

Bill No. HB 1433, 1st Eng.

Amendment No. ____ Barcode 780684

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 issuance, purchase, or sale, before April 23, 2002, of a vehicle protection product or contract, agreement, or product that provides for payment of vehicle protection expenses as defined in s. 634.011.

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

634.3205 Rebating; when allowed.--

(1) No sales representative shall rebate any portion

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1 of his or her commission except as follows:

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

4 (b) The rebate shall be in accordance with a rebating
5 schedule filed by the sales representative with the home
6 warranty association issuing the home warranty to which the
7 rebate applies. The home warranty association shall maintain a
8 copy of all rebating schedules for a period of 3 years.

9 (c) The rebating schedule shall be uniformly applied
10 in that all consumers who purchase the same home warranty
11 through the sales representative for the same coverage receive
12 the same percentage rebate.

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

17 (e) The age, sex, place of residence, race,
18 nationality, ethnic origin, marital status, or occupation of
19 the consumer is not used in determining the percentage of the
20 rebate or whether a rebate is available.

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

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

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

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

29 634.406 Financial requirements.--

30 (8) An association licensed under this part, and
31 holding no other license under part I or part II of chapter

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1 634, is not required to establish an unearned premium reserve
2 or maintain contractual liability insurance and may allow its
3 premiums to exceed the ratio to net assets limitation of this
4 section if the association complies with the following:

5 (a) The association or, if the association is a direct
6 or indirect wholly owned subsidiary of a parent corporation,
7 its parent corporation has, and maintains at all times, a
8 minimum net worth of at least \$100 million and provides the
9 office with the following:

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

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

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29 Failure to timely file the documents required under this
30 paragraph may, at the discretion of the office, subject the
31 association to suspension or revocation of its license under

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1 this part. An association or parent corporation demonstrating
2 compliance with subparagraph 1. and subparagraph 2. must
3 maintain outstanding debt obligations, if any, rated in the
4 top four rating categories by a recognized rating service.

5 (b) If the net worth of a parent corporation is used
6 to satisfy the net worth provisions of paragraph (a), the
7 following provisions must be met:

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

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

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

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1 634.4225 Rebating; when allowed.--

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

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

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

11 (c) The rebating schedule shall be uniformly applied
12 in that all consumers who purchase the same service warranty
13 through the sales representative for the same coverage receive
14 the same percentage rebate.

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

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

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

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

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

29 Section 6. This act shall take effect upon becoming a
30 law and section 2 shall apply retroactively to January 1,
31 1998.

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

2 And the title is amended as follows:

3 Line 5 through Line 14, delete those lines

4

5 and insert:

6 may rebate his or her commission; amending s.
7 634.271, F.S.; providing an exemption from
8 penalty provisions for certain service
9 warranties; creating s. 634.3205, F.S.;
10 providing conditions under which a sales
11 representative of a home warranty association
12 may rebate his or her commission; amending s.
13 634.406, F.S.; providing conditions under which
14 a service warranty association is exempt from
15 certain premium reserve and liability insurance
16 requirements and may allow premiums to exceed
17 certain limits; creating s. 634.4225, F.S.;
18 providing conditions under which a sales
19 representative of a service warranty
20 association may rebate his or her commission;
21 providing retroactive applicability; providing
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