

By the Committee on Commerce, Economic Opportunities, and Consumer Services; and Senator Bennett

310-2096-04

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A bill to be entitled
An act relating to warranty associations;
creating ss. 634.1815, 634.3205, and 634.4225,
F.S.; prescribing conditions under which a
salesperson or a sales representative of a
motor vehicle service agreement company, a home
warranty association, or a service warranty
association may rebate his or her commission;
amending s. 634.406, F.S.; prescribing
conditions under which a service warranty
association is exempt from certain
premium-reserve and liability-insurance
requirements and may allow premiums to exceed
certain limits; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 634.1815, Florida Statutes, is created to read:

634.1815 Rebating; when allowed.--

(1) No salesperson shall rebate any portion of his or her commission except as follows:

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

(b) The rebate shall be in accordance with a rebating schedule filed by the salesperson with the service agreement company issuing the service agreement to which the rebate applies. The service agreement company shall maintain a copy of all rebating schedules for a period of 3 years.

(c) The rebating schedule shall be uniformly applied in that all consumers who purchase the same service agreement

1 through the salesperson for the same coverage receive the same
2 percentage rebate.

3 (d) The rebate schedule is prominently displayed in
4 public view in the salesperson's place of doing business and a
5 copy is available to consumers on request at no charge.

6 (e) The age, sex, place of residence, race,
7 nationality, ethnic origin, marital status, or occupation of
8 the consumer is not used in determining the percentage of the
9 rebate or whether a rebate is available.

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

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

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

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

18 634.3205 Rebating; when allowed.--

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

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

23 (b) The rebate shall be in accordance with a rebating
24 schedule filed by the sales representative with the home
25 warranty association issuing the home warranty to which the
26 rebate applies. The home warranty association shall maintain a
27 copy of all rebating schedules for a period of 3 years.

28 (c) The rebating schedule shall be uniformly applied
29 in that all consumers who purchase the same home warranty
30 through the sales representative for the same coverage receive
31 the same percentage rebate.

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

5 (e) The age, sex, place of residence, race,
6 nationality, ethnic origin, marital status, or occupation of
7 the consumer is not used in determining the percentage of the
8 rebate or whether a rebate is available.

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

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

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

15 Section 3. Subsection (8) is added to section 634.406,
16 Florida Statutes, to read:

17 634.406 Financial requirements.--

18 (8) An association licensed under this part, and
19 holding no other license under part I or part II of chapter
20 634, is not required to establish an unearned premium reserve
21 or maintain contractual liability insurance and may allow its
22 premiums to exceed the ratio to net assets limitation of this
23 section if the association complies with the following:

24 (a) The association or, if the association is a direct
25 or indirect wholly owned subsidiary of a parent corporation,
26 its parent corporation has, and maintains at all times, a
27 minimum net worth of at least \$100 million and provides the
28 office with the following:

29 1. A copy of the association's annual audited
30 financial statements or the audited consolidated financial
31 statements of the association's parent, prepared by an

1 independent certified public accountant in accordance with
2 generally accepted accounting principles, which clearly
3 demonstrate the net worth of the association or its parent
4 corporation to be \$100 million and a quarterly written
5 certification to the office that such entity continues to
6 maintain the net worth required under this paragraph; and

7 2. The association's or its parent corporation's Form
8 10-K, Form 10-Q, or Form 20-F as filed with the United States
9 Securities and Exchange Commission or such other documents as
10 are required to be filed with a recognized stock exchange,
11 which shall be provided on a quarterly and annual basis within
12 10 days after the last date each such report must be filed
13 with the Securities and Exchange Commission, the National
14 Association of Security Dealers Automated Quotation system, or
15 other recognized stock exchange.

16
17 Failure to timely file the documents required under this
18 paragraph may, at the discretion of the office, subject the
19 association to suspension or revocation of its license under
20 this part. An association or parent corporation demonstrating
21 compliance with subparagraph 1. and subparagraph 2. must
22 maintain outstanding debt obligations, if any, rated in the
23 top four rating categories by a recognized rating service.

24 (b) If the net worth of a parent corporation is used
25 to satisfy the net worth provisions of paragraph (a), the
26 following provisions must be met:

27 1. The parent corporation must guarantee all service
28 warranty obligations of the association, wherever written, on
29 a form approved in advance by the office. No cancellation,
30 termination, or modification of the guarantee shall become
31 effective unless the parent corporation provides the office

1 written notice at least 90 days before the effective date of
2 the cancellation, termination, or modification and the office
3 approves the request in writing. Prior to the effective date
4 of cancellation, termination, or modification of the
5 guarantee, the association must demonstrate to the
6 satisfaction of the office compliance with all applicable
7 provisions of this part, including whether the association
8 will meet the requirements of this section by the purchase of
9 contractual liability insurance, establishing required
10 reserves, or other method allowed under this section. If the
11 association or parent corporation does not demonstrate to the
12 satisfaction of the office compliance with all applicable
13 provisions of this part, it shall immediately cease writing
14 new and renewal business upon the effective date of the
15 cancellation, termination, or modification.

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

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

20 634.4225 Rebating; when allowed.--

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

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

25 (b) The rebate shall be in accordance with a rebating
26 schedule filed by the sales representative with the
27 association issuing the service warranty to which the rebate
28 applies. The association shall maintain a copy of all rebating
29 schedules for a period of 3 years.

30 (c) The rebating schedule shall be uniformly applied
31 in that all consumers who purchase the same service warranty

1 through the sales representative for the same coverage receive
2 the same percentage rebate.

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

7 (e) The age, sex, place of residence, race,
8 nationality, ethnic origin, marital status, or occupation of
9 the consumer is not used in determining the percentage of the
10 rebate or whether a rebate is available.

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

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

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

17 Section 5. This act shall take effect upon becoming a
18 law.

19
20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 Senate Bill 1848

23 The committee substitute replaces the underlying bill with the
24 following provisions:

- 25 -- Agents for motor vehicle service agreement companies,
26 home warranty associations, and service warranty
27 associations are authorized to rebate their commissions
28 to their customers under certain circumstances; and
29 -- A service warranty association that has a net worth of at
30 least \$100 million, or that is a wholly owned subsidiary
31 of a parent corporation with a net worth of at least \$100
million which guarantees the performance of the warranty
obligations of the association, is not required to
maintain an unearned premiums reserve or contractual
liability insurance and may allow its premiums to net
assets ratio to exceed 7-to-1.