

1 relating to a buyer's right to cancel a home
2 warranty; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Section 634.042, Florida Statutes, is
7 created to read:

8 634.042 Prohibited investments and loans.--A motor
9 vehicle service agreement company shall not directly or
10 indirectly invest in or lend its funds upon the security of
11 any note or other evidence of indebtedness of any director,
12 officer, or controlling stockholder of the motor vehicle
13 service agreement company. This prohibition applies only to
14 investments and loans initially reported on motor vehicle
15 service agreement financial statements after the third
16 quarterly statement for 2006.

17 Section 2. Subsection (3) of section 634.301, Florida
18 Statutes, is amended to read:

19 634.301 Definitions.--As used in this part, the term:

20 (3) "Home warranty" or "warranty" means any contract
21 or agreement:

22 (a) Offered in connection with the sale of residential
23 property;

24 (b) Offered in connection with a loan of \$5,000 or
25 more which is secured by residential property that is the
26 subject of the warranty, but not in connection with the sale
27 of such property; or

28 (c) Offered in connection with a home improvement of
29 \$7,500 or more for residential property that is the subject of
30 the warranty, but not in connection with the sale of such
31 property;

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2 whereby a person undertakes to indemnify the warranty holder
3 against the cost of repair or replacement, or actually
4 furnishes repair or replacement, of any structural component
5 or appliance of a home, necessitated by wear and tear or an
6 inherent defect of any such structural component or appliance
7 or necessitated by the failure of an inspection to detect the
8 likelihood of any such loss. However, this part does not
9 prohibit the giving of usual performance guarantees by either
10 the builder of a home or the manufacturer or seller of an
11 appliance, as long as no identifiable charge is made for such
12 guarantee. This part does not permit the provision of
13 indemnification against consequential damages arising from the
14 failure of any structural component or appliance of a home,
15 which practice constitutes the transaction of insurance
16 subject to all requirements of the insurance code. This part
17 does not apply to service contracts entered into between
18 consumers and nonprofit organizations or cooperatives the
19 members of which consist of condominium associations and
20 condominium owners and which perform repairs and maintenance
21 for appliances or maintenance of the residential property.
22 This part does not apply to a contract or agreement offered in
23 connection with a sale of residential property by a warranty
24 association in compliance with part III, provided such
25 contract or agreement only relates to the systems and
26 appliances of the covered residential property and does not
27 cover any structural component of the residential property.

28 Section 3. Section 634.3076, Florida Statutes, is
29 created to read:

30 634.3076 Prohibited investments and loans.--A home
31 warranty association shall not directly or indirectly invest

1 in or lend its funds upon the security of any note or other
2 evidence of indebtedness of any director, officer, or
3 controlling stockholder of the home warranty association. This
4 prohibition applies only to investments and loans initially
5 reported on a home warranty association's financial statements
6 after the third quarterly statement for 2006.

7 Section 4. Paragraph (d) is added to subsection (3) of
8 section 634.3077, Florida Statutes, to read:

9 634.3077 Financial requirements.--

10 (3) An association shall not be required to set up an
11 unearned premium reserve if it has purchased contractual
12 liability insurance which demonstrates to the satisfaction of
13 the office that 100 percent of its claim exposure is covered
14 by such insurance. Such contractual liability insurance shall
15 be obtained from an insurer that holds a certificate of
16 authority to do business within the state or from an insurer
17 approved by the office as financially capable of meeting the
18 obligations incurred pursuant to the policy. For purposes of
19 this subsection, the contractual liability policy shall
20 contain the following provisions:

21 (d) The contractual liability insurance policy shall
22 insure all home warranty contracts that were issued while the
23 policy was in effect whether or not the premium has been
24 remitted to the insurer.

25 Section 5. Subsection (3) of section 634.312, Florida
26 Statutes, is amended, and subsection (8) is added to that
27 section, to read:

28 634.312 Filing; 7 approval of forms.--

29 (3) The office shall not approve any such form that
30 ~~imposes which allows for more than nine annual renewals or~~
31 ~~which renewal contracts provide that the cost of renewal~~

1 ~~exceeds the then current cost for new warranty contracts or~~
2 ~~impose~~ a fee for inspection of the premises.

3 (8) Each home warranty contract shall contain a
4 cancellation provision. Any home warranty agreement may be
5 canceled by the purchaser within 10 days after purchase. The
6 refund must be 100 percent of the gross premium paid, less any
7 claims paid on the agreement. A reasonable administrative fee
8 may be charged, not to exceed 5 percent of the gross premium
9 paid by the warranty agreement holder. After the home warranty
10 agreement has been in effect for 10 days, if the contract is
11 canceled by the warranty holder, a return of premium shall be
12 based upon 90 percent of unearned pro rata premium less any
13 claims that have been paid. If the contract is canceled by the
14 association for any reason other than for fraud or
15 misrepresentation, a return of premium shall be based upon 100
16 percent of unearned pro rata premium.

17 Section 6. Subsection (8) of section 634.336, Florida
18 Statutes, is amended to read:

19 634.336 Unfair methods of competition and unfair or
20 deceptive acts or practices defined.--The following methods,
21 acts, or practices are defined as unfair methods of
22 competition and unfair or deceptive acts or practices:

23 (8) COERCION OF DEBTORS.--When a home warranty is sold
24 as authorized by s. 634.301(3)(b):

25 (a) Requiring, as a condition precedent or condition
26 subsequent to the lending of the money or the extension of the
27 credit or any renewal thereof, that the person to whom such
28 credit is extended purchase a home warranty; or

29 (b) Failing to provide the advice required by s.
30 634.344. ~~;~~ ~~or~~

31

1 ~~(c) Failing to comply with the provisions of s.~~
2 ~~634.345.~~

3 Section 7. Section 634.4062, Florida Statutes, is
4 created to read:

5 634.4062 Prohibited investments and loans.--A service
6 warranty association shall not directly or indirectly invest
7 in or lend its funds upon the security of any note or other
8 evidence of indebtedness of any director, officer, or
9 controlling stockholder of the service warranty association.
10 This prohibition applies only to investments and loans
11 initially reported on a service warranty association's
12 financial statements after the third quarterly statement for
13 2006.

14 Section 8. Section 634.345, Florida Statutes, is
15 repealed.

16 Section 9. This act shall take effect July 1, 2006.

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18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 Senate Bill 1620

- 21 1. Prohibits warranty associations from investing or lending
22 association funds to any officer, director, or
controlling shareholder.
- 23 2. Revises provisions regarding cancellation of home
24 warranty association contracts and refund of premiums.
- 25 3. Provides that if a home warranty association uses a
26 contractual liability insurance policy in lieu of
27 establishing an unearned premium reserve, the contractual
liability must cover all home warranty contracts issued
during the policy period whether or not the premium has
been remitted to the insurer.
- 28 4. Allows a service warranty association to sell a warranty
29 covering home systems and appliances, but not covering
30 any structural component of a home without obtaining a
license as a home warranty association.