

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. IX of ch.
20 626, F.S., relating to service agreement
21 companies and their salespersons; creating s.
22 634.2815, F.S.; prohibiting engaging in any
23 trade practice determined to be an unfair
24 method of competition or an unfair or deceptive
25 act or practice involving the business of motor
26 vehicle service agreements; creating s.
27 634.282, F.S.; defining unfair methods of
28 competition and unfair or deceptive acts or
29 practices; creating s. 634.2825, F.S.;
30 requiring vendors and lenders to separately
31 state and identify the amount charged and to be

1 paid for a motor vehicle service agreement;
 2 providing applicability; creating s. 634.283,
 3 F.S.; providing power of the Department of
 4 Insurance to examine and investigate the
 5 affairs of persons involved in the business of
 6 motor vehicle service agreements in the state;
 7 creating s. 634.284, F.S.; authorizing the
 8 department to conduct hearings with respect to
 9 specified prohibited practices; providing a
 10 fine for failure to comply with a subpoena or
 11 an order directing discovery; creating s.
 12 634.285, F.S.; providing for the issuance of
 13 cease and desist orders by the department;
 14 providing specified penalties; creating s.
 15 634.286, F.S.; providing for appeals of orders
 16 of the department; creating s. 634.287, F.S.;
 17 providing penalties for violation of a cease
 18 and desist order of the department; creating s.
 19 634.288, F.S.; providing for civil liability;
 20 amending s. 634.3077, F.S.; eliminating
 21 specified assets to be deducted in computing
 22 the net asset requirement of a home warranty
 23 association; creating s. 634.3078, F.S.;
 24 specifying allowable assets and liabilities
 25 with respect to the determination of the
 26 financial condition of a service warranty
 27 association; amending s. 634.313, F.S.;
 28 providing for submission of annual statements
 29 and financial reports to the Department of
 30 Insurance in a computer-readable form; amending
 31 s. 634.312, F.S.; filing and approval of forms;

1 amending s. 634.318, F.S.; providing that a
 2 home warranty association is not required to be
 3 licensed as a salesperson to solicit, sell,
 4 issue, or otherwise transact the home warranty
 5 agreements issued by the association; amending
 6 s. 634.331, F.S.; revising terminology with
 7 respect to coverage of property for sale;
 8 amending s. 634.415, F.S.; providing for
 9 submission of statements and reports to the
 10 Department of Insurance in a computer-readable
 11 form; amending s. 634.419, F.S.; providing that
 12 a service warranty association is not required
 13 to be licensed as a sales representative to
 14 solicit, sell, or issue service warranty
 15 agreements issued by the association; amending
 16 s. 634.436, F.S.; including advertising,
 17 offering, or providing a free service warranty
 18 as an inducement to specified purchases or
 19 sales among acts or practices which constitute
 20 unfair methods of competition and unfair or
 21 deceptive acts or practices; amending ss.
 22 624.124 and 628.4615, F.S.; correcting cross
 23 references; creating s. 634.289, F.S.; relating
 24 to rulemaking authority; amending s. 634.302,
 25 F.S.; relating to rulemaking authority;
 26 amending s. 634.402, F.S.; relating to
 27 rulemaking authority; providing for effective
 28 dates.

29
 30 Be It Enacted by the Legislature of the State of Florida:
 31

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.

29
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 (e) Uses any advertisement that would mislead or
17 otherwise cause a reasonable person to believe mistakenly that
18 the state or federal government is responsible for the motor
19 vehicle service agreement sales activity of any person or
20 stands behind any person's credit or that any person, the
21 state, or the federal government guarantees any returns on
22 motor vehicle service agreements or is a source of payment of
23 any motor vehicle service agreement obligation of or sold by
24 any person.
25 (2) FALSE INFORMATION AND ADVERTISING
26 GENERALLY.--Knowingly making, publishing, disseminating,
27 circulating, or placing before the public, or causing,
28 directly or indirectly, to be made, published, disseminated,
29 circulated, or placed before the public:
30 (a) In a newspaper, magazine, or other publication;
31

1 (b) In the form of a notice, circular, pamphlet,
2 letter, or poster;

3 (c) Over any radio or television station; or

4 (d) Over the Internet, electronically, or in any other
5 way,

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7 an advertisement, announcement, or statement containing any
8 assertion, representation, or statement with respect to the
9 business of motor vehicle service agreements, which assertion,
10 representation, or statement is untrue, deceptive, or
11 misleading.

12 (3) DEFAMATION.--Knowingly making, publishing,
13 disseminating, or circulating, directly or indirectly, or
14 aiding, abetting, or encouraging the making, publishing,
15 disseminating, or circulating of, any oral or written
16 statement, or any pamphlet, circular, article, or literature,
17 which is false or maliciously critical of, or derogatory to,
18 any person and which is calculated to injure such person.

19 (4) BOYCOTT, COERCION, AND INTIMIDATION.--Entering
20 into any agreement to commit, or by any concerted action
21 committing, any act of boycott, coercion, or intimidation
22 resulting in, or tending to result in, unreasonable restraint
23 of, or monopoly in, the business of motor vehicle service
24 agreements.

25 (5) FALSE STATEMENTS AND ENTRIES.--

26 (a) Knowingly:

27 1. Filing with any supervisory or other public
28 official;

29 2. Making, publishing, disseminating, or circulating;

30 3. Delivering to any person;

31 4. Placing before the public; or

1 5. Causing, directly or indirectly, to be made,
2 published, disseminated, circulated, delivered to any person,
3 or placed before the public,
4
5 any false statement.

6 (b) Knowingly making any false entry of a material
7 fact in any book, report, or statement of any person, or
8 knowingly failing to make a true entry of any material fact
9 pertaining to the business of such person in any book, report,
10 or statement of such person.

11 (6) UNFAIR DISCRIMINATION.--Knowingly making or
12 permitting any unfair discrimination between individuals of
13 the same actuarially supportable class and essentially the
14 same hazard, in the amount of premium, policy fees, or rates
15 charged for any motor vehicle service agreement, in any of the
16 terms or conditions of such agreement, or in any other manner
17 whatsoever.

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

21 (a) Permitting, or offering to make, or making, any
22 contract or agreement as to such contract other than as
23 plainly expressed in the motor vehicle service agreement
24 issued thereon;

25 (b) Paying, allowing, or giving, or offering to pay,
26 allow, or give, directly or indirectly, as inducement to such
27 motor vehicle service agreement, any unlawful rebate of
28 premiums payable on the agreement, any special favor or
29 advantage in the benefits thereon, or any valuable
30 consideration or inducement not specified in the agreement;
31

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

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.--

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

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,
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31

1 shall, in addition to the other penalties provided in this
2 act, commit a misdemeanor of the second degree, punishable as
3 provided in s. 775.082 or s. 775.083.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 cause to have conducted a hearing in accordance with chapter
2 120.

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

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

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

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

1 the department may, at its discretion, order any one or more
2 of the following penalties:

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

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

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

14 634.286 Appeals from orders of the department.--Any
15 person subject to an order of the department under s. 634.285
16 may obtain a review of such order by filing an appeal
17 therefrom in accordance with the provisions and procedures for
18 appeal from the orders of the department in general under s.
19 120.68.

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

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

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

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

1 Section 14. Section 634.288, Florida Statutes, is
2 created to read:

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

7 Section 15. Effective January 1, 2002, section
8 634.3077, Florida Statutes, is amended to read:

9 634.3077 Financial requirements.--

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

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

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

1 ~~outside the United States shall be deducted from the net~~
2 ~~assets of the association.~~

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

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

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

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

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

31

1 Section 16. Effective January 1, 2002, section
2 634.3078, Florida Statutes, is created to read:

3 634.3078 Assets and liabilities.--

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

8 (a) Cash in the possession of the home warranty
9 association, or in transit under its control, including the
10 true balance of any deposit in a solvent bank, savings and
11 loan association, or trust company which is domiciled in the
12 United States.

13 (b) Investments, securities, properties, and loans
14 acquired or held in accordance with this part, and in
15 connection therewith the following items:

16 1. Interest due or accrued on any bond or evidence of
17 indebtedness which is not in default and which is not valued
18 on a basis including accrued interest.

19 2. Declared and unpaid dividends on stock and shares,
20 unless the amount of the dividends has otherwise been allowed
21 as an asset.

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

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

30 5. Interest due or accrued on current mortgage loans,
31 in an amount not exceeding in any event the amount, if any, of

1 the excess of the value of the property less delinquent taxes
2 thereon over the unpaid principal; but in no event shall
3 interest accrued for a period in excess of 90 days be allowed
4 as an asset.

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

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

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

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

20 (e) The liquidation value of prepaid expenses.

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

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

1 department of this determination, if the removal of the asset
2 from the organization's assets would impair the company's
3 solvency.

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

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

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

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

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

24 1. The life of the lease.

25 2. The useful life of the improvements.

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

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

30 (f) Notes or other evidences of indebtedness which are
31 secured by mortgages or deeds of trust which are in default

1 and beyond the express period specified in the instrument for
2 curing the default.

3 (g) Bonds in default for more than 60 days.

4 (h) Deferred costs other than the liquidation value of
5 prepaid expenses except for those companies that reserve 100
6 percent of gross written premium.

7 (i) Any note, account receivable, advance, or other
8 evidence of indebtedness, or investment in:

9 1. The parent of the home warranty association;

10 2. Any entity directly or indirectly controlled by the
11 home warranty association's parent;

12 3. An affiliate of the parent or the home warranty
13 association; or

14 4. Officers, directors, shareholders, employees, or
15 salespersons of the home warranty association; however,
16 premium receivables under 45 days old may be considered an
17 admitted asset.

18
19 The department may, however, allow all or a portion of such
20 asset, at values to be determined by the department, if deemed
21 by the department to be available for the payment of losses
22 and claims.

23 (3) LIABILITIES.--In any determination of the
24 financial condition of a home warranty association,
25 liabilities to be charged against its assets shall include,
26 but not be limited to:

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

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

3 (c) Reserve for unearned premiums.

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

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

13 634.312 Filing, approval of forms.

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

22 Section 18. Subsection (5) is added to section
23 634.313, Florida Statutes, to read:

24 634.313 Tax on premiums; annual statement; reports.--

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

31

1 Section 19. Section 634.318, Florida Statutes, is
2 amended to read:

3 634.318 License and appointment of sales
4 representatives.--Sales representatives for home warranty
5 associations and insurers shall be licensed, appointed,
6 renewed, continued, reinstated, or terminated in the same
7 manner as prescribed in chapter 626 for insurance
8 representatives in general, except they shall be exempt from
9 the fingerprinting, photo identification card, education, and
10 examination provisions. License, appointment, and other fees
11 shall be those as prescribed in s. 624.501. No employee or
12 sales representative of a home warranty association or insurer
13 may directly or indirectly solicit or negotiate insurance
14 contracts, or hold herself or himself out in any manner to be
15 an insurance agent or solicitor, unless so qualified,
16 licensed, and appointed therefor under the insurance code. A
17 home warranty association is not required to be licensed as a
18 sales representative to solicit, sell, issue, or otherwise
19 transact the home warranty agreements issued by the home
20 warranty association.

21 Section 20. Section 634.331, Florida Statutes, is
22 amended to read:

23 634.331 Coverage of property for sale.--A home
24 warranty may provide coverage of residential property during
25 the listing period of such property for a period not to exceed
26 12 months, provided that the home warranty company charges the
27 warranty purchaser a separately identifiable charge for the
28 listing list period coverage in an amount equal to at least 15
29 percent of the annual premium charged for the home warranty
30 and the charge for such coverage is due at the earlier of the
31

1 end of the listing period or the date the sale of the
2 residential property is closed.

3 Section 21. Subsection (6) is added to section
4 634.415, Florida Statutes, to read:

5 634.415 Tax on premiums; annual statement; reports;
6 quarterly statements.--

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

13 Section 22. Section 634.419, Florida Statutes, is
14 amended to read:

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

25 Section 23. Subsection (8) is added to section
26 634.436, Florida Statutes, to read:

27 634.436 Unfair methods of competition and unfair or
28 deceptive acts or practices defined.--The following methods,
29 acts, or practices are defined as unfair methods of
30 competition and unfair or deceptive acts or practices:

31 (8) FREE SERVICE WARRANTIES.--

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

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

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

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

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

18 Section 24. Section 624.124, Florida Statutes, is
19 amended to read:

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

26 (1) Towing service.

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

29 (3) Emergency service.
30
31

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

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

6 (6) Paying emergency living and transportation
7 expenses of the owner of a motor vehicle when the motor
8 vehicle is damaged.

9
10 For purposes of this section, "motor vehicle" has the same
11 meaning specified by s. 634.011~~(7)(6)~~.

12 Section 25. Paragraph (a) of subsection (1) of section
13 628.4615, Florida Statutes, is amended to read:

14 628.4615 Specialty insurers; acquisition of
15 controlling stock, ownership interest, assets, or control;
16 merger or consolidation.--

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

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

23 Section 26. Section 634.289, Florida Statutes, is
24 created to read:

25 634.289 Rules.--The department may adopt rules, in
26 accordance with chapter 120, to identify specific methods of
27 competition or acts or practices which are prohibited by s.
28 634.282, but these rules shall not enlarge upon or extend the
29 provisions of that section.

30 Section 27. Section 634.302, Florida Statutes, is
31 created to read:

1 634.302 Powers of department; rules.--The department
2 shall administer this part, and, to that end, it has authority
3 to adopt rules pursuant to ss. 120.536(1) and 120.54 to
4 implement the provisions of this part. Such rules may include
5 rules to identify specific methods of competition or acts or
6 practices which are prohibited by s. 634.336, but the rules
7 shall not enlarge upon or extend the provisions of that
8 section.

9 Section 28. Section 634.402, Florida Statutes, is
10 amended to read:

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

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