

1                                   A bill to be entitled  
2           An act relating to warranty associations;  
3           amending s. 634.031, F.S.; exempting certain  
4           licensed motor vehicle service agreement  
5           company affiliates from application of motor  
6           vehicle service agreement requirements under  
7           certain circumstances; providing criteria and  
8           requirements for the exemption; providing a  
9           circumstance for denying the exemption and  
10          subjecting the affiliate to such requirements;  
11          providing certain liability; creating s.  
12          634.042, F.S.; prohibiting a motor vehicle  
13          service agreement company from investing or  
14          lending company funds for specified purposes;  
15          amending s. 634.301, F.S.; revising a  
16          definition of "home warranty" to specify  
17          nonapplication to certain contracts or  
18          agreements; creating s. 634.3076, F.S.;  
19          prohibiting a home warranty association from  
20          investing or lending association funds for  
21          specified purposes; amending s. 634.3077, F.S.;  
22          specifying an additional requirement for  
23          contractual liability insurance purchased by a  
24          home warranty association; amending s. 634.312,  
25          F.S.; revising a prohibition against the Office  
26          of Insurance Regulation for nonapproval of  
27          certain forms; specifying cancellation  
28          requirements for home warranty contracts;  
29          providing return of premium requirements;  
30          authorizing an administrative fee; specifying  
31          refund amounts for a home warranty under

1 certain circumstances; amending s. 634.336,  
2 F.S.; removing cancellation practices from the  
3 provisions that constitute unfair methods of  
4 competition and unfair or deceptive acts or  
5 practices; creating s. 634.4062, F.S.;  
6 prohibiting a service warranty association from  
7 investing or lending association funds for  
8 specified purposes; repealing s. 634.345, F.S.,  
9 relating to a buyer's right to cancel a home  
10 warranty; providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Subsection (6) is added to section 634.031,  
15 Florida Statutes, to read:

16 634.031 License required.--

17 (6) Any person that is an affiliate of a licensed  
18 motor vehicle service agreement company which is domiciled in  
19 this state and which uses contractual liability insurance to  
20 qualify with the requirements of s. 634.041 is exempt from  
21 application of this part if the person does not issue, market,  
22 or cause to be marketed motor vehicle service agreements to  
23 residents of this state and does not administer motor vehicle  
24 service agreements that were originally issued to residents of  
25 this state. Any affiliated person operating from this state  
26 under this subsection must use a licensed motor vehicle  
27 service agreement company to administer all service agreements  
28 issued by such person in other states. If the office  
29 determines, after notice and opportunity for hearing in  
30 accordance with s. 120.569, that a person's intentional  
31 business practices do not comply with any part of the

1 exemption requirements of this subsection, the person shall be  
2 subject to this part. The motor vehicle service agreement  
3 company shall be liable for all acts of and responsible for  
4 all violations of this part by an affiliated person operating  
5 from this state.

6 Section 2. 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 3. 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;

1  
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 4. 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 5. 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 6. 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 cancelled 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 cancelled 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 7. 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~~

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1           ~~(c) Failing to comply with the provisions of s.~~  
2 ~~634.345.~~  
3           Section 8. 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 9. Section 634.345, Florida Statutes, is  
15 repealed.  
16           Section 10. This act shall take effect July 1, 2006.  
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