

Bill No. HB 1433, 1st Eng.

Amendment No. ____ Barcode 144988

CHAMBER ACTION

Senate

House

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

Line 48 through Line 172, delete those lines

and insert:

Section 2. Subsection (5) is added to section 634.271, Florida Statutes, to read:

634.271 Civil remedy.--

(5) The penalty provisions in ss. 520.12 and 521.006, as well as the statutory penalty minimum recovery of \$500 in subsection (1), do not apply to any violation of this part or chapters 520 and 521 relating to or in connection with the unauthorized or unregulated sale, prior to April 23, 2002, of a vehicle protection product that provides for payment of vehicle protection expenses, as defined in s. 634.011, or the failure to disclose or properly disclose in a retail installment contract or motor vehicle lease agreement prior to April 23, 2002, a vehicle protection product that provides for payment of vehicle protection expenses, if it was otherwise clearly disclosed to the consumer in writing at the time of

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1 the purchase or lease.

2 Section 3. Section 634.3205, Florida Statutes, is
3 created to read:

4 634.3205 Rebating; when allowed.--

5 (1) No sales representative shall rebate any portion
6 of his or her commission except as follows:

7 (a) The rebate shall be available to all consumers in
8 the same actuarial class.

9 (b) The rebate shall be in accordance with a rebating
10 schedule filed by the sales representative with the home
11 warranty association issuing the home warranty to which the
12 rebate applies. The home warranty association shall maintain a
13 copy of all rebating schedules for a period of 3 years.

14 (c) The rebating schedule shall be uniformly applied
15 in that all consumers who purchase the same home warranty
16 through the sales representative for the same coverage receive
17 the same percentage rebate.

18 (d) The rebate schedule is prominently displayed in
19 public view in the sales representative's place of doing
20 business and a copy is available to consumers on request at no
21 charge.

22 (e) The age, sex, place of residence, race,
23 nationality, ethnic origin, marital status, or occupation of
24 the consumer is not used in determining the percentage of the
25 rebate or whether a rebate is available.

26 (2) No rebate shall be withheld or limited in amount
27 based on factors that are unfairly discriminatory.

28 (3) No rebate shall be given which is not reflected on
29 the rebate schedule.

30 (4) No rebate shall be refused or granted based upon
31 the purchase or failure to purchase collateral business.

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1 Section 4. Subsection (8) is added to section 634.406,
2 Florida Statutes, to read:

3 634.406 Financial requirements.--

4 (8) An association licensed under this part, and
5 holding no other license under part I or part II of chapter
6 634, is not required to establish an unearned premium reserve
7 or maintain contractual liability insurance and may allow its
8 premiums to exceed the ratio to net assets limitation of this
9 section if the association complies with the following:

10 (a) The association or, if the association is a direct
11 or indirect wholly owned subsidiary of a parent corporation,
12 its parent corporation has, and maintains at all times, a
13 minimum net worth of at least \$100 million and provides the
14 office with the following:

15 1. A copy of the association's annual audited
16 financial statements or the audited consolidated financial
17 statements of the association's parent, prepared by an
18 independent certified public accountant in accordance with
19 generally accepted accounting principles, which clearly
20 demonstrate the net worth of the association or its parent
21 corporation to be \$100 million and a quarterly written
22 certification to the office that such entity continues to
23 maintain the net worth required under this paragraph; and

24 2. The association's or its parent corporation's Form
25 10-K, Form 10-Q, or Form 20-F as filed with the United States
26 Securities and Exchange Commission or such other documents as
27 are required to be filed with a recognized stock exchange,
28 which shall be provided on a quarterly and annual basis within
29 10 days after the last date each such report must be filed
30 with the Securities and Exchange Commission, the National
31 Association of Security Dealers Automated Quotation system, or

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1 other recognized stock exchange.

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3 Failure to timely file the documents required under this
4 paragraph may, at the discretion of the office, subject the
5 association to suspension or revocation of its license under
6 this part. An association or parent corporation demonstrating
7 compliance with subparagraph 1. and subparagraph 2. must
8 maintain outstanding debt obligations, if any, rated in the
9 top four rating categories by a recognized rating service.

10 (b) If the net worth of a parent corporation is used
11 to satisfy the net worth provisions of paragraph (a), the
12 following provisions must be met:

13 1. The parent corporation must guarantee all service
14 warranty obligations of the association, wherever written, on
15 a form approved in advance by the office. No cancellation,
16 termination, or modification of the guarantee shall become
17 effective unless the parent corporation provides the office
18 written notice at least 90 days before the effective date of
19 the cancellation, termination, or modification and the office
20 approves the request in writing. Prior to the effective date
21 of cancellation, termination, or modification of the
22 guarantee, the association must demonstrate to the
23 satisfaction of the office compliance with all applicable
24 provisions of this part, including whether the association
25 will meet the requirements of this section by the purchase of
26 contractual liability insurance, establishing required
27 reserves, or other method allowed under this section. If the
28 association or parent corporation does not demonstrate to the
29 satisfaction of the office compliance with all applicable
30 provisions of this part, it shall immediately cease writing
31 new and renewal business upon the effective date of the

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1 cancellation, termination, or modification.

2 2. The service warranty association must maintain at
3 all times net assets of at least \$750,000.

4 Section 5. Section 634.4225, Florida Statutes, is
5 created to read:

6 634.4225 Rebating; when allowed.--

7 (1) No sales representative shall rebate any portion
8 of his or her commission except as follows:

9 (a) The rebate shall be available to all consumers in
10 the same actuarial class.

11 (b) The rebate shall be in accordance with a rebating
12 schedule filed by the sales representative with the
13 association issuing the service warranty to which the rebate
14 applies. The association shall maintain a copy of all rebating
15 schedules for a period of 3 years.

16 (c) The rebating schedule shall be uniformly applied
17 in that all consumers who purchase the same service warranty
18 through the sales representative for the same coverage receive
19 the same percentage rebate.

20 (d) The rebate schedule is prominently displayed in
21 public view in the sales representative's place of doing
22 business and a copy is available to consumers on request at no
23 charge.

24 (e) The age, sex, place of residence, race,
25 nationality, ethnic origin, marital status, or occupation of
26 the consumer is not used in determining the percentage of the
27 rebate or whether a rebate is available.

28 (2) No rebate shall be withheld or limited in amount
29 on factors that are unfairly discriminatory.

30 (3) No rebate shall be given which is not reflected on
31 the rebate schedule.

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1 (4) No rebate shall be refused or granted based upon
2 the purchase or failure to purchase collateral business.

3 Section 6. This act shall take effect upon becoming a
4 law and section 2 shall apply retroactively to January 1,
5 1998.

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

9 And the title is amended as follows:

10 Line 5 through Line 14, delete those lines

11

12 and insert:

13 may rebate his or her commission; amending s.
14 634.271, F.S.; providing an exemption from
15 penalty provisions for certain service
16 warranties; creating s. 634.3205, F.S.;
17 providing conditions under which a sales
18 representative of a home warranty association
19 may rebate his or her commission; amending s.
20 634.406, F.S.; providing conditions under which
21 a service warranty association is exempt from
22 certain premium reserve and liability insurance
23 requirements and may allow premiums to exceed
24 certain limits; creating s. 634.4225, F.S.;
25 providing conditions under which a sales
26 representative of a service warranty
27 association may rebate his or her commission;
28 providing retroactive applicability; providing
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