

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

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

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

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

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.

29
30 The department, upon determining that a service agreement
31 company's asset has not been evaluated according to applicable

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

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

9 634.137 Financial and statistical reporting
10 requirements.--

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

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

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

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

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

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

1 (d) Over the Internet, electronically, or in any other
2 way,
3
4 an advertisement, announcement, or statement containing any
5 assertion, representation, or statement with respect to the
6 business of motor vehicle service agreements, which assertion,
7 representation, or statement is untrue, deceptive, or
8 misleading.

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

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

22 (5) FALSE STATEMENTS AND ENTRIES.--

23 (a) Knowingly:

- 24 1. Filing with any supervisory or other public
25 official;
26 2. Making, publishing, disseminating, or circulating;
27 3. Delivering to any person;
28 4. Placing before the public; or
29 5. Causing, directly or indirectly, to be made,
30 published, disseminated, circulated, delivered to any person,
31 or placed before the public,

1
2 any false statement.

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

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

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

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

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

28 (c) Giving, selling, or purchasing, or offering to
29 give, sell, or purchase, as an inducement to such motor
30 vehicle service agreement or in connection therewith, any
31 stocks, bonds, or other securities of any insurance company,

1 service agreement company, or other corporation, association,
2 or partnership, or any dividends or profits accrued thereon,
3 or anything of value not specified in the motor vehicle
4 service agreement.

5 (8) UNFAIR CLAIM SETTLEMENT PRACTICES.--

6 (a) Attempting to settle claims on the basis of an
7 application or any other material document that was altered
8 without notice to, or knowledge or consent of, the service
9 agreement holder;

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

15 (c) Committing or performing with such frequency as to
16 indicate a general business practice any of the following
17 practices:

18 1. Failure to adopt and implement internal standards
19 for the investigation of claims;

20 2. Misrepresentation of pertinent facts or contract
21 provisions relating to coverages at issue;

22 3. Failure to acknowledge and act promptly upon
23 communications with respect to claims;

24 4. Denial of claims without conducting reasonable
25 investigations based upon available information;

26 5. Failure to affirm or deny full or partial coverage
27 of claims and, as to partial coverage, the dollar amount or
28 extent of coverage, or failure to provide a written statement
29 that the claim is being investigated, upon written request of
30 the service agreement holder within 30 days after
31 proof-of-loss statements have been completed;

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

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

8 8. Failure to clearly explain the nature of the
9 requested information and the reasons such information is
10 necessary.

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

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

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

27 (12) FREE SERVICE AGREEMENTS.--

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

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

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

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

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

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

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

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

30 (14) INTERLOCKING OWNERSHIP AND MANAGEMENT.--
31

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

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

16 (15) FALSE CLAIMS; OBTAINING OR RETAINING MONEY
17 DISHONESTLY.--

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

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

27
28 in addition to the other penalties provided in this act,
29 commits a misdemeanor of the second degree, punishable as
30 provided in s. 775.082 or s. 775.083.

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

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

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

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

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

19 Section 8. Section 634.2825, Florida Statutes, is
20 created to read:

21 634.2825 Motor vehicle service agreement cost
22 specified in "price package".--

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

1 reduce, or otherwise affect any other factor involved in the
2 cost of merchandise, property, or financing as to the
3 purchaser or borrower.

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

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

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

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

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

20 (1) Whenever the department has reason to believe that
21 any person has engaged, or is engaging, in this state in any
22 unfair method of competition or any unfair or deceptive act or
23 practice as defined in s. 634.282, or is engaging in the
24 business of motor vehicle service agreements without being
25 properly licensed as required by this part, and that a
26 proceeding by the department in respect thereto would be in
27 the interest of the public, the department shall conduct or
28 cause to have conducted a hearing in accordance with chapter
29 120.

30 (2) The department, a duly empowered hearing officer,
31 or an administrative law judge shall, during the conduct of

1 such hearing, have those powers enumerated in s. 120.569;
2 however, the penalty for failure to comply with a subpoena or
3 with an order directing discovery is limited to a fine not to
4 exceed \$1,000 per violation.

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

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

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

30 (1) The suspension or revocation of such person's
31 license, or eligibility for any license, if the person knew,

1 or reasonably should have known, that she or he was in
2 violation of this part.

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

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

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

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

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

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

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

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

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

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

3 Section 15. Effective January 1, 2002, section
4 634.3077, Florida Statutes, is amended to read:

5 634.3077 Financial requirements.--

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

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

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

30 (3)~~(4)~~ An association shall not be required to set up
31 an unearned premium reserve if it has purchased contractual

1 liability insurance which demonstrates to the satisfaction of
2 the department that 100 percent of its claim exposure is
3 covered by such insurance. Such contractual liability
4 insurance shall be obtained from an insurer that holds a
5 certificate of authority to do business within the state or
6 from an insurer approved by the department as financially
7 capable of meeting the obligations incurred pursuant to the
8 policy. For purposes of this subsection, the contractual
9 liability policy shall contain the following provisions:

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

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

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

23 ~~(4)(5)~~ An association that purchases contractual
24 liability insurance on the warranties that it issues shall
25 provide the department with claim statistics required to be
26 filed by associations not purchasing such insurance.

27 Section 16. Effective January 1, 2002, section
28 634.3078, Florida Statutes, is created to read:

29 634.3078 Assets and liabilities.--

30 (1) ASSETS.--In any determination of the financial
31 condition of a home warranty association, there shall be

1 allowed as assets only those assets that are owned by the home
2 warranty association company and which assets consist of:

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

8 (b) Investments, securities, properties, and loans
9 acquired or held in accordance with this part and, in
10 connection therewith, the following items:

11 1. Interest due or accrued on any bond or evidence of
12 indebtedness which is not in default and which is not valued
13 on a basis including accrued interest.

14 2. Declared and unpaid dividends on stock and shares,
15 unless the amount of the dividends has otherwise been allowed
16 as an asset.

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

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

25 5. Interest due or accrued on current mortgage loans,
26 in an amount not exceeding the amount, if any, of the excess
27 of the value of the property less delinquent taxes thereon
28 over the unpaid principal; but interest accrued for a period
29 in excess of 90 days may not be allowed as an asset.

30 6. Rent due or accrued on real property if such rent
31 is not in arrears for more than 3 months. However, rent

1 accrued for a period in excess of 90 days may not be allowed
2 as an asset.

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

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

10 (d) Part inventories maintained for the purpose of
11 servicing products warranted. Part inventories must be listed
12 at cost. Home warranty associations companies are required to
13 maintain records to support valuation of part inventories.

14 (e) The liquidation value of prepaid expenses.

15 (f) Other assets or receivables, not inconsistent with
16 the provisions of this section, deemed by the department to be
17 available for the payment of losses and claims, at values to
18 be determined by the department.

19
20 The department, upon determining that a home warranty
21 association's asset has not been evaluated according to
22 applicable law or that it does not qualify as an asset, shall
23 require the home warranty association to properly reevaluate
24 the asset or replace the asset with an asset suitable to the
25 department within 30 days after written notification by the
26 department of this determination, if the removal of the asset
27 from the organization's assets would impair the company's
28 solvency.

29 (2) ASSETS NOT ALLOWED.--In addition to assets
30 impliedly excluded by the provisions of subsection (1), the
31 following assets expressly shall not be allowed as assets in

- 1 any determination of the financial condition of a home
2 warranty association:
- 3 (a) Goodwill, agreement holder lists, patents, trade
4 names, agreements not to compete, and other like intangible
5 assets.
- 6 (b) Any note or account receivable from or advances to
7 officers, directors, or controlling stockholders, whether
8 secured or not, and advances to employees, agents, or other
9 persons on personal security only.
- 10 (c) Stock of the home warranty association owned by it
11 directly or owned by it through any entity in which the
12 organization owns or controls, directly or indirectly, more
13 than 25 percent of the ownership interest.
- 14 (d) Leasehold improvements, stationery, and
15 literature, except that leasehold improvements made prior to
16 October 1, 2001, shall be allowed as an asset and shall be
17 amortized over the shortest of the following periods:
- 18 1. The life of the lease.
19 2. The useful life of the improvements.
20 3. The 3-year period following October 1, 2001.
- 21 (e) Furniture, fixtures, furnishings, vehicles, and
22 equipment, other than those items authorized under paragraph
23 (1)(c).
- 24 (f) Notes or other evidences of indebtedness which are
25 secured by mortgages or deeds of trust which are in default
26 and beyond the express period specified in the instrument for
27 curing the default.
- 28 (g) Bonds in default for more than 60 days.
- 29 (h) Deferred costs other than the liquidation value of
30 prepaid expenses except for those companies that reserve 100
31 percent of gross written premium.

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

3 1. The parent of the home warranty association;

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

6 3. An affiliate of the parent or the home warranty
7 association; or

8 4. Officers, directors, shareholders, employees, or
9 salespersons of the home warranty association; however,
10 premium receivables under 45 days old may be considered an
11 admitted asset.

12
13 The department may, however, allow all or a portion of such
14 asset, at values to be determined by the department, if deemed
15 by the department to be available for the payment of losses
16 and claims.

17 (3) LIABILITIES.--In any determination of the
18 financial condition of a home warranty association,
19 liabilities to be charged against its assets shall include,
20 but not be limited to:

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

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

28 (c) Reserve for unearned premiums.

29
30 The department, upon determining that the home warranty
31 association has failed to report liabilities that should have

1 been reported, shall require a correct report which reflects
2 the proper liabilities to be submitted by the home warranty
3 association to the department within 10 working days after
4 receipt of written notification.

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

7 634.312 Filing, approval of forms.--

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

16 Section 18. Subsection (5) is added to section
17 634.313, Florida Statutes, to read:

18 634.313 Tax on premiums; annual statement; reports.--

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

25 Section 19. Section 634.318, Florida Statutes, is
26 amended to read:

27 634.318 License and appointment of sales
28 representatives.--Sales representatives for home warranty
29 associations and insurers shall be licensed, appointed,
30 renewed, continued, reinstated, or terminated in the same
31 manner as prescribed in chapter 626 for insurance

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

14 Section 20. Section 634.331, Florida Statutes, is
15 amended to read:

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

26 Section 21. Subsection (6) is added to section
27 634.415, Florida Statutes, to read:

28 634.415 Tax on premiums; annual statement; reports;
29 quarterly statements.--

30 (6) The department may by rule require each service
31 warranty association to submit to the department, as the

1 department may designate, all or part of the information
2 contained in the financial statements and reports required by
3 this section in a computer-readable form compatible with the
4 electronic data processing system specified by the department.

5 Section 22. Section 634.419, Florida Statutes, is
6 amended to read:

7 634.419 License and appointment required.--No person
8 or entity shall solicit, negotiate, advertise, or effectuate
9 service warranty contracts in this state unless such person or
10 entity is licensed and appointed as a sales representative.
11 Sales representatives shall be responsible for the actions of
12 persons under their supervision. However, a service warranty
13 association licensed as such under this part shall not be
14 required to be licensed and appointed as a sales
15 representative to solicit, negotiate, advertise, or effectuate
16 its products.

17 Section 23. Subsection (8) is added to section
18 634.436, Florida Statutes, to read:

19 634.436 Unfair methods of competition and unfair or
20 deceptive acts or practices defined.--The following methods,
21 acts, or practices are defined as unfair methods of
22 competition and unfair or deceptive acts or practices:

23 (8) FREE SERVICE WARRANTIES.--

24 (a) Advertising, offering, or providing a free service
25 warranty as an inducement to the purchase or sale of real or
26 personal property or of services directly or indirectly
27 connected with such real or personal property.

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

30
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1 1. A service warranty for which no identifiable and
2 additional charge is made to the purchaser of such real
3 property, personal property, or services.

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

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

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

15 624.124 Motor vehicle services; exemption from
16 code.--Any person may, in exchange for fees, dues, charges, or
17 other consideration, provide any of the following services
18 related to the ownership, operation, use, or maintenance of a
19 motor vehicle without being deemed an insurer and without
20 being subject to the provisions of this code:

21 (1) Towing service.

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

24 (3) Emergency service.

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

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

30
31

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

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

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

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

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

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

11 (j) A legal expense insurance corporation authorized
12 to engage in a legal expense insurance business pursuant to s.
13 642.021;

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

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

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

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

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

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

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

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

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

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

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