

By Senator Garcia

39-871A-01

See HB 1787

1                                   A bill to be entitled

2           An act relating to warranty associations;

3           amending s. 634.011, F.S.; defining the term

4           "additive product"; redefining the terms "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 are subject to pt. X of ch. 626,

20          F.S., relating to viatical settlements;

21          creating s. 634.2815, F.S.; prohibiting

22          engaging in any trade practice determined to be

23          an unfair method of competition or an unfair or

24          deceptive act or practice involving the

25          business of motor vehicle service agreements;

26          creating s. 634.282, F.S.; defining unfair

27          methods of competition and unfair or deceptive

28          acts or practices; creating s. 634.2825, F.S.;

29          requiring vendors and lenders to separately

30          state and identify the amount charged and to be

31          paid for a motor vehicle service agreement;

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

1 a home warranty association is not required to  
2 be licensed as a salesperson to solicit, sell,  
3 issue, or otherwise transact the home warranty  
4 agreements issued by the association; amending  
5 s. 634.331, F.S.; revising terminology with  
6 respect to coverage of property for sale;  
7 amending s. 634.336, F.S.; including  
8 advertising, offering, or providing a free home  
9 warranty as an inducement to specified  
10 purchases or sales among acts or practices  
11 which constitute unfair methods of competition  
12 and unfair or deceptive acts or practices;  
13 amending s. 634.415, F.S.; providing for  
14 submission of statements and reports to the  
15 Department of Insurance in a computer-readable  
16 form; amending s. 634.419, F.S.; providing that  
17 a service warranty association is not required  
18 to be licensed as a sales representative to  
19 solicit, sell, or issue service warranty  
20 agreements issued by the association; amending  
21 s. 634.436, F.S.; including advertising,  
22 offering, or providing a free service warranty  
23 as an inducement to specified purchases or  
24 sales among acts or practices which constitute  
25 unfair methods of competition and unfair or  
26 deceptive acts or practices; amending ss.  
27 624.124, 628.4615, F.S.; conforming  
28 cross-references; providing an effective date.

29  
30 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Present subsections (2) through (16) of  
2 section 634.011, Florida Statutes, are renumbered as  
3 subsections (3) through (17), respectively, present  
4 subsections (7) and (13) are amended, and a new subsection (2)  
5 is added to that section, to read:

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

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

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

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

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

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

7 634.044 Assets and liabilities.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 634.137 Financial and statistical reporting  
10 requirements.--

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

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

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

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

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

14 Section 6. Section 634.2815, Florida Statutes, is  
15 created to read:

16 634.2815 Unfair methods of competition and unfair or  
17 deceptive acts or practices prohibited.--No person may engage  
18 in this state in any trade practice which is defined in this  
19 part as, or determined pursuant to s. 634.282 to be, an unfair  
20 method of competition or an unfair or deceptive act or  
21 practice involving the business of motor vehicle service  
22 agreements.

23 Section 7. Section 634.282, Florida Statutes, is  
24 created to read:

25 634.282 Unfair methods of competition and unfair or  
26 deceptive acts or practices defined.--The following methods,  
27 acts, or practices are defined as unfair methods of  
28 competition and unfair or deceptive acts or practices:

29 (1) MISREPRESENTATION AND FALSE  
30 ADVERTISING.--Knowingly making, issuing, circulating, or  
31 causing to be made, issued, or circulated, any estimate,



1 illustration, circular, statement, sales presentation,  
2 omission, or comparison which:  
3 (a) Misrepresents the benefits, advantages,  
4 conditions, or terms of any motor vehicle service agreement.  
5 (b) Is misleading or is a misrepresentation as to the  
6 financial condition of any person.  
7 (c) Uses any name or title of any contract  
8 misrepresenting the true nature thereof.  
9 (d) Is a misrepresentation for the purpose of  
10 inducing, or tending to induce, the lapse, forfeiture,  
11 exchange, conversion, or surrender of any motor vehicle  
12 service agreement.  
13 (2) FALSE INFORMATION AND ADVERTISING  
14 GENERALLY.--Knowingly making, publishing, disseminating,  
15 circulating, or placing before the public, or causing,  
16 directly or indirectly, to be made, published, disseminated,  
17 circulated, or placed before the public:  
18 (a) In a newspaper, magazine, or other publication;  
19 (b) In the form of a notice, circular, pamphlet,  
20 letter, or poster;  
21 (c) Over any radio or television station; or  
22 (d) Over the Internet, electronically, or in any other  
23 way,  
24  
25 an advertisement, announcement, or statement containing any  
26 assertion, representation, or statement with respect to the  
27 business of motor vehicle service agreements, which assertion,  
28 representation, or statement is untrue, deceptive, or  
29 misleading.  
30 (3) DEFAMATION.--Knowingly making, publishing,  
31 disseminating, or circulating, directly or indirectly, or

1 aiding, abetting, or encouraging the making, publishing,  
2 disseminating, or circulating of, any oral or written  
3 statement, or any pamphlet, circular, article, or literature,  
4 which is false or maliciously critical of, or derogatory to,  
5 any person and which is calculated to injure such person.

6 (4) BOYCOTT, COERCION, AND INTIMIDATION.--Entering  
7 into any agreement to commit, or by any concerted action  
8 committing, any act of boycott, coercion, or intimidation  
9 resulting in, or tending to result in, unreasonable restraint  
10 of, or monopoly in, the business of motor vehicle service  
11 agreements.

12 (5) FALSE STATEMENTS AND ENTRIES.--

13 (a) Knowingly:

14 1. Filing with any supervisory or other public  
15 official;

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

17 3. Delivering to any person;

18 4. Placing before the public; or

19 5. Causing, directly or indirectly, to be made,  
20 published, disseminated, circulated, delivered to any person,  
21 or placed before the public,

22  
23 any false statement.

24 (b) Knowingly making any false entry of a material  
25 fact in any book, report, or statement of any person, or  
26 knowingly failing to make a true entry of any material fact  
27 pertaining to the business of such person in any book, report,  
28 or statement of such person.

29 (6) UNFAIR DISCRIMINATION.--Knowingly making or  
30 permitting any unfair discrimination between individuals of  
31 the same actuarially supportable class and essentially the

1 same hazard, in the amount of premium, policy fees, or rates  
2 charged for any motor vehicle service agreement, in any of the  
3 terms or conditions of such agreement, or in any other manner  
4 whatsoever.

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

8 (a) Permitting, or offering to make, or making, any  
9 contract or agreement as to such contract other than as  
10 plainly expressed in the motor vehicle service agreement  
11 issued thereon;

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

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

26 (8) UNFAIR CLAIM SETTLEMENT PRACTICES.--

27 (a) Attempting to settle claims on the basis of an  
28 application or any other material document which was altered  
29 without notice to, or knowledge or consent of, the service  
30 agreement holder;

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1           **(b) Making a material misrepresentation to the service**  
2 **agreement holder for the purpose and with the intent of**  
3 **effecting settlement of such claims, loss, or damage under**  
4 **such contract on less favorable terms than those provided in,**  
5 **and contemplated by, such contract; or**

6           **(c) Committing or performing with such frequency as to**  
7 **indicate a general business practice any of the following**  
8 **practices:**

9           **1. Failure to adopt and implement internal standards**  
10 **for the investigation of claims;**

11           **2. Misrepresentation of pertinent facts or contract**  
12 **provisions relating to coverages at issue;**

13           **3. Failure to acknowledge and act promptly upon**  
14 **communications with respect to claims;**

15           **4. Denial of claims without conducting reasonable**  
16 **investigations based upon available information;**

17           **5. Failure to affirm or deny full or partial coverage**  
18 **of claims and, as to partial coverage, the dollar amount or**  
19 **extent of coverage, or failure to provide a written statement**  
20 **that the claim is being investigated, upon written request of**  
21 **the service agreement holder within 30 days after**  
22 **proof-of-loss statements have been completed;**

23           **6. Failure to promptly provide a reasonable**  
24 **explanation to the service agreement holder of the basis in**  
25 **the contract in relation to the facts or applicable law for**  
26 **denial of a claim or for the offer of a compromise settlement;**

27           **7. Failure to promptly notify the service agreement**  
28 **holder of any additional information necessary for the**  
29 **processing of a claim; or**

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1           8. Failure to clearly explain the nature of the  
2 requested information and the reasons such information is  
3 necessary.

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

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

13           (11) MISREPRESENTATION IN SERVICE AGREEMENT  
14 APPLICATIONS.--Knowingly making a false or fraudulent written  
15 or oral statement or representation on, or relative to, an  
16 application or negotiation for a motor vehicle service  
17 agreement for the purpose of obtaining a fee, commission,  
18 money, or other benefit from any insurer, service agreement  
19 company, agent, broker, salesperson, or individual.

20           (12) FREE SERVICE AGREEMENTS.--

21           (a) Advertising, offering, or providing a free motor  
22 vehicle service agreement as an inducement to the purchase or  
23 sale of real or personal property or of services directly or  
24 indirectly connected with such real or personal property.

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

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

30           2. A motor vehicle service agreement for which an  
31 identifiable or additional charge is made in an amount less

1 than the cost of such motor vehicle service agreement as to  
2 the seller or other person, other than the service agreement  
3 company, providing the same.

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

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

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

17 (b) Knowingly collecting as a premium or charge for a  
18 motor vehicle service agreement any sum in excess of or less  
19 than the premium or charge applicable to such motor vehicle  
20 service agreement, in accordance with the applicable  
21 classifications and rates as filed with the department, and as  
22 specified in the motor vehicle service agreement.

23 (14) INTERLOCKING OWNERSHIP AND MANAGEMENT.--

24 (a) Any motor vehicle service agreement company may  
25 retain, invest in, or acquire the whole or any part of the  
26 capital of any other motor vehicle service agreement company,  
27 or have a common management with any other motor vehicle  
28 service agreement company, unless such retention, investment,  
29 acquisition, or common management is inconsistent with any  
30 other provision of this part, or unless by reason thereof the  
31 business of such insurers with the public is conducted in a

1 manner which substantially lessens competition generally in  
2 the insurance business.

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

8 (15) FALSE CLAIMS; OBTAINING OR RETAINING MONEY  
9 DISHONESTLY.--

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

13 (b) Any salesperson who represents any motor vehicle  
14 service agreement company or collects or does business without  
15 the authority of the motor vehicle service agreement company,  
16 secures cash advances by false statements, or fails to turn  
17 over when required, or satisfactorily account for, all  
18 collections of such motor vehicle service agreement company,

19  
20 shall, in addition to the other penalties provided in this  
21 act, commit a misdemeanor of the second degree, punishable as  
22 provided in s. 775.082 or s. 775.083.

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

24 (a) Representing to the applicant that a specific  
25 ancillary coverage or product is required by law in  
26 conjunction with the purchase of a motor vehicle service  
27 agreement when such coverage or product is not required;

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

1           (c) Charging an applicant for a specific ancillary  
2 coverage or product, in addition to the cost of the motor  
3 vehicle service agreement coverage applied for, without the  
4 informed consent of the applicant.

5  
6 No provision of this section shall be deemed to prohibit a  
7 service agreement company or a licensed insurer from giving to  
8 service agreement holders, prospective service agreement  
9 holders, and others for the purpose of advertising, any  
10 article of merchandise having a value of not more than \$25.

11           Section 8. Section 634.2825, Florida Statutes, is  
12 created to read:

13           634.2825 Motor vehicle service agreement cost  
14 specified in "price package".--

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

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

30           Section 9. Section 634.283, Florida Statutes, is  
31 created to read:



1           634.283 Power of department to examine and  
2 investigate.--The department has the power to examine and  
3 investigate the affairs of every person involved in the  
4 business of motor vehicle service agreements in this state in  
5 order to determine whether such person has been or is engaged  
6 in any unfair method of competition or in any unfair or  
7 deceptive act or practice prohibited by s. 634.2815.

8           Section 10. Section 634.284, Florida Statutes, is  
9 created to read:

10           634.284 Prohibited practices; hearings, witnesses,  
11 appearances, production of books, and service of process.--

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

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

28           (3) A statement of charges, notice, or order under  
29 this part may be served by anyone duly authorized by the  
30 department, either in the manner provided by law for service  
31 of process in civil actions or by certifying and mailing a

1 copy thereof to the person affected by such statement, notice,  
2 order, or other process at her or his residence or principal  
3 office or place of business. The verified return by the person  
4 so serving such statement, notice, order, or other process,  
5 setting forth the manner of the service is proof of the same;  
6 and the return postcard receipt for such statement, notice,  
7 order, or other process, certified and mailed as provided in  
8 this subsection, is proof of service of the same.

9 Section 11. Section 634.285, Florida Statutes, is  
10 created to read:

11 634.285 Cease and desist and penalty orders.--After  
12 the hearing provided for in s. 634.284, the department shall  
13 enter a final order in accordance with s. 120.569. If it is  
14 determined that the person charged has engaged in an unfair or  
15 deceptive act or practice or the unlawful transaction of a  
16 service agreement business, the department also shall issue an  
17 order requiring the violator to cease and desist from engaging  
18 in such method of competition, act, or practice or the  
19 unlawful transaction of service agreement business. Further,  
20 the department may, at its discretion, order any one or more  
21 of the following penalties:

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

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

31

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

3 634.286 Appeals from orders of the department.--Any  
4 person subject to an order of the department under s. 634.285  
5 may obtain a review of such order by filing an appeal  
6 therefrom in accordance with the provisions and procedures for  
7 appeal from the orders of the department in general under s.  
8 120.68.

9 Section 13. Section 634.287, Florida Statutes, is  
10 created to read:

11 634.287 Penalty for violation of cease and desist  
12 order.--Any person who violates a cease and desist order of  
13 the department under s. 634.285 while such order is in effect,  
14 after notice and hearing as provided in s. 634.284, is  
15 subject, at the discretion of the department, to any one or  
16 more of the following penalties:

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

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

21 Section 14. Section 634.288, Florida Statutes, is  
22 created to read:

23 634.288 Civil liability.--The provisions of this part  
24 are cumulative to rights under the general civil and common  
25 law, and no action of the department will abrogate such rights  
26 to damages or other relief in any court.

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

29 634.301 Definitions.--As used in this part, the term:

30 (4) "Home warranty" or "warranty" means any contract  
31 or agreement:

1           (a) Offered in connection with the sale of residential  
2 property;

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

7           (c) Offered in connection with a home improvement of  
8 \$7,500 or more for residential property that is the subject of  
9 the warranty, but not in connection with the sale of such  
10 property;

11

12 whereby a person undertakes to indemnify the warranty holder  
13 against the cost of repair or replacement, or actually  
14 furnishes repair or replacement, of any structural component  
15 or appliance of a home, necessitated by wear and tear or an  
16 inherent defect of any such structural component or appliance  
17 or necessitated by the failure of an inspection to detect the  
18 likelihood of any such loss. However, this part does not  
19 prohibit the giving of usual performance guarantees by either  
20 the builder of a home or the manufacturer or seller of an  
21 appliance, as long as no identifiable charge is made for such  
22 guarantee. This part does not permit the provision of  
23 indemnification against consequential damages arising from the  
24 failure of any structural component or appliance of a home,  
25 which practice constitutes the transaction of insurance  
26 subject to all requirements of the insurance code. This part  
27 does not apply to service contracts entered into between  
28 consumers and nonprofit organizations or cooperatives the  
29 members of which consist of condominium associations and  
30 condominium owners and which perform repairs and maintenance  
31 for appliances or maintenance of the residential property.

1 This part does not apply to a contract or agreement offered in  
2 connection with the sale of residential property by a service  
3 warranty association in compliance with part III of this  
4 chapter, provided such contract or agreement only relates to  
5 the systems and appliances of the covered residential property  
6 and does not cover any structural component of the residential  
7 property.

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

10 634.3077 Financial requirements.--

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

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

29 ~~(3) In computing the net asset requirement, goodwill,~~  
30 ~~franchises, customer lists, patents or trademarks, receivables~~  
31 ~~from or advances to officers, directors, employees,~~

1 ~~salespersons, or affiliated companies; and assets deposited~~  
2 ~~outside the United States shall be deducted from the net~~  
3 ~~assets of the association.~~

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

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

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

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

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

1 Section 17. Section 634.3078, Florida Statutes, is  
2 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 or 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 18. Subsection (5) is added to section  
12 634.313, Florida Statutes, to read:

13           634.313 Tax on premiums; annual statement; reports.--

14           (5) The department may by rule require each home  
15 warranty association to submit to the department, as the  
16 department may designate, all or part of the information  
17 contained in the financial reports required by this section in  
18 a computer-readable form compatible with the electronic data  
19 processing system specified by the department.

20           Section 19. Section 634.318, Florida Statutes, is  
21 amended to read:

22           634.318 License and appointment of sales  
23 representatives.--Sales representatives for home warranty  
24 associations and insurers shall be licensed, appointed,  
25 renewed, continued, reinstated, or terminated in the same  
26 manner as prescribed in chapter 626 for insurance  
27 representatives in general, except they shall be exempt from  
28 the fingerprinting, photo identification card, education, and  
29 examination provisions. License, appointment, and other fees  
30 shall be those as prescribed in s. 624.501. No employee or  
31 sales representative of a home warranty association or insurer

1 may directly or indirectly solicit or negotiate insurance  
2 contracts, or hold herself or himself out in any manner to be  
3 an insurance agent or solicitor, unless so qualified,  
4 licensed, and appointed therefor under the insurance code. A  
5 home warranty association is not required to be licensed as a  
6 sales representative to solicit, sell, issue, or otherwise  
7 transact the home warranty agreements issued by the home  
8 warranty association.

9 Section 20. Section 634.331, Florida Statutes, is  
10 amended to read:

11 634.331 Coverage of property for sale.--A home  
12 warranty may provide coverage of residential property during  
13 the listing period of such property for a period not to exceed  
14 12 months, provided that the home warranty company charges the  
15 warranty purchaser a separately identifiable charge for the  
16 listing ~~list~~ period coverage in an amount equal to at least 15  
17 percent of the annual premium charged for the home warranty  
18 and the charge for such coverage is due at the earlier of the  
19 end of the listing period or the date the sale of the  
20 residential property is closed.

21 Section 21. Subsection (9) is added to section  
22 634.336, Florida Statutes, to read:

23 634.336 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 (9) FREE HOME WARRANTIES PROHIBITED.--

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

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

3           1. A home 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 home warranty for which an identifiable or  
7 additional charge is made in an amount less than the cost of  
8 such home warranty as to the seller or other person, other  
9 than the home warranty association, providing the same, except  
10 that this provision does not apply to home warranty coverage  
11 provided during the listing period of a home.

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

16           Section 22. Subsection (6) is added to section  
17 634.415, Florida Statutes, to read:

18           634.415 Tax on premiums; annual statement; reports;  
19 quarterly statements.--

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

26           Section 23. Section 634.419, Florida Statutes, is  
27 amended to read:

28           634.419 License and appointment required.--No person  
29 or entity shall solicit, negotiate, advertise, or effectuate  
30 service warranty contracts in this state unless such person or  
31 entity is licensed and appointed as a sales representative.

1 Sales representatives shall be responsible for the actions of  
2 persons under their supervision. However, a service warranty  
3 association licensed as such under this part shall not be  
4 required to be licensed and appointed as a sales  
5 representative to advertise, solicit, sell, or issue its  
6 products.

7 Section 24. Subsection (8) is added to section  
8 634.436, Florida Statutes, to read:

9 634.436 Unfair methods of competition and unfair or  
10 deceptive acts or practices defined.--The following methods,  
11 acts, or practices are defined as unfair methods of  
12 competition and unfair or deceptive acts or practices:

13 (8) FREE SERVICE WARRANTIES.--

14 (a) Advertising, offering, or providing a free service  
15 warranty as an inducement to the purchase or sale of real or  
16 personal property or of services directly or indirectly  
17 connected with such real or personal property.

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

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

23 2. A service warranty for which an identifiable or  
24 additional charge is made in an amount less than the cost of  
25 such service warranty as to the seller or other person, other  
26 than the service warranty association, providing the same.

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

31

1           Section 25. Section 624.124, Florida Statutes, is  
2 amended to read:

3           624.124 Motor vehicle services; exemption from  
4 code.--Any person may, in exchange for fees, dues, charges, or  
5 other consideration, provide any of the following services  
6 related to the ownership, operation, use, or maintenance of a  
7 motor vehicle without being deemed an insurer and without  
8 being subject to the provisions of this code:

9           (1) Towing service.

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

12           (3) Emergency service.

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

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

18           (6) Paying emergency living and transportation  
19 expenses of the owner of a motor vehicle when the motor  
20 vehicle is damaged.

21

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

24           Section 26. Subsection (1) of section 628.4615,  
25 Florida Statutes, is amended to read:

26           628.4615 Specialty insurers; acquisition of  
27 controlling stock, ownership interest, assets, or control;  
28 merger or consolidation.--

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

- 1 (a) A motor vehicle service agreement company  
2 authorized to issue motor vehicle service agreements as those  
3 terms are defined in s. 634.011~~(8)~~(8)and~~(9)~~(8);
- 4 (b) A home warranty association authorized to issue  
5 "home warranties" as those terms are defined in s. 634.301(4)  
6 and (5);
- 7 (c) A service warranty association authorized to issue  
8 "service warranties" as those terms are defined in s.  
9 634.401(14) and (15);
- 10 (d) An optometric service plan corporation authorized  
11 to issue optometric service plan contracts as those terms are  
12 defined in s. 637.001(2) and (3);
- 13 (e) A pharmaceutical service plan corporation  
14 authorized to issue pharmaceutical service plan contracts as  
15 those terms are defined in s. 637.1701(2) and (3);
- 16 (f) A dental service plan corporation licensed to  
17 issue contracts for dental services pursuant to a dental  
18 service plan as that term is defined in s. 637.401(1);
- 19 (g) An ambulance service association authorized to  
20 issue ambulance service contracts as those terms are defined  
21 in s. 638.021(1) and (2);
- 22 (h) An authorized health maintenance organization  
23 operating pursuant to s. 641.21;
- 24 (i) An authorized prepaid health clinic operating  
25 pursuant to s. 641.405;
- 26 (j) A legal expense insurance corporation authorized  
27 to engage in a legal expense insurance business pursuant to s.  
28 642.021;
- 29 (k) A provider which is licensed to operate a facility  
30 which undertakes to provide continuing care as those terms are  
31 defined in s. 651.011(2), (5), (6), and (7);



1           (1) A multiple-employer welfare arrangement operating  
2 pursuant to ss. 624.436-624.446;

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

5           (n) A corporation authorized to accept donor annuity  
6 agreements pursuant to s. 627.481.

7           Section 27. This act shall take effect upon becoming a  
8 law.

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LEGISLATIVE SUMMARY

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

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

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

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