

CHAMBER ACTION

1 The Insurance Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to warranty associations; creating s.
7 634.042, F.S.; prohibiting a motor vehicle service
8 agreement company from investing or lending company funds
9 for specified purposes; amending s. 634.301, F.S.;
10 revising a definition of "home warranty" to specify
11 nonapplication to certain contracts or agreements;
12 creating s. 634.3076, F.S.; prohibiting a home warranty
13 association from investing or lending association funds
14 for specified purposes; amending s. 634.3077, F.S.;
15 specifying an additional requirement for contractual
16 liability insurance purchased by a home warranty
17 association; amending s. 634.312, F.S.; revising a
18 prohibition against the Office of Insurance Regulation for
19 nonapproval of certain forms; specifying cancellation
20 requirements for home warranty contracts; providing return
21 of premium requirements; authorizing an administrative
22 fee; specifying refund amounts for a home warranty under
23 certain circumstances; amending s. 634.336, F.S.; removing

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24 a cross-reference to conform; creating s. 634.4062, F.S.;

25 prohibiting a service warranty association from investing

26 or lending association funds for specified purposes;

27 repealing s. 634.345, F.S., relating to a buyer's right to

28 cancel a home warranty; providing an effective date.

29

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

31

32 Section 1. Section 634.042, Florida Statutes, is created

33 to read:

34 634.042 Prohibited investments and loans.--A motor vehicle

35 service agreement company shall not directly or indirectly

36 invest in or lend its funds upon the security of any note or

37 other evidence of indebtedness of any director, officer, or

38 controlling stockholder of the motor vehicle service agreement

39 company. This prohibition applies only to investments and loans

40 initially reported on motor vehicle service agreement financial

41 statements after the third quarterly statement for 2006.

42 Section 2. Subsection (3) of section 634.301, Florida

43 Statutes, is amended to read:

44 634.301 Definitions.--As used in this part, the term:

45 (3) "Home warranty" or "warranty" means any contract or

46 agreement:

47 (a) Offered in connection with the sale of residential

48 property;

49 (b) Offered in connection with a loan of \$5,000 or more

50 which is secured by residential property that is the subject of

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51 | the warranty, but not in connection with the sale of such
52 | property; or

53 | (c) Offered in connection with a home improvement of
54 | \$7,500 or more for residential property that is the subject of
55 | the warranty, but not in connection with the sale of such
56 | property;

57 |
58 | whereby a person undertakes to indemnify the warranty holder
59 | against the cost of repair or replacement, or actually furnishes
60 | repair or replacement, of any structural component or appliance
61 | of a home, necessitated by wear and tear or an inherent defect
62 | of any such structural component or appliance or necessitated by
63 | the failure of an inspection to detect the likelihood of any
64 | such loss. However, this part does not prohibit the giving of
65 | usual performance guarantees by either the builder of a home or
66 | the manufacturer or seller of an appliance, as long as no
67 | identifiable charge is made for such guarantee. This part does
68 | not permit the provision of indemnification against
69 | consequential damages arising from the failure of any structural
70 | component or appliance of a home, which practice constitutes the
71 | transaction of insurance subject to all requirements of the
72 | insurance code. This part does not apply to service contracts
73 | entered into between consumers and nonprofit organizations or
74 | cooperatives the members of which consist of condominium
75 | associations and condominium owners and which perform repairs
76 | and maintenance for appliances or maintenance of the residential
77 | property. This part does not apply to a contract or agreement
78 | offered in connection with a sale of residential property by a

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79 | warranty association in compliance with part III, provided such
 80 | contract or agreement only relates to the systems and appliances
 81 | of the covered residential property and does not cover any
 82 | structural component of the residential property.

83 | Section 3. Section 634.3076, Florida Statutes, is created
 84 | to read:

85 | 634.3076 Prohibited investments and loans.--A home
 86 | warranty association shall not directly or indirectly invest in
 87 | or lend its funds upon the security of any note or other
 88 | evidence of indebtedness of any director, officer, or
 89 | controlling stockholder of the home warranty association. This
 90 | prohibition applies only to investments and loans initially
 91 | reported on a home warranty association's financial statements
 92 | after the third quarterly statement for 2006.

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

95 | 634.3077 Financial requirements.--

96 | (3) An association shall not be required to set up an
 97 | unearned premium reserve if it has purchased contractual
 98 | liability insurance which demonstrates to the satisfaction of
 99 | the office that 100 percent of its claim exposure is covered by
 100 | such insurance. Such contractual liability insurance shall be
 101 | obtained from an insurer that holds a certificate of authority
 102 | to do business within the state or from an insurer approved by
 103 | the office as financially capable of meeting the obligations
 104 | incurred pursuant to the policy. For purposes of this
 105 | subsection, the contractual liability policy shall contain the
 106 | following provisions:

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

111 Section 5. Subsection (3) of section 634.312, Florida
112 Statutes, is amended, and subsection (8) is added to that
113 section, to read:

114 634.312 Filing; ~~7~~ approval of forms.--

115 (3) The office shall not approve any such form that
116 imposes ~~which allows for more than nine annual renewals or which~~
117 ~~renewal contracts provide that the cost of renewal exceeds the~~
118 ~~then-current cost for new warranty contracts or impose a fee for~~
119 inspection of the premises.

120 (8) Each home warranty contract shall contain a
121 cancellation provision. Any home warranty agreement may be
122 cancelled by the purchaser within 10 days after purchase. The
123 refund must be 100 percent of the gross premium paid, less any
124 claims paid on the agreement. A reasonable administrative fee
125 may be charged, not to exceed 5 percent of the gross premium
126 paid by the warranty agreement holder. After the home warranty
127 agreement has been in effect for 10 days, if the contract is
128 cancelled by the warranty holder, a return of premium shall be
129 based upon 90 percent of unearned pro rata premium less any
130 claims that have been paid. If the contract is canceled by the
131 association for any reason other than for fraud or
132 misrepresentation, a return of premium shall be based upon 100
133 percent of unearned pro rata premium.

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

136 634.336 Unfair methods of competition and unfair or
137 deceptive acts or practices defined.--The following methods,
138 acts, or practices are defined as unfair methods of competition
139 and unfair or deceptive acts or practices:

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

142 (a) Requiring, as a condition precedent or condition
143 subsequent to the lending of the money or the extension of the
144 credit or any renewal thereof, that the person to whom such
145 credit is extended purchase a home warranty; or

146 (b) Failing to provide the advice required by s. 634.344~~7~~
147 ~~or~~

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

149 Section 7. Section 634.4062, Florida Statutes, is created
150 to read:

151 634.4062 Prohibited investments and loans.--A service
152 warranty association shall not directly or indirectly invest in
153 or lend its funds upon the security of any note or other
154 evidence of indebtedness of any director, officer, or
155 controlling stockholder of the service warranty association.
156 This prohibition applies only to investments and loans initially
157 reported on a service warranty association's financial
158 statements after the third quarterly statement for 2006.

159 Section 8. Section 634.345, Florida Statutes, is repealed.

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