

1 A bill to be entitled
2 An act relating to warranty associations;
3 creating ss. 634.1815, 634.3205, and 634.4225,
4 F.S.; prescribing conditions under which a
5 salesperson or a sales representative of a
6 motor vehicle service agreement company, a home
7 warranty association, or a service warranty
8 association may rebate his or her commission;
9 amending s. 634.271, F.S.; providing an
10 exemption from penalty provisions for certain
11 service warranties; providing retroactive
12 applicability; amending s. 634.406, F.S.;
13 prescribing conditions under which a service
14 warranty association is exempt from certain
15 premium-reserve and liability-insurance
16 requirements and may allow premiums to exceed
17 certain limits; providing an effective date.

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

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

23 634.1815 Rebating; when allowed.--

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

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

28 (b) The rebate shall be in accordance with a rebating
29 schedule filed by the salesperson with the service agreement
30 company issuing the service agreement to which the rebate

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1 applies. The service agreement company shall maintain a copy
2 of all rebating schedules for a period of 3 years.

3 (c) The rebating schedule shall be uniformly applied
4 in that all consumers who purchase the same service agreement
5 through the salesperson for the same coverage receive the same
6 percentage rebate.

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

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

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

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

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

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

22 634.271 Civil remedy.--

23 (5) The penalty provisions in ss. 520.12 and 521.006,
24 as well as the statutory penalty minimum recovery of \$500 in
25 subsection (1), do not apply to any violation of this part or
26 chapters 520 and 521 relating to or in connection with the
27 issuance, purchase, or sale, before April 23, 2002, of a
28 vehicle protection product or contract, agreement, or product
29 that provides for payment of vehicle protection expenses as
30 defined in s. 634.011.

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

3 634.3205 Rebating; when allowed.--

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

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

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

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

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

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

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

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

29 (4) No rebate shall be refused or granted based upon
30 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
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1 Association of Security Dealers Automated Quotation system, or
2 other recognized stock exchange.

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

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

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

1 new and renewal business upon the effective date of the
2 cancellation, termination, or modification.

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

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

7 634.4225 Rebating; when allowed.--

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

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

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

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

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

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

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

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

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

5 Section 6. This act shall take effect upon becoming a
6 law and section 2 shall apply retroactively to January 1,
7 1998.

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