

1  
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  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

any false statement.

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

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

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

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

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

(c) Giving, selling, or purchasing, or offering to give, sell, or purchase, as an inducement to such motor vehicle service agreement or in connection therewith, any 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  
31

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 120, 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.  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31