

Bill No. SB 2240

Amendment No. 1 Barcode 122232

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Banking and Insurance recommended the following amendment:

Senate Amendment (with title amendment)

On page 9, line 13, through page 33, line 8, delete those lines

and insert:

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

(2) FALSE INFORMATION AND ADVERTISING GENERALLY.--Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated,

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1 circulated, or placed before the public:

2 (a) In a newspaper, magazine, or other publication;

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

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

6 (d) Over the Internet, electronically, or in any other
7 way,

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

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

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

27 (5) FALSE STATEMENTS AND ENTRIES.--

28 (a) Knowingly:

29 1. Filing with any supervisory or other public
30 official;

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

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1 3. Delivering to any person;
2 4. Placing before the public; or
3 5. Causing, directly or indirectly, to be made,
4 published, disseminated, circulated, delivered to any person,
5 or placed before the public,
6
7 any false statement.

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

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

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

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

27 (b) Paying, allowing, or giving, or offering to pay,
28 allow, or give, directly or indirectly, as inducement to such
29 motor vehicle service agreement, any unlawful rebate of
30 premiums payable on the agreement, any special favor or
31 advantage in the benefits thereon, or any valuable

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1 consideration or inducement not specified in the agreement;

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

10 (8) UNFAIR CLAIM SETTLEMENT PRACTICES.--

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

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

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

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

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

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

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

31 5. Failure to affirm or deny full or partial coverage

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

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

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

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

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

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

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

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1 (12) FREE SERVICE AGREEMENTS.--

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

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

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

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

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

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

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

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

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

4 (14) INTERLOCKING OWNERSHIP AND MANAGEMENT.--

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

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

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

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

25 (b) Any salesperson who represents any motor vehicle
26 service agreement company or collects or does business without
27 the authority of the motor vehicle service agreement company,
28 secures cash advances by false statements, or fails to turn
29 over when required, or satisfactorily account for, all
30 collections of such motor vehicle service agreement company,
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1 in addition to the other penalties provided in this act,
 2 commits 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

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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 that
 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 may examine and investigate the
 15 affairs of every person involved in the business of motor
 16 vehicle service agreements in this state in order to determine
 17 whether such person has been or is engaged in any unfair
 18 method of competition or in any unfair or deceptive act or
 19 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

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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,

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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.

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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~~

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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 Section 16. Effective January 1, 2002, section

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1 634.3078, Florida Statutes, is created to read:

2 634.3078 Assets and liabilities.--

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

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

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

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

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

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

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

29 5. Interest due or accrued on current mortgage loans,
30 in an amount not exceeding the amount, if any, of the excess
31 of the value of the property less delinquent taxes thereon

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1 over the unpaid principal; but interest accrued for a period
2 in excess of 90 days may not be allowed as an asset.

3 6. Rent due or accrued on real property if such rent
4 is not in arrears for more than 3 months. However, rent
5 accrued for a period in excess of 90 days may not be allowed
6 as an asset.

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

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

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

18 (e) The liquidation value of prepaid expenses.

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

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

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1 solvency.

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

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

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

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

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

22 1. The life of the lease.

23 2. The useful life of the improvements.

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

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

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

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

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1 (c) Reserve for unearned premiums.

2

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

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

11 634.312 Filing, approval of forms.--

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

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

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

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

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

31 634.318 License and appointment of sales

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

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

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

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

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

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

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

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

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

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

27 (8) FREE SERVICE WARRANTIES.--

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

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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. A service warranty with respect to which the word
11 "free" or words implying that the provision of the service
12 warranty is without cost are used in connection with the
13 advertising or offering for sale of any kind of goods,
14 merchandise, or services.

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

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

23 (1) Towing service.

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

26 (3) Emergency service.

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

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

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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)~~s. 634.011(6)~~.

7 Section 25. Subsection (1) of section 628.4615,
8 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) and (9)~~s. 634.011(7) and~~
18 ~~(8)~~;

19 (b) A home warranty association authorized to issue
20 "home warranties" as those terms are defined in s. 634.301(4)
21 and (5);

22 (c) A service warranty association authorized to issue
23 "service warranties" as those terms are defined in s.
24 634.401(14) and (15);

25 (d) An optometric service plan corporation authorized
26 to issue optometric service plan contracts as those terms are
27 defined in s. 637.001(2) and (3);

28 (e) A pharmaceutical service plan corporation
29 authorized to issue pharmaceutical service plan contracts as
30 those terms are defined in s. 637.1701(2) and (3);

31 (f) A dental service plan corporation licensed to

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1 issue contracts for dental services pursuant to a dental
2 service plan as that term is defined in s. 637.401(1);

3 (g) An ambulance service association authorized to
4 issue ambulance service contracts as those terms are defined
5 in s. 638.021(1) and (2);

6 (h) An authorized health maintenance organization
7 operating pursuant to s. 641.21;

8 (i) An authorized prepaid health clinic operating
9 pursuant to s. 641.405;

10 (j) A legal expense insurance corporation authorized
11 to engage in a legal expense insurance business pursuant to s.
12 642.021;

13 (k) A provider which is licensed to operate a facility
14 which undertakes to provide continuing care as those terms are
15 defined in s. 651.011(2), (5), (6), and (7);

16 (l) A multiple-employer welfare arrangement operating
17 pursuant to ss. 624.436-624.446;

18 (m) A premium finance company authorized to finance
19 insurance premiums pursuant to s. 627.828; or

20 (n) A corporation authorized to accept donor annuity
21 agreements pursuant to s. 627.481.

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

24 634.289 Rules.--The department may adopt rules, in
25 accordance with chapter 20, to identify specific methods of
26 competition or acts or practices that are prohibited by s.
27 634.282, but these rules shall not enlarge upon or extend the
28 provisions of that section.

29 Section 27. Section 634.302, Florida Statutes, is
30 amended to read:

31 634.302 Powers of department; rules.--The department

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

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

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

17 Section 29. Except as otherwise expressly provided in
 18 this act, this act shall take effect upon becoming a law.

19
 20

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

22 And the title is amended as follows:

23 On page 1, line 17, through page 3, line 28, delete
 24 those lines

25
 26

and insert:

27 repealing s. 634.281, F.S., which provides that
 28 service agreement companies and their
 29 salespersons shall be subject to pt. IX of ch.
 30 626, F.S., relating to service agreement
 31 companies and their salespersons; creating s.

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1 634.2815, F.S.; prohibiting engaging in any
2 trade practice determined to be an unfair
3 method of competition or an unfair or deceptive
4 act or practice involving the business of motor
5 vehicle service agreements; creating s.
6 634.282, F.S.; defining unfair methods of
7 competition and unfair or deceptive acts or
8 practices; creating s. 634.2825, F.S.;
9 requiring vendors and lenders to separately
10 state and identify the amount charged and to be
11 paid for a motor vehicle service agreement;
12 providing applicability; creating s. 634.283,
13 F.S.; providing power of the Department of
14 Insurance to examine and investigate the
15 affairs of persons involved in the business of
16 motor vehicle service agreements in the state;
17 creating s. 634.284, F.S.; authorizing the
18 department to conduct hearings with respect to
19 specified prohibited practices; providing a
20 fine for failure to comply with a subpoena or
21 an order directing discovery; creating s.
22 634.285, F.S.; providing for the issuance of
23 cease and desist orders by the department;
24 providing specified penalties; creating s.
25 634.286, F.S.; providing for appeals of orders
26 of the department; creating s. 634.287, F.S.;
27 providing penalties for violation of a cease
28 and desist order of the department; creating s.
29 634.288, F.S.; providing for civil liability;
30 amending s. 634.3077, F.S.; eliminating
31 specified assets to be deducted in computing

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1 the net asset requirement of a home warranty
2 association; creating s. 634.3078, F.S.;
3 specifying allowable assets and liabilities
4 with respect to the determination of the
5 financial condition of a service warranty
6 association; amending s. 634.312, F.S.;
7 amending provisions relating to the filing and
8 approval of forms; amending s. 634.313, F.S.;
9 providing for the submission of annual
10 statements and financial reports to the
11 Department of Insurance in a computer-readable
12 form; amending s. 634.318, F.S.; providing that
13 a home warranty association is not required to
14 be licensed as a salesperson to solicit, sell,
15 issue, or otherwise transact the home warranty
16 agreements issued by the association; amending
17 s. 634.331, F.S.; revising terminology with
18 respect to coverage of property for sale;
19 amending s. 634.415, F.S.; providing for the
20 submission of statements and reports to the
21 Department of Insurance in a computer-readable
22 form; amending s. 634.419, F.S.; providing that
23 a service warranty association is not required
24 to be licensed as a sales representative to
25 solicit, sell, or issue service warranty
26 agreements issued by the association; amending
27 s. 634.436, F.S.; including advertising,
28 offering, or providing a free service warranty
29 as an inducement to specified purchases or
30 sales among acts or practices that constitute
31 unfair methods of competition and unfair or

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1 deceptive acts or practices; amending ss.
2 624.124, 628.4615, F.S.; correcting
3 cross-references; creating s. 634.289, F.S.;
4 providing rulemaking authority; amending s.
5 634.302, F.S.; providing rulemaking authority;
6 amending s. 634.402, F.S.; providing rulemaking
7 authority; providing for effective dates.
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