, color, creed, marital status, sex, or
15 national origin.
16 (11) MISREPRESENTATION IN SERVICE AGREEMENT
17 APPLICATIONS.--Knowingly making a false or fraudulent written
18 or oral statement or representation on, or relative to, an
19 application or negotiation for a motor vehicle service
20 agreement for the purpose of obtaining a fee, commission,
21 money, or other benefit from any insurer, service agreement
22 company, agent, broker, salesperson, or individual.
23 (12) FREE SERVICE AGREEMENTS.--
24 (a) Advertising, offering, or providing a free motor
25 vehicle service agreement as an inducement to the purchase or
26 sale of real or personal property or of services directly or
27 indirectly connected with such real or personal property.
28 (b) For the purposes of this subsection, a "free"
29 motor vehicle service agreement is:
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1 1. A motor vehicle service agreement for which no
2 identifiable and additional charge is made to the purchaser of
3 such real property, personal property, or services.

4 2. A motor vehicle service agreement for which an
5 identifiable or additional charge is made in an amount less
6 than the cost of such motor vehicle service agreement as to
7 the seller or other person, other than the service agreement
8 company, providing the same.

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

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

15 (a) Knowingly collecting any sum as a premium or
16 charge for a motor vehicle service agreement, which is not
17 then provided, or is not in due course to be provided, subject
18 to acceptance of the risk by a service agreement company or an
19 insurer, by a motor vehicle service agreement issued by a
20 service agreement company or an insurer as permitted by this
21 part.

22 (b) Knowingly collecting as a premium or charge for a
23 motor vehicle service agreement any sum in excess of or less
24 than the premium or charge applicable to such motor vehicle
25 service agreement, in accordance with the applicable
26 classifications and rates as filed with the department, and as
27 specified in the motor vehicle service agreement.

28 (14) INTERLOCKING OWNERSHIP AND MANAGEMENT.--

29 (a) Any motor vehicle service agreement company may
30 retain, invest in, or acquire the whole or any part of the
31 capital of any other motor vehicle service agreement company,

1 or have a common management with any other motor vehicle
2 service agreement company, unless such retention, investment,
3 acquisition, or common management is inconsistent with any
4 other provision of this part, or unless by reason thereof the
5 business of such insurers with the public is conducted in a
6 manner which substantially lessens competition generally in
7 the insurance business.

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

13 (15) FALSE CLAIMS; OBTAINING OR RETAINING MONEY
14 DISHONESTLY.--

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

18 (b) Any salesperson who represents any motor vehicle
19 service agreement company or collects or does business without
20 the authority of the motor vehicle service agreement company,
21 secures cash advances by false statements, or fails to turn
22 over when required, or satisfactorily account for, all
23 collections of such motor vehicle service agreement company,
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25 shall, in addition to the other penalties provided in this
26 act, commit a misdemeanor of the second degree, punishable as
27 provided in s. 775.082 or s. 775.083.

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

29 (a) Representing to the applicant that a specific
30 ancillary coverage or product is required by law in
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1 conjunction with the purchase of a motor vehicle service
2 agreement when such coverage or product is not required;
3 (b) Representing to the applicant that a specific
4 ancillary coverage or product is included in the motor vehicle
5 service agreement contract applied for without an additional
6 charge when such charge is required; or
7 (c) Charging an applicant for a specific ancillary
8 coverage or product, in addition to the cost of the motor
9 vehicle service agreement coverage applied for, without the
10 informed consent of the applicant.

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

17 Section 8. Section 634.2825, Florida Statutes, is
18 created to read:

19 634.2825 Motor vehicle service agreement cost
20 specified in "price package".--

21 (1) When the premium or charge for a motor vehicle
22 service agreement or involving such property or merchandise is
23 included in the overall purchase price or financing of the
24 purchase of merchandise or property, the vendor or lender
25 shall separately state and identify the amount charged and to
26 be paid for the motor vehicle service agreement, and the
27 classifications, if any, upon which based; and the inclusion
28 or exclusion of the cost of a motor vehicle service agreement
29 in such purchase price or financing shall not increase,
30 reduce, or otherwise affect any other factor involved in the
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1 cost of merchandise, property, or financing as to the
2 purchaser or borrower.

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

6 Section 9. Section 634.283, Florida Statutes, is
7 created to read:

8 634.283 Power of department to examine and
9 investigate.--The department has the power to examine and
10 investigate the affairs of every person involved in the
11 business of motor vehicle service agreements in this state in
12 order to determine whether such person has been or is engaged
13 in any unfair method of competition or in any unfair or
14 deceptive act or practice prohibited by s. 634.2815.

15 Section 10. Section 634.284, Florida Statutes, is
16 created to read:

17 634.284 Prohibited practices; hearings, witnesses,
18 appearances, production of books, and service of process.--

19 (1) Whenever the department has reason to believe that
20 any person has engaged, or is engaging, in this state in any
21 unfair method of competition or any unfair or deceptive act or
22 practice as defined in s. 634.282, or is engaging in the
23 business of motor vehicle service agreements without being
24 properly licensed as required by this part, and that a
25 proceeding by the department in respect thereto would be in
26 the interest of the public, the department shall conduct or
27 cause to have conducted a hearing in accordance with chapter
28 120.

29 (2) The department, a duly empowered hearing officer,
30 or an administrative law judge shall, during the conduct of
31 such hearing, have those powers enumerated in s. 120.569;

1 however, the penalty for failure to comply with a subpoena or
2 with an order directing discovery is limited to a fine not to
3 exceed \$1,000 per violation.

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

16 Section 11. Section 634.285, Florida Statutes, is
17 created to read:

18 634.285 Cease and desist and penalty orders.--After
19 the hearing provided for in s. 634.284, the department shall
20 enter a final order in accordance with s. 120.569. If it is
21 determined that the person charged has engaged in an unfair or
22 deceptive act or practice or the unlawful transaction of a
23 service agreement business, the department also shall issue an
24 order requiring the violator to cease and desist from engaging
25 in such method of competition, act, or practice or the
26 unlawful transaction of service agreement business. Further,
27 the department may, at its discretion, order any one or more
28 of the following penalties:

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

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

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

10 634.286 Appeals from orders of the department.--Any
11 person subject to an order of the department under s. 634.285
12 may obtain a review of such order by filing an appeal
13 therefrom in accordance with the provisions and procedures for
14 appeal from the orders of the department in general under s.
15 120.68.

16 Section 13. Section 634.287, Florida Statutes, is
17 created to read:

18 634.287 Penalty for violation of cease and desist
19 order.--Any person who violates a cease and desist order of
20 the department under s. 634.285 while such order is in effect,
21 after notice and hearing as provided in s. 634.284, is
22 subject, at the discretion of the department, to any one or
23 more of the following penalties:

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

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

28 Section 14. Section 634.288, Florida Statutes, is
29 created to read:

30 634.288 Civil liability.--The provisions of this part
31 are cumulative to rights under the general civil and common

1 law, and no action of the department will abrogate such rights
2 to damages or other relief in any court.

3 Section 15. Subsection (4) of section 634.301, Florida
4 Statutes, is amended to read:

5 634.301 Definitions.--As used in this part, the term:

6 (4) "Home warranty" or "warranty" means any contract
7 or agreement:

8 (a) Offered in connection with the sale of residential
9 property;

10 (b) Offered in connection with a loan of \$5,000 or
11 more which is secured by residential property that is the
12 subject of the warranty, but not in connection with the sale
13 of such property; or

14 (c) Offered in connection with a home improvement of
15 \$7,500 or more for residential property that is the subject of
16 the warranty, but not in connection with the sale of such
17 property;

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19 whereby a person undertakes to indemnify the warranty holder
20 against the cost of repair or replacement, or actually
21 furnishes repair or replacement, of any structural component
22 or appliance of a home, necessitated by wear and tear or an
23 inherent defect of any such structural component or appliance
24 or necessitated by the failure of an inspection to detect the
25 likelihood of any such loss. However, this part does not
26 prohibit the giving of usual performance guarantees by either
27 the builder of a home or the manufacturer or seller of an
28 appliance, as long as no identifiable charge is made for such
29 guarantee. This part does not permit the provision of
30 indemnification against consequential damages arising from the
31 failure of any structural component or appliance of a home,

1 which practice constitutes the transaction of insurance
2 subject to all requirements of the insurance code. This part
3 does not apply to service contracts entered into between
4 consumers and nonprofit organizations or cooperatives the
5 members of which consist of condominium associations and
6 condominium owners and which perform repairs and maintenance
7 for appliances or maintenance of the residential property.
8 This part does not apply to a contract or agreement offered in
9 connection with the sale of residential property by a service
10 warranty association in compliance with part III of this
11 chapter, provided such contract or agreement only relates to
12 the systems and appliances of the covered residential property
13 and does not cover any structural component of the residential
14 property.

15 Section 16. Section 634.3077, Florida Statutes, is
16 amended to read:

17 634.3077 Financial requirements.--

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

25 (2) An association shall maintain, at a minimum, net
26 assets equal to one-sixth of the written premiums it receives
27 for the issuance and delivery of any binder or warranty in
28 force. Net assets may be less than one-sixth of the premiums
29 written provided the association has net assets of not less
30 than \$500,000 and maintains a funded, unearned premium reserve
31 account consisting of unencumbered assets equal to a minimum

1 of 40 percent of the gross written premiums received by it
2 from all warranty contracts in force which shall be held in
3 the form of cash or invested in securities for investments as
4 provided in part II of chapter 625.

5 ~~(3) In computing the net asset requirement, goodwill,~~
6 ~~franchises, customer lists, patents or trademarks, receivables~~
7 ~~from or advances to officers, directors, employees,~~
8 ~~salespersons, or affiliated companies; and assets deposited~~
9 ~~outside the United States shall be deducted from the net~~
10 ~~assets of the association.~~

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

22 (a) In the event that the home warranty association is
23 unable to fulfill its obligation under its contracts issued in
24 this state for any reason, including insolvency, bankruptcy,
25 or dissolution, the contractual liability insurer will pay
26 losses and unearned premiums under such plans directly to
27 persons making claims under such contracts.

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

31

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

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

9 Section 17. Section 634.3078, Florida Statutes, is
10 created to read:

11 634.3078 Assets and liabilities.--

12 (1) ASSETS.--In any determination of the financial
13 condition of a home warranty association, there shall be
14 allowed as assets only those assets that are owned by the home
15 warranty association company and which assets consist of:

16 (a) Cash in the possession of the home warranty
17 association, or in transit under its control, including the
18 true balance of any deposit in a solvent bank, savings and
19 loan association, or trust company which is domiciled in the
20 United States.

21 (b) Investments, securities, properties, and loans
22 acquired or held in accordance with this part, and in
23 connection therewith the following items:

24 1. Interest due or accrued on any bond or evidence of
25 indebtedness which is not in default and which is not valued
26 on a basis including accrued interest.

27 2. Declared and unpaid dividends on stock and shares,
28 unless the amount of the dividends has otherwise been allowed
29 as an asset.

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1 3. Interest due or accrued upon a collateral loan
2 which is not in default in an amount not to exceed 1 year's
3 interest thereon.

4 4. Interest due or accrued on deposits or certificates
5 of deposit in solvent banks, savings and loan associations,
6 and trust companies domiciled in the United States, and
7 interest due or accrued on other assets, if such interest is
8 in the judgment of the department a collectible asset.

9 5. Interest due or accrued on current mortgage loans,
10 in an amount not exceeding in any event the amount, if any, of
11 the excess of the value of the property less delinquent taxes
12 thereon over the unpaid principal; but in no event shall
13 interest accrued for a period in excess of 90 days be allowed
14 as an asset.

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

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

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

26 (d) Part inventories maintained for the purpose of
27 servicing products warranted. Part inventories must be listed
28 at cost. Home warranty associations companies are required to
29 maintain records to support valuation of part inventories.

30 (e) The liquidation value or prepaid expenses.
31

1 (f) Other assets or receivables, not inconsistent with
2 the provisions of this section, deemed by the department to be
3 available for the payment of losses and claims, at values to
4 be determined by the department.

5
6 The department, upon determining that a home warranty
7 association's asset has not been evaluated according to
8 applicable law or that it does not qualify as an asset, shall
9 require the home warranty association to properly reevaluate
10 the asset or replace the asset with an asset suitable to the
11 department within 30 days of written notification by the
12 department of this determination, if the removal of the asset
13 from the organization's assets would impair the company's
14 solvency.

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

20 (a) Goodwill, agreement holder lists, patents, trade
21 names, agreements not to compete, and other like intangible
22 assets.

23 (b) Any note or account receivable from or advances to
24 officers, directors, or controlling stockholders, whether
25 secured or not, and advances to employees, agents, or other
26 persons on personal security only.

27 (c) Stock of the home warranty association owned by it
28 directly or owned by it through any entity in which the
29 organization owns or controls, directly or indirectly, more
30 than 25 percent of the ownership interest.

31

- 1 (d) Leasehold improvements, stationery, and
2 literature, except that leasehold improvements made prior to
3 October 1, 2001, shall be allowed as an asset and shall be
4 amortized over the shortest of the following periods:
5 1. The life of the lease.
6 2. The useful life of the improvements.
7 3. The 3-year period following October 1, 2001.
8 (e) Furniture, fixtures, furnishings, vehicles, and
9 equipment, other than those items authorized under paragraph
10 (1)(c).
11 (f) Notes or other evidences of indebtedness which are
12 secured by mortgages or deeds of trust which are in default
13 and beyond the express period specified in the instrument for
14 curing the default.
15 (g) Bonds in default for more than 60 days.
16 (h) Deferred costs other than the liquidation value of
17 prepaid expenses except for those companies that reserve 100
18 percent of gross written premium.
19 (i) Any note, account receivable, advance, or other
20 evidence of indebtedness, or investment in:
21 1. The parent of the home warranty association;
22 2. Any entity directly or indirectly controlled by the
23 home warranty association's parent;
24 3. An affiliate of the parent or the home warranty
25 association; or
26 4. Officers, directors, shareholders, employees, or
27 salespersons of the home warranty association; however,
28 premium receivables under 45 days old may be considered an
29 admitted asset.
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1 The department may, however, allow all or a portion of such
2 asset, at values to be determined by the department, if deemed
3 by the department to be available for the payment of losses
4 and claims.

5 (3) LIABILITIES.--In any determination of the
6 financial condition of a home warranty association,
7 liabilities to be charged against its assets shall include,
8 but not be limited to:

9 (a) The amount, in conformity with generally accepted
10 accounting principles, necessary to pay all of its unpaid
11 losses and claims incurred for or on behalf of an agreement
12 holder, on or prior to the end of the reporting period,
13 whether reported or unreported.

14 (b) Taxes, expenses, and other obligations due or
15 accrued at the date of the statement.

16 (c) Reserve for unearned premiums.
17

18 The department, upon determining that the home warranty
19 association has failed to report liabilities that should have
20 been reported, shall require a correct report which reflects
21 the proper liabilities to be submitted by the home warranty
22 association to the department within 10 working days of
23 receipt of written notification.

24 Section 18. Subsection (5) is added to section
25 634.313, Florida Statutes, to read:

26 634.313 Tax on premiums; annual statement; reports.--

27 (5) The department may by rule require each home
28 warranty association to submit to the department, as the
29 department may designate, all or part of the information
30 contained in the financial reports required by this section in
31

1 a computer-readable form compatible with the electronic data
2 processing system specified by the department.

3 Section 19. Section 634.318, Florida Statutes, is
4 amended to read:

5 634.318 License and appointment of sales
6 representatives.--Sales representatives for home warranty
7 associations and insurers shall be licensed, appointed,
8 renewed, continued, reinstated, or terminated in the same
9 manner as prescribed in chapter 626 for insurance
10 representatives in general, except they shall be exempt from
11 the fingerprinting, photo identification card, education, and
12 examination provisions. License, appointment, and other fees
13 shall be those as prescribed in s. 624.501. No employee or
14 sales representative of a home warranty association or insurer
15 may directly or indirectly solicit or negotiate insurance
16 contracts, or hold herself or himself out in any manner to be
17 an insurance agent or solicitor, unless so qualified,
18 licensed, and appointed therefor under the insurance code. A
19 home warranty association is not required to be licensed as a
20 sales representative to solicit, sell, issue, or otherwise
21 transact the home warranty agreements issued by the home
22 warranty association.

23 Section 20. Section 634.331, Florida Statutes, is
24 amended to read:

25 634.331 Coverage of property for sale.--A home
26 warranty may provide coverage of residential property during
27 the listing period of such property for a period not to exceed
28 12 months, provided that the home warranty company charges the
29 warranty purchaser a separately identifiable charge for the
30 listing ~~list~~ period coverage in an amount equal to at least 15
31 percent of the annual premium charged for the home warranty

1 and the charge for such coverage is due at the earlier of the
2 end of the listing period or the date the sale of the
3 residential property is closed.

4 Section 21. Subsection (9) is added to section
5 634.336, Florida Statutes, to read:

6 634.336 Unfair methods of competition and unfair or
7 deceptive acts or practices defined.--The following methods,
8 acts, or practices are defined as unfair methods of
9 competition and unfair or deceptive acts or practices:

10 (9) FREE HOME WARRANTIES PROHIBITED.--

11 (a) Advertising, offering, or providing a free home
12 warranty as an inducement to the purchase or sale of real or
13 personal property or of services directly or indirectly
14 connected with such real or personal property.

15 (b) For the purposes of this subsection, a "free" home
16 warranty is:

17 1. A home warranty for which no identifiable and
18 additional charge is made to the purchaser of such real
19 property, personal property, or services.

20 2. A home warranty for which an identifiable or
21 additional charge is made in an amount less than the cost of
22 such home warranty as to the seller or other person, other
23 than the home warranty association, providing the same, except
24 that this provision does not apply to home warranty coverage
25 provided during the listing period of a home.

26 3. Using the word "free" or words which imply the
27 provision of a home warranty without a cost in connection with
28 the advertising or offering for sale of any kind of goods,
29 merchandise, or services.

30 Section 22. Subsection (6) is added to section
31 634.415, Florida Statutes, to read:

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 23. 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 advertise, solicit, sell, or issue its
20 products.

21 Section 24. 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.

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 25. 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

1 (6) Paying emergency living and transportation
2 expenses of the owner of a motor vehicle when the motor
3 vehicle is damaged.

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

7 Section 26. Paragraph (a) of subsection (1) of section
8 628.4615, Florida Statutes, is amended to read:

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

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

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

18 Section 27. This act shall take effect upon becoming a
19 law.

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HOUSE SUMMARY

Revises and creates various provisions within pt. I of ch. 634, F.S., relating to motor vehicle service agreement companies. Defines "additive product" and revises the definitions of "motor vehicle service agreement" and "salesperson." Includes part inventories among the allowable assets of a motor vehicle service agreement company. Provides for submission of financial reports to the Department of Insurance in a computer-readable form. Provides that a motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the company. Repeals provisions which require motor vehicle service agreement companies and their salespersons to be subject to pt. X of ch. 626, F.S., relating to viatical settlements. Prohibits engaging in unfair or deceptive acts or practices involving the business of motor vehicle service agreements and defines such acts and practices. Requires vendors and lenders to separately state and identify the amount charged and to be paid for a motor vehicle service agreement. Provides investigative power of the Department of Insurance. Authorizes the department to conduct hearings with respect to specified prohibited practices. Provides a fine for failure to comply with a subpoena or an order directing discovery. Provides for the issuance of cease and desist orders by the department. Provides specified penalties. Provides for appeals of orders of the department. Provides penalties for violation of a cease and desist order of the department.

With respect to pt. II of ch. 634, F.S., relating to home warranty associations, revises the definition of "home warranty." Eliminates specified assets to be deducted in computing the net asset requirements of a home warranty association. Specifies allowable assets and liabilities with respect to the determination of the financial condition of a service warranty association. Provides for submission of financial reports to the Department of Insurance in a computer-readable form. Provides that a home warranty association is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the home warranty agreements issued by the association. Includes advertising, offering, or providing a free home warranty as an inducement to specified purchases or sales among acts or practices which constitute unfair methods of competition and unfair or deceptive acts or practices.

With respect to pt. III of ch. 634, F.S., relating to service warranty associations, provides for submission of statements and reports to the Department of Insurance in a computer-readable form. Provides that a service warranty association is not required to be licensed as a sales representative to solicit, sell, or issue service

752-111-01

1 warranty agreements issued by the association. Includes
2 advertising, offering, or providing a free service
3 warranty as an inducement to specified purchases or sales
4 among acts or practices which constitute unfair methods
5 of competition and unfair or deceptive acts or practices.
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