

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Planas offered the following:

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3 **Amendment to Senate Amendment (144988) (with title**  
4 **amendments)**

5 On page 1, line 20, through page 6, line 2,  
6 remove: all of said lines

7

8 and insert:

9 (5) The penalty provisions in ss. 520.12 and 521.006, as

10 well as the statutory penalty minimum recovery of \$500 in  
11 subsection (1), do not apply to any violation of this part or  
12 chapters 520 and 521 relating to or in connection with the  
13 unauthorized or unregulated sale, prior to April 23, 2002, of a  
14 vehicle protection product, contract, or agreement that provides  
15 for payment of vehicle protection expenses, as defined in s.  
16 634.011(7)(b)1., or the failure to disclose or properly disclose  
17 in a retail installment contract or motor vehicle lease

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18 agreement prior to April 23, 2002, a vehicle protection product,  
19 contract, or agreement that provides for payment of vehicle  
20 protection expenses, if the sale of such product, contract, or  
21 agreement was otherwise clearly disclosed to the consumer in  
22 writing at the time of the purchase or lease; provided, however,  
23 that for any such violation or failure to disclose or properly  
24 disclose where the penalty provisions in ss. 520.12 and 521.006,  
25 as well as the statutory penalty minimum recovery of \$500 in  
26 subsection (1), do not apply as a result of this subsection,  
27 then the court shall award actual damages and costs, including a  
28 reasonable attorney's fee.

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

31 634.3205 Rebating; when allowed.--

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

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

36 (b) The rebate shall be in accordance with a rebating  
37 schedule filed by the sales representative with the home  
38 warranty association issuing the home warranty to which the  
39 rebate applies. The home warranty association shall maintain a  
40 copy of all rebating schedules for a period of 3 years.

41 (c) The rebating schedule shall be uniformly applied in  
42 that all consumers who purchase the same home warranty through  
43 the sales representative for the same coverage receive the same  
44 percentage rebate.

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

48 (e) The age, sex, place of residence, race, nationality,  
49 ethnic origin, marital status, or occupation of the consumer is  
50 not used in determining the percentage of the rebate or whether  
51 a rebate is available.

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

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

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

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

60 634.406 Financial requirements.--

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

67 (a) The association or, if the association is a direct or  
68 indirect wholly owned subsidiary of a parent corporation, its  
69 parent corporation has, and maintains at all times, a minimum  
70 net worth of at least \$100 million and provides the office with  
71 the following:

72 1. A copy of the association's annual audited financial  
73 statements or the audited consolidated financial statements of

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74 the association's parent, prepared by an independent certified  
75 public accountant in accordance with generally accepted  
76 accounting principles, which clearly demonstrate the net worth  
77 of the association or its parent corporation to be \$100 million  
78 and a quarterly written certification to the office that such  
79 entity continues to maintain the net worth required under this  
80 paragraph; and

81 2. The association's or its parent corporation's Form 10-  
82 K, Form 10-Q, or Form 20-F as filed with the United States  
83 Securities and Exchange Commission or such other documents as  
84 are required to be filed with a recognized stock exchange, which  
85 shall be provided on a quarterly and annual basis within 10 days  
86 after the last date each such report must be filed with the  
87 Securities and Exchange Commission, the National Association of  
88 Security Dealers Automated Quotation system, or other recognized  
89 stock exchange.

90  
91 Failure to timely file the documents required under this  
92 paragraph may, at the discretion of the office, subject the  
93 association to suspension or revocation of its license under  
94 this part. An association or parent corporation demonstrating  
95 compliance with subparagraph 1. and subparagraph 2. must  
96 maintain outstanding debt obligations, if any, rated in the top  
97 four rating categories by a recognized rating service.

98 (b) If the net worth of a parent corporation is used to  
99 satisfy the net worth provisions of paragraph (a), the following  
100 provisions must be met:

101 1. The parent corporation must guarantee all service  
102 warranty obligations of the association, wherever written, on a

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103 form approved in advance by the office. No cancellation,  
104 termination, or modification of the guarantee shall become  
105 effective unless the parent corporation provides the office  
106 written notice at least 90 days before the effective date of the  
107 cancellation, termination, or modification and the office  
108 approves the request in writing. Prior to the effective date of  
109 cancellation, termination, or modification of the guarantee, the  
110 association must demonstrate to the satisfaction of the office  
111 compliance with all applicable provisions of this part,  
112 including whether the association will meet the requirements of  
113 this section by the purchase of contractual liability insurance,  
114 establishing required reserves, or other method allowed under  
115 this section. If the association or parent corporation does not  
116 demonstrate to the satisfaction of the office compliance with  
117 all applicable provisions of this part, it shall immediately  
118 cease writing new and renewal business upon the effective date  
119 of the cancellation, termination, or modification.

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

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

124 634.4225 Rebating; when allowed.--

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

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

129 (b) The rebate shall be in accordance with a rebating  
130 schedule filed by the sales representative with the association  
131 issuing the service warranty to which the rebate applies. The

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132 association shall maintain a copy of all rebating schedules for  
133 a period of 3 years.

134 (c) The rebating schedule shall be uniformly applied in  
135 that all consumers who purchase the same service warranty  
136 through the sales representative for the same coverage receive  
137 the same percentage rebate.

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

141 (e) The age, sex, place of residence, race, nationality,  
142 ethnic origin, marital status, or occupation of the consumer is  
143 not used in determining the percentage of the rebate or whether  
144 a rebate is available.

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

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

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

151 Section 6. If any provision of this act or its application  
152 to any person or circumstances is held invalid, the invalidity  
153 shall not affect other provisions or applications of this act  
154 which can be given effect without the invalid provision or  
155 application, and to this end the provisions of this act are  
156 declared severable.

157  
158 ===== T I T L E A M E N D M E N T =====

159 On page 6, line 28,  
160 remove: all of said line

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162 and insert: providing retroactive applicability; providing

163 severability; providing