

By the Committee on Judiciary; and Senator Bennett

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1                                   A bill to be entitled  
2           An act relating to warranty associations; amending s.  
3           628.4615, F.S., relating to specialty insurers;  
4           conforming a cross-reference; amending s. 634.011,  
5           F.S.; revising the definition of the term "motor  
6           vehicle service agreement"; amending s. 634.031, F.S.;  
7           providing penalties for certain licensure violations;  
8           amending s. 634.041, F.S., relating to qualifications  
9           for licensure; conforming cross-references; amending  
10          s. 634.095, F.S.; prohibiting service agreement  
11          companies from issuing certain deceptive  
12          advertisements, operating without a subsisting  
13          license, or remitting premiums to a person other than  
14          the obligated service agreement company; amending s.  
15          634.121, F.S.; deleting a requirement that certain  
16          service agreement forms be approved by the Office of  
17          Insurance Regulation of the Financial Services  
18          Commission; amending s. 634.1213, F.S.; authorizing  
19          the office to order a service agreement company to  
20          stop using forms that do not comply with specified  
21          requirements; amending s. 634.137, F.S.; deleting a  
22          schedule for the submissions of certain reports;  
23          amending s. 634.141, F.S.; providing guidelines for  
24          the office to use in determining whether to examine a  
25          company; amending s. 634.1815, F.S.; requiring certain  
26          rebates to be approved by the company issuing a  
27          service agreement; amending s. 634.282, F.S.;  
28          clarifying provisions relating to the refund of excess  
29          premiums or charges; requiring that a consumer receive

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30 a sample copy of the service agreement prior to the  
31 sale of a service agreement; amending s. 634.301,  
32 F.S.; revising certain definitions relating to home  
33 warranties; amending s. 634.303, F.S.; providing that  
34 it is a first-degree misdemeanor for a person without  
35 a subsisting license to provide or offer to provide  
36 home warranties; amending s. 634.308, F.S.; providing  
37 an exception to certain grounds for licensure  
38 suspension or revocation; amending s. 634.312, F.S.;  
39 deleting a requirement that certain home warranty  
40 agreement forms be approved by the office; amending s.  
41 634.3123, F.S.; authorizing the office to order a home  
42 warranty association to stop using forms that do not  
43 comply with specified requirements; amending s.  
44 634.314, F.S.; providing guidelines for the office to  
45 use in determining whether to examine an association;  
46 amending s. 634.3205, F.S.; requiring certain rebates  
47 to be approved by the association issuing a service  
48 agreement; amending s. 634.336, F.S.; requiring that a  
49 consumer receive a sample copy of the service  
50 agreement prior to the sale of a service agreement;  
51 amending s. 634.344, F.S.; prohibiting certain  
52 coercive actions relating to the sale of a home  
53 warranty in connection with the lending of money;  
54 amending s. 634.401, F.S.; redefining the term  
55 "indemnify"; amending s. 634.403, F.S.; providing that  
56 it is a first-degree misdemeanor for a person without  
57 a subsisting license to provide or offer to provide  
58 service warranties; amending s. 634.406, F.S.,

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59 relating to financial requirements; conforming a  
60 cross-reference; amending s. 634.414, F.S.; deleting a  
61 requirement that certain service warranty forms be  
62 approved by the office; deleting certain requirements  
63 relating to the display of the issuing association's  
64 name on literature; amending s. 634.4145, F.S.;  
65 authorizing the office to order a service warranty  
66 association to stop using forms that do not comply  
67 with specified requirements; amending s. 634.415,  
68 F.S.; deleting a requirement that associations file  
69 certain quarterly statements and special reports;  
70 amending s. 634.416, F.S.; providing guidelines for  
71 the office to use in determining whether to examine a  
72 service warranty association; amending s. 634.4225,  
73 F.S.; requiring certain rebates to be approved by the  
74 association issuing a service warranty; amending s.  
75 634.436, F.S.; requiring that a consumer receive a  
76 sample copy of the service agreement prior to the sale  
77 of a service agreement; repealing s. 634.1216, F.S.,  
78 relating to required rate filings; repealing s.  
79 634.136(2) and (3), F.S., relating to certain records  
80 required to be maintained by motor vehicle service  
81 contract companies; repealing s. 634.3126, F.S.,  
82 relating to required rate filings; repealing s.  
83 634.313(4), F.S., relating to required reports  
84 relating to taxes on premiums; providing an effective  
85 date.

86  
87 Be It Enacted by the Legislature of the State of Florida:

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89 Section 1. Subsection (1) of section 628.4615, Florida  
90 Statutes, is amended to read:

91 628.4615 Specialty insurers; acquisition of controlling  
92 stock, ownership interest, assets, or control; merger or  
93 consolidation.—

94 (1) For the purposes of this section, the term "specialty  
95 insurer" means any person holding a license or certificate of  
96 authority as:

97 (a) A motor vehicle service agreement company authorized to  
98 issue motor vehicle service agreements as those terms are  
99 defined in s. 634.011;

100 (b) A home warranty association authorized to issue "home  
101 warranties" as those terms are defined in s. 634.301(2) and (3)  
102 ~~s. 634.301(3) and (4)~~;

103 (c) A service warranty association authorized to issue  
104 "service warranties" as those terms are defined in s.  
105 634.401(13) and (14);

106 (d) A prepaid limited health service organization  
107 authorized to issue prepaid limited health service contracts, as  
108 those terms are defined in chapter 636;

109 (e) An authorized health maintenance organization operating  
110 pursuant to s. 641.21;

111 (f) An authorized prepaid health clinic operating pursuant  
112 to s. 641.405;

113 (g) A legal expense insurance corporation authorized to  
114 engage in a legal expense insurance business pursuant to s.  
115 642.021;

116 (h) A provider which is licensed to operate a facility

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117 which undertakes to provide continuing care as those terms are  
118 defined in s. 651.011(2), (4), (5), and (6);

119 (i) A multiple-employer welfare arrangement operating  
120 pursuant to ss. 624.436-624.446;

121 (j) A premium finance company authorized to finance  
122 insurance premiums pursuant to s. 627.828; or

123 (k) A corporation authorized to accept donor annuity  
124 agreements pursuant to s. 627.481.

125 Section 2. Subsection (8) of section 634.011, Florida  
126 Statutes, is amended to read:

127 634.011 Definitions.—As used in this part, the term:

128 (8) "Motor vehicle service agreement" or "service  
129 agreement" means any contract or agreement indemnifying the  
130 service agreement holder for the motor vehicle listed on the  
131 service agreement and arising out of the ownership, operation,  
132 and use of the motor vehicle against loss caused by failure of  
133 any mechanical or other component part, or any mechanical or  
134 other component part that does not function as it was originally  
135 intended; however, nothing in this part shall prohibit or affect  
136 the giving, free of charge, of the usual performance guarantees  
137 by manufacturers or dealers in connection with the sale of motor  
138 vehicles. Transactions exempt under s. 624.125 are expressly  
139 excluded from this definition and are exempt from the provisions  
140 of this part. Service agreements that are sold to persons other  
141 than consumers are excluded from this definition and are exempt  
142 from regulation under the Florida Insurance Code. The term  
143 "motor vehicle service agreement" includes any contract or  
144 agreement that provides:

145 (a) For the coverage or protection defined in this

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146 subsection and which is issued or provided in conjunction with  
147 an additive product applied to the motor vehicle that is the  
148 subject of such contract or agreement;

149 (b) For payment of vehicle protection expenses.

150 1.a. "Vehicle protection expenses" means a preestablished  
151 flat amount payable for the loss of or damage to a vehicle or  
152 expenses incurred by the service agreement holder for loss or  
153 damage to a covered vehicle, including, but not limited to,  
154 applicable deductibles under a motor vehicle insurance policy;  
155 temporary vehicle rental expenses; expenses for a replacement  
156 vehicle that is at least the same year, make, and model of the  
157 stolen motor vehicle; sales taxes or registration fees for a  
158 replacement vehicle that is at least the same year, make, and  
159 model of the stolen vehicle; or other incidental expenses  
160 specified in the agreement.

161 b. "Vehicle protection product" means a product or system  
162 installed or applied to a motor vehicle or designed to prevent  
163 the theft of the motor vehicle or assist in the recovery of the  
164 stolen motor vehicle.

165 2. Vehicle protection expenses shall be payable in the  
166 event of loss or damage to the vehicle as a result of the  
167 failure of the vehicle protection product to prevent the theft  
168 of the motor vehicle or to assist in the recovery of the stolen  
169 motor vehicle. Vehicle protection expenses covered under the  
170 agreement shall be clearly stated in the service agreement form,  
171 unless the agreement provides for the payment of a  
172 preestablished flat amount, in which case the service agreement  
173 form shall clearly identify such amount.

174 3. Motor vehicle service agreements providing for the

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175 payment of vehicle protection expenses shall either:

176 a. Reimburse a service agreement holder for the following  
177 expenses, at a minimum: deductibles applicable to comprehensive  
178 coverage under the service agreement holder's motor vehicle  
179 insurance policy; temporary vehicle rental expenses; sales taxes  
180 and registration fees on a replacement vehicle that is at least  
181 the same year, make, and model of the stolen motor vehicle; and  
182 the difference between the benefits paid to the service  
183 agreement holder for the stolen vehicle under the service  
184 agreement holder's comprehensive coverage and the actual cost of  
185 a replacement vehicle that is at least the same year, make, and  
186 model of the stolen motor vehicle; or

187 b. Pay a preestablished flat amount to the service  
188 agreement holder.

189

190 Payments shall not duplicate any benefits or expenses paid to  
191 the service agreement holder by the insurer providing  
192 comprehensive coverage under a motor vehicle insurance policy  
193 covering the stolen motor vehicle; however, the payment of  
194 vehicle protection expenses at a preestablished flat amount of  
195 \$5,000 or less does not duplicate any benefits or expenses  
196 payable under any comprehensive motor vehicle insurance policy;  
197 or

198 (c)1. For the payment for paintless dent-removal services  
199 provided by a company whose primary business is providing such  
200 services.

201 2. "Paintless dent-removal" means the process of removing  
202 dents, dings, and creases, including hail damage, from a vehicle  
203 without affecting the existing paint finish, but does not

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204 include services that involve the replacement of vehicle body  
205 panels or sanding, bonding, or painting.

206 Section 3. Subsection (7) is added to section 634.031,  
207 Florida Statutes, to read:

208 634.031 License required.—

209 (7) Any person who violates this section commits, in  
210 addition to any other violation, a misdemeanor of the first  
211 degree, punishable as provided in s. 775.082 or s. 775.083.

212 Section 4. Paragraph (b) of subsection (8) and paragraph  
213 (b) of subsection (11) of section 634.041, Florida Statutes, are  
214 amended to read:

215 634.041 Qualifications for license.—To qualify for and hold  
216 a license to issue service agreements in this state, a service  
217 agreement company must be in compliance with this part, with  
218 applicable rules of the commission, with related sections of the  
219 Florida Insurance Code, and with its charter powers and must  
220 comply with the following:

221 (8)

222 (b) A service agreement company does not have to establish  
223 and maintain an unearned premium reserve if it purchases and  
224 maintains contractual liability insurance in accordance with the  
225 following:

226 1. The insurance covers 100 percent of its claim exposure  
227 and is obtained from an insurer approved by the office which  
228 holds a certificate of authority to do business within this  
229 state.

230 2. If the service agreement company does not meet its  
231 contractual obligations, the contractual liability insurance  
232 policy binds its issuer to pay or cause to be paid to the



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233 service agreement holder all legitimate claims and cancellation  
234 refunds for all service agreements issued by the service  
235 agreement company while the policy was in effect. This  
236 requirement also applies to those service agreements for which  
237 no premium has been remitted to the insurer.

238 3. If the issuer of the contractual liability policy is  
239 fulfilling the service agreements covered by the contractual  
240 liability policy and the service agreement holder cancels the  
241 service agreement, the issuer must make a full refund of  
242 unearned premium to the consumer, subject to the cancellation  
243 fee provisions of s. 634.121(3) ~~s. 634.121(5)~~. The sales  
244 representative and agent must refund to the contractual  
245 liability policy issuer their unearned pro rata commission.

246 4. The policy may not be canceled, terminated, or  
247 nonrenewed by the insurer or the service agreement company  
248 unless a 90-day written notice thereof has been given to the  
249 office by the insurer before the date of the cancellation,  
250 termination, or nonrenewal.

251 5. The service agreement company must provide the office  
252 with the claims statistics.

253  
254 All funds or premiums remitted to an insurer by a motor vehicle  
255 service agreement company under this part shall remain in the  
256 care, custody, and control of the insurer and shall be counted  
257 as an asset of the insurer; provided, however, this requirement  
258 does not apply when the insurer and the motor vehicle service  
259 agreement company are affiliated companies and members of an  
260 insurance holding company system. If the motor vehicle service  
261 agreement company chooses to comply with this paragraph but also

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262 maintains a reserve to pay claims, such reserve shall only be  
263 considered an asset of the covered motor vehicle service  
264 agreement company and may not be simultaneously counted as an  
265 asset of any other entity.

266 (11)

267 (b) Notwithstanding any other requirement of this part, a  
268 service agreement company maintaining an unearned premium  
269 reserve on all service agreements in accordance with paragraph  
270 (8) (a) may offer service agreements providing vehicle protection  
271 expenses if it maintains contractual liability insurance only on  
272 all service agreements providing vehicle protection expenses and  
273 continues to maintain the 50-percent reserve for all service  
274 agreements not providing vehicle protection expenses. A service  
275 agreement company maintaining contractual liability insurance  
276 for all service agreements providing vehicle protection expenses  
277 and the 50-percent reserve for all other service agreements  
278 must, in the service agreement register as required under s.  
279 634.136(2) ~~s. 634.136(4)~~, distinguish between insured service  
280 agreements providing vehicle protection expenses and service  
281 agreements not providing vehicle protection expenses.

282 Section 5. Section 634.095, Florida Statutes, is amended to  
283 read:

284 634.095 Prohibited acts.—Any service agreement company or  
285 salesperson that engages in one or more of the following acts  
286 is, in addition to any applicable denial, suspension,  
287 revocation, or refusal to renew or continue any appointment or  
288 license, guilty of a misdemeanor of the second degree,  
289 punishable as provided in s. 775.082 or s. 775.083:

290 (1) No salesperson or agent who participates in or

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291 influences the processing, administration, or adjustment of  
292 claims shall enter into any agreement or understanding in which  
293 the effect is to make the amount of any salesperson's or agent's  
294 commission contingent upon savings effected in the adjustment,  
295 settlement, and payment of losses covered by the service  
296 agreement company's or insurer's service agreement. Any  
297 agreement or understanding now existing is declared unlawful and  
298 shall be terminated immediately.

299 (2) Offering or attempting to offer the service agreement  
300 holder a return of all or a portion of the premium paid if the  
301 service agreement holder does not file any claims or files a  
302 limited number of claims or files claims the dollar amount of  
303 which does not exceed a set amount or percentage.

304 (3) Issuing or causing to be issued any advertisement  
305 which:

306 (a) Does not fully disclose in boldfaced type the name,  
307 address, and license number of the service agreement company.

308 (b) In any respect is in violation of or does not comply  
309 with this part, applicable provisions of the Florida Insurance  
310 Code, or applicable rule of the commission.

311 (c) Is ambiguous, misleading, or deceptive.

312 (d) Is false, deceptive, or misleading with respect to:

313 1. The service agreement company's affiliation with a motor  
314 vehicle manufacturer;

315 2. The service agreement company's possession of  
316 information regarding a motor vehicle owner's current motor  
317 vehicle manufacturer's original equipment warranty;

318 3. The expiration of a motor vehicle owner's current motor  
319 vehicle manufacturer's original equipment warranty; or

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320       4. Any requirement that the motor vehicle owner register  
321 for a new motor vehicle service agreement with the company in  
322 order to maintain coverage under the current motor vehicle  
323 service agreement or manufacturer's original equipment warranty.

324           (4) Denying claims for lack of service or maintenance on  
325 component parts that do not require servicing or routine  
326 maintenance or are unrelated to servicing.

327           (5) Requiring that the purchaser or insured agree to  
328 purchase noninsurance services, commodities, or other insurance  
329 including automobile services as specified in s. 624.124 or  
330 exempt motor vehicle service agreements specified in s. 624.125.

331           (6) The practice, known as sliding, by any person whereby  
332 the person:

333           (a) Represents to the applicant that a specific ancillary  
334 coverage or product is required by law in conjunction with the  
335 purchase of a service agreement, when in fact the specific  
336 ancillary coverage or product is not required;

337           (b) Represents to the applicant that a specific ancillary  
338 coverage or product is included in the service agreement applied  
339 for without an additional charge, when in fact an additional  
340 charge is applied; or

341           (c) Charges an applicant for a specific ancillary coverage  
342 or product, over and above the cost of the service coverage  
343 applied for, without the informed consent of the applicant.

344       (7) Remitting premiums received on motor vehicle service  
345 agreements sold to any person other than the licensed service  
346 agreement company that is obligated to perform thereunder, if  
347 the agreement between such company and the salesperson requires  
348 that premiums be submitted directly to the service agreement

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349 company.

350 Section 6. Section 634.121, Florida Statutes, is amended to  
351 read:

352 634.121 ~~Filing of Forms, required procedures, provisions.-~~

353 ~~(1) A service agreement form or related form may not be~~  
354 ~~issued or used in this state unless it has been filed with and~~  
355 ~~approved by the office. Upon application for a license, the~~  
356 ~~office shall require the applicant to submit for approval each~~  
357 ~~brochure, pamphlet, circular, form letter, advertisement, or~~  
358 ~~other sales literature or advertising communication addressed or~~  
359 ~~intended for distribution. The office shall disapprove any~~  
360 ~~document which is untrue, deceptive, or misleading or which~~  
361 ~~contains misrepresentations or omissions of material facts.~~

362 ~~(a) After an application has been approved, a licensee is~~  
363 ~~not required to submit brochures or advertisement to the office~~  
364 ~~for approval; however, a licensee may not have published, and a~~  
365 ~~person may not publish, any brochure or advertisement which is~~  
366 ~~untrue, deceptive, or misleading or which contains~~  
367 ~~misrepresentations or omissions of material fact.~~

368 ~~(b) For purposes of this section, brochures and advertising~~  
369 ~~includes, but is not limited to, any report, circular, public~~  
370 ~~announcement, certificate, or other printed matter or~~  
371 ~~advertising material which is designed or used to solicit or~~  
372 ~~induce any persons to enter into any motor vehicle service~~  
373 ~~agreement.~~

374 ~~(c) The office shall disapprove any service agreement form~~  
375 ~~providing vehicle protection expenses which does not clearly~~  
376 ~~indicate either the method for calculating the benefit to be~~  
377 ~~paid or provided to the service agreement holder or the~~

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378 ~~preestablished flat amount payable pursuant to the terms of the~~  
379 ~~service agreement. All service agreement forms providing vehicle~~  
380 ~~protection expenses shall clearly indicate the term of the~~  
381 ~~service agreement, whether new or used cars are eligible for the~~  
382 ~~vehicle protection product, and that the service agreement~~  
383 ~~holder may not make any claim against the Florida Insurance~~  
384 ~~Guarantee Association for vehicle protection expenses. The~~  
385 ~~service agreement shall be provided to a service agreement~~  
386 ~~holder on a form that provides only vehicle protection expenses.~~  
387 ~~A service agreement form providing vehicle protection expenses~~  
388 ~~must state that the service agreement holder must have in force~~  
389 ~~at the time of loss comprehensive motor vehicle insurance~~  
390 ~~coverage as a condition precedent to requesting payment of~~  
391 ~~vehicle protection expenses.~~

392 ~~(2) Every filing required under this section must be made~~  
393 ~~not less than 30 days in advance of issuance or use. At the~~  
394 ~~expiration of 30 days from the date of filing, a form so filed~~  
395 ~~becomes approved unless prior thereto it has been affirmatively~~  
396 ~~disapproved by written notice of the office. The office may~~  
397 ~~extend by not more than an additional 15 days the period within~~  
398 ~~which it may affirmatively approve or disapprove any form by~~  
399 ~~giving notice of extension before the expiration of the initial~~  
400 ~~30-day period. At the expiration of any period as so extended~~  
401 ~~and in the absence of prior affirmative disapproval, the form~~  
402 ~~becomes approved.~~

403 ~~(1)~~(3) Before the sale of any service agreement, written  
404 notice must be given to the prospective purchaser by the service  
405 agreement company or its agent or salesperson, ~~on an office-~~  
406 ~~approved form,~~ that purchase of the service agreement is not

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407 required in order to purchase or obtain financing for a motor  
408 vehicle.

409 (2)~~(4)~~ All motor vehicle service agreements are assignable  
410 in a consumer transaction and must contain a statement in  
411 conspicuous, boldfaced type, informing the purchaser of the  
412 service agreement of her or his right to assign it to a  
413 subsequent retail purchaser of the motor vehicle covered by the  
414 service agreement and all conditions on such right of transfer.  
415 The assignment must occur within a period of time specified in  
416 the agreement, which period may not expire earlier than 15 days  
417 after the date of the sale or transfer of the motor vehicle. The  
418 service agreement company may charge an assignment fee not to  
419 exceed \$40.

420 (3)~~(5)~~ (a) Each service agreement must contain a  
421 cancellation provision. Any service agreement is cancelable by  
422 the purchaser within 60 days after purchase. The refund must be  
423 100 percent of the gross premium paid, less any claims paid on  
424 the agreement. A reasonable administrative fee may be charged  
425 not to exceed 5 percent of the gross premium paid by the  
426 agreement holder.

427 (b) After the service agreement has been in effect for 60  
428 days, it may not be canceled by the insurer or service agreement  
429 company unless:

- 430 1. There has been a material misrepresentation or fraud at  
431 the time of sale of the service agreement;
- 432 2. The agreement holder has failed to maintain the motor  
433 vehicle as prescribed by the manufacturer;
- 434 3. The odometer has been tampered with or disabled and the  
435 agreement holder has failed to repair the odometer; or

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436 4. For nonpayment of premium by the agreement holder, in  
437 which case the service agreement company shall provide the  
438 agreement holder notice of cancellation by certified mail.  
439

440 If the service agreement is canceled by the insurer or service  
441 agreement company, the return of premium must not be less than  
442 100 percent of the paid unearned pro rata premium, less any  
443 claims paid on the agreement. If, after 60 days, the service  
444 agreement is canceled by the service agreement holder, the  
445 insurer or service agreement company shall return directly to  
446 the agreement holder not less than 90 percent of the unearned  
447 pro rata premium, less any claims paid on the agreement. The  
448 service agreement company remains responsible for full refunds  
449 to the consumer on canceled service agreements. However, the  
450 salesperson and agent are responsible for the refund of the  
451 unearned pro rata commission. A service agreement company may  
452 effectuate refunds through the issuing salesperson or agent.

453 (4)~~(6)~~ If the service agreement is canceled, pursuant to an  
454 order of liquidation, the salesperson or agent is responsible  
455 for refunding, and must refund, to the receiver the unearned pro  
456 rata commission.

457 (5)~~(7)~~ If a service agreement company violates any lawful  
458 order of the office or fails to meet its contractual obligations  
459 under this part, upon notice from the office, the sales  
460 representative or agent must refund to the service agreement  
461 holder the unearned pro rata commission, unless the sales  
462 representative or agent has made other arrangements,  
463 satisfactory to the office, with the service agreement holder.

464 (6)~~(8)~~ Each service agreement, which includes a copy of the



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465 application form, must be mailed or delivered to the agreement  
466 holder within 45 days after the date of purchase.

467 ~~(7)-(9)~~ Each service agreement form must contain in  
468 conspicuous, boldfaced type any statement or clause that places  
469 restrictions or limitations on the benefits offered or disclose  
470 such restrictions or limitations in regular type in a section of  
471 the service agreement containing a conspicuous, boldfaced type  
472 heading.

473 ~~(8)-(10)~~ If an insurer or service agreement company intends  
474 to use or require the use of remanufactured or used replacement  
475 parts, each service agreement form as well as all service  
476 agreement brochures must contain in conspicuous, boldfaced type  
477 a statement to that effect.

478 ~~(9)-(11)~~ Each service agreement form as well as all service  
479 agreement company sales brochures must clearly identify the  
480 name, address, and Florida license number of the licensed  
481 insurer or service agreement company.

482 ~~(10)-(12)~~ If a service agreement contains a rental car  
483 provision, it must disclose the terms and conditions of this  
484 benefit in conspicuous, boldfaced type or disclose such  
485 restrictions or limitations in regular type in a section of the  
486 service agreement containing a conspicuous, boldfaced type  
487 heading.

488 Section 7. Section 634.1213, Florida Statutes, is amended  
489 to read:

490 634.1213 Noncompliant forms ~~Grounds for disapproval.~~—The  
491 office may order a service agreement company to stop using  
492 ~~disapprove~~ any service agreement form that ~~or service agreement~~  
493 ~~company sales brochures filed under s. 634.121, or withdraw any~~

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494 ~~previous approval thereof, if the form or brochure:~~

495 (1) Is in any respect in violation of or does not comply  
496 with this part, any applicable provision of the Florida  
497 Insurance Code, or any applicable rule of the commission.

498 (2) Contains or incorporates by reference when such  
499 incorporation is otherwise permissible, any inconsistent,  
500 ambiguous, or misleading clauses, or exceptions and conditions  
501 which deceptively affect the risk purported to be assumed in the  
502 general coverage of the service agreement.

503 (3) Has any title, heading, or other indication of its  
504 provisions which is misleading.

505 (4) Is printed or otherwise reproduced in such manner as to  
506 render any material provision of the form substantially  
507 illegible.

508 (5) Contains any provision which is unfair or inequitable  
509 or which encourages misrepresentation.

510 (6) Contains any provision which makes it difficult to  
511 determine the actual insurer or service agreement company  
512 issuing the form.

513 (7) Contains any provision for reducing claim payments due  
514 to depreciation of parts, except for marine engines.

515 Section 8. Subsection (1) of section 634.137, Florida  
516 Statutes, is amended to read:

517 634.137 Financial and statistical reporting requirements.-

518 (1) Each service agreement company shall, by March 1 of  
519 each year, submit to the office annual financial reports on  
520 forms prescribed by the commission and furnished by the office.  
521 ~~as follows:~~

522 ~~(a) Reports for a period ending December 31 are due by~~

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523 ~~March 1.~~

524 ~~(b) Reports for a period ending March 31 are due by May 15.~~

525 ~~(c) Reports for a period ending June 30 are due by August~~  
526 ~~15.~~

527 ~~(d) Reports for a period ending September 30 are due by~~  
528 ~~November 15.~~

529 Section 9. Section 634.141, Florida Statutes, is amended to  
530 read:

531 634.141 Examination of companies.—

532 (1) Motor vehicle service agreement companies licensed  
533 under this part may shall be subject to periodic examination by  
534 the office in the same manner and subject to the same terms and  
535 conditions as applies to insurers under part II of chapter 624.  
536 The commission may by rule establish provisions whereby a  
537 company may be exempted from examination.

538 (2) The office shall determine whether to conduct an  
539 examination of a company by considering:

540 (a) The amount of time that the company has been  
541 continuously licensed and operating under the same management  
542 and control;

543 (b) The company's history of compliance with applicable  
544 law;

545 (c) The number of consumer complaints against the company;  
546 and

547 (d) The financial condition of the company, demonstrated by  
548 the financial reports submitted pursuant to s. 634.137.

549 Section 10. Paragraph (b) of subsection (1) of section  
550 634.1815, Florida Statutes, is amended to read:

551 634.1815 Rebating; when allowed.—

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

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

559 Section 11. Subsection (13) of section 634.282, Florida  
560 Statutes, is amended, and subsection (17) is added to that  
561 section, to read:

562 634.282 Unfair methods of competition and unfair or  
563 deceptive acts or practices defined.—The following methods,  
564 acts, or practices are defined as unfair methods of competition  
565 and unfair or deceptive acts or practices:

566 (13) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED  
567 CHARGES FOR MOTOR VEHICLE SERVICE AGREEMENTS.—

568 (a) Knowingly collecting any sum as a premium or charge for  
569 a motor vehicle service agreement, which is not then provided,  
570 or is not in due course to be provided, subject to acceptance of  
571 the risk by a service agreement company or an insurer, by a  
572 motor vehicle service agreement issued by a service agreement  
573 company or an insurer as permitted by this part.

574 (b) Knowingly collecting as a premium or charge for a motor  
575 vehicle service agreement any sum in excess of or less than the  
576 premium or charge applicable to such motor vehicle service  
577 agreement, ~~in accordance with the applicable classifications and~~  
578 ~~rates as filed with the office,~~ and as specified in the motor  
579 vehicle service agreement. However, there is no violation of  
580 this subsection if excess premiums or charges are refunded to

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581 the service agreement holder within 45 days after receipt of the  
582 agreement by the service agreement company or if the licensed  
583 sales representative's commission is reduced by the amount of  
584 any premium undercharge.

585 (17) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO  
586 SALE.—

587 (a) Failing to provide a consumer with a complete sample  
588 copy of the terms and conditions of the service agreement prior  
589 to the time of sale upon a request for the same by the consumer.

590 (b) A service agreement company may comply with this  
591 provision by providing the consumer with a sample copy of the  
592 terms and conditions of the service agreement or by directing  
593 the consumer to a website that displays a complete sample of the  
594 terms and conditions of the service agreement.

595  
596 No provision of this section shall be deemed to prohibit a  
597 service agreement company or a licensed insurer from giving to  
598 service agreement holders, prospective service agreement  
599 holders, and others for the purpose of advertising, any article  
600 of merchandise having a value of not more than \$25.

601 Section 12. Section 634.301, Florida Statutes, as amended  
602 by section 1 of chapter 2007-235, Laws of Florida, is amended to  
603 read:

604 634.301 Definitions.—As used in this part, the term:

605 (1) "Gross written premiums" means the total amount of  
606 premiums, paid for the entire period of the home warranty,  
607 inclusive of commissions, for which the association is obligated  
608 under home warranties issued.

609 ~~(2) "Home improvement" means major remodeling, enclosure of~~

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610 ~~a garage, addition of a room, addition of a pool, and other like~~  
611 ~~items that add value to the residential property. The term does~~  
612 ~~not include normal maintenance for items such as painting,~~  
613 ~~reroofing, and other like items subject to normal wear and tear.~~

614 (2)~~(3)~~ "Home warranty" or "warranty" means any contract or  
615 agreement;

616 ~~(a) Offered in connection with the sale of residential~~  
617 ~~property;~~

618 ~~(b) Offered in connection with a loan of \$5,000 or more~~  
619 ~~which is secured by residential property that is the subject of~~  
620 ~~the warranty, but not in connection with the sale of such~~  
621 ~~property;~~

622 ~~(c) Offered in connection with a home improvement of \$7,500~~  
623 ~~or more for residential property that is the subject of the~~  
624 ~~warranty, but not in connection with the sale of such property;~~  
625 ~~or~~

626 ~~(d) Offered in connection with a home inspection service as~~  
627 ~~defined under s. 468.8311(4) or a mold assessment as defined~~  
628 ~~under s. 468.8411(3);~~

629  
630 whereby a person undertakes to indemnify the warranty holder  
631 against the cost of repair or replacement, or actually furnishes  
632 repair or replacement, of any structural component or appliance  
633 of a home, necessitated by wear and tear or an inherent defect  
634 of any such structural component or appliance or necessitated by  
635 the failure of an inspection to detect the likelihood of any  
636 such loss. However, this part does not prohibit the giving of  
637 usual performance guarantees by either the builder of a home or  
638 the manufacturer or seller of an appliance, as long as no

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639 identifiable charge is made for such guarantee. This part does  
640 not permit the provision of indemnification against  
641 consequential damages arising from the failure of any structural  
642 component or appliance of a home, which practice constitutes the  
643 transaction of insurance subject to all requirements of the  
644 insurance code. This part does not apply to service contracts  
645 entered into between consumers and nonprofit organizations or  
646 cooperatives the members of which consist of condominium  
647 associations and condominium owners and which perform repairs  
648 and maintenance for appliances or maintenance of the residential  
649 property. This part does not apply to a contract or agreement  
650 offered ~~in connection with a sale of residential property~~ by a  
651 warranty association in compliance with part III, provided such  
652 contract or agreement only relates to the systems and appliances  
653 of the covered residential property and does not cover any  
654 structural component of the residential property.

655 (3)~~(4)~~ "Home warranty association" means any corporation or  
656 any other organization, other than an authorized insurer,  
657 issuing home warranties.

658 (4)~~(5)~~ "Impaired" means having liabilities in excess of  
659 assets.

660 (5)~~(6)~~ "Insolvent" means the inability of a corporation to  
661 pay its debts as they become due in the usual course of its  
662 business.

663 (6)~~(7)~~ "Insurance code" means the Florida Insurance Code.

664 (7)~~(8)~~ "Insurer" means any property or casualty insurer  
665 duly authorized to transact such business in this state.

666 (8)~~(9)~~ "Listing period" means the period of time  
667 residential property is listed for sale with a licensed real

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668 estate broker, beginning on the date the residence is first  
669 listed for sale and ending on either the date the sale of the  
670 residence is closed, the date the residence is taken off the  
671 market, or the date the listing contract with the real estate  
672 broker expires.

673 (9)~~(10)~~ "Net assets" means the amount by which the total  
674 statutory assets of an association exceed the total liabilities  
675 of the association.

676 (10)~~(11)~~ "Person" includes an individual, company,  
677 corporation, association, insurer, agent, and every other legal  
678 entity.

679 (11)~~(12)~~ "Premium" means the total consideration received,  
680 or to be received, by an insurer or home warranty association  
681 for or related to the issuance and delivery of any binder or  
682 warranty, including any charges designated as assessments or  
683 fees for policies, surveys, inspections, or service or any other  
684 charges.

685 (12)~~(13)~~ "Sales representative" means any person with whom  
686 an insurer or home inspection or warranty association has a  
687 contract and who is utilized by such insurer or association for  
688 the purpose of selling or issuing home warranties. The term  
689 includes all employees of an insurer or association engaged  
690 directly in the sale or issuance of home warranties.

691 (13)~~(14)~~ "Structural component" means the roof, plumbing  
692 system, electrical system, foundation, basement, walls,  
693 ceilings, or floors of a home.

694 Section 13. Subsection (4) is added to section 634.303,  
695 Florida Statutes, to read:

696 634.303 License required.—



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697       (4) Any person who provides, offers to provide, or holds  
698 oneself out as providing or offering to provide home warranties  
699 in this state or from this state without holding a subsisting  
700 license commits, in addition to any other violation, a  
701 misdemeanor of the first degree, punishable as provided in s.  
702 775.082 or s. 775.083.

703       Section 14. Paragraph (f) of subsection (2) of section  
704 634.308, Florida Statutes, is amended to read:

705       634.308 Grounds for suspension or revocation of license.—

706       (2) The license of any home warranty association shall be  
707 suspended, revoked, or not renewed if it is determined that such  
708 association:

709       (f) Has issued warranty contracts which renewal contracts  
710 provide that the cost of renewal exceeds the then-current cost  
711 for new warranty contracts, unless the increase is supported by  
712 the claims history or claims cost data, or impose a fee for  
713 inspection of the premises.

714       Section 15. Section 634.312, Florida Statutes, is amended  
715 to read:

716       634.312 Forms; required provisions and procedures Filing;  
717 ~~approval of forms.—~~

718       ~~(1) No warranty form or related form shall be issued or~~  
719 ~~used in this state unless it has been filed with and approved by~~  
720 ~~the office. Also upon application for a license, the office~~  
721 ~~shall require the applicant to submit for approval each~~  
722 ~~brochure, pamphlet, circular, form letter, advertisement, or~~  
723 ~~other sales literature or advertising communication addressed or~~  
724 ~~intended for distribution. Approval of the application~~  
725 ~~constitutes approval of such documents, unless the applicant has~~

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726 ~~consented otherwise in writing. The office shall disapprove any~~  
727 ~~document which is untrue, deceptive, or misleading or which~~  
728 ~~contains misrepresentations or omissions of material facts.~~

729 ~~(a) After an application has been approved, a licensee is~~  
730 ~~not required to submit brochures or advertisement to the office~~  
731 ~~for approval; however, a licensee may not have published, and a~~  
732 ~~person may not publish, any brochure or advertisement which is~~  
733 ~~untrue, deceptive, or misleading or which contains~~  
734 ~~misrepresentations or omissions of material fact.~~

735 ~~(b) For purposes of this section, brochures and advertising~~  
736 ~~includes, but is not limited to, any report, circular, public~~  
737 ~~announcement, certificate, or other printed matter or~~  
738 ~~advertising material which is designed or used to solicit or~~  
739 ~~induce any persons to enter into any home warranty agreement.~~

740 ~~(2) Every such filing shall be made not less than 30 days~~  
741 ~~in advance of issuance or use. At the expiration of 30 days from~~  
742 ~~date of filing, a form so filed shall be deemed approved unless~~  
743 ~~prior thereto it has been affirmatively approved or disapproved~~  
744 ~~by written order of the office.~~

745 ~~(3) The office shall not approve any such form that imposes~~  
746 ~~a fee for inspection of the premises.~~

747 (1)~~(4)~~ All home warranty contracts are assignable in a  
748 consumer transaction and must contain a statement informing the  
749 purchaser of the home warranty of her or his right to assign it,  
750 at least within 15 days from the date the home is sold or  
751 transferred, to a subsequent retail purchaser of the home  
752 covered by the home warranty and all conditions on such right of  
753 transfer. The home warranty company may charge an assignment fee  
754 not to exceed \$40. Home warranty assignments include, but are

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755 not limited to, the assignment from a home builder who purchased  
756 the home warranty to a subsequent home purchaser.

757 (2)~~(5)~~ Subject to the insurer's or home warranty  
758 association's requirement as to payment of premium, every home  
759 warranty shall be mailed or delivered to the warranty holder not  
760 later than 45 days after the effectuation of coverage, and the  
761 application is part of the warranty contract document.

762 (3)~~(6)~~ All home warranty contracts must state in  
763 conspicuous, boldfaced type that the home warranty may not  
764 provide listing period coverage free of charge.

765 (4)~~(7)~~ All home warranty contracts must disclose any  
766 exclusions, restrictions, or limitations on the benefits offered  
767 or the coverage provided by the home warranty contract in  
768 boldfaced type, and must contain, in boldfaced type, a statement  
769 on the front page of the contract substantially similar to the  
770 following: "Certain items and events are not covered by this  
771 contract. Please refer to the exclusions listed on page .... of  
772 this document."

773 (5)~~(8)~~ Each home warranty contract shall contain a  
774 cancellation provision. Any home warranty agreement may be  
775 canceled by the purchaser within 10 days after purchase. The  
776 refund must be 100 percent of the gross premium paid, less any  
777 claims paid on the agreement. A reasonable administrative fee  
778 may be charged, not to exceed 5 percent of the gross premium  
779 paid by the warranty agreement holder. After the home warranty  
780 agreement has been in effect for 10 days, if the contract is  
781 canceled by the warranty holder, a return of premium shall be  
782 based upon 90 percent of unearned pro rata premium less any  
783 claims that have been paid. If the contract is canceled by the

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784 association for any reason other than for fraud or  
785 misrepresentation, a return of premium shall be based upon 100  
786 percent of unearned pro rata premium, less any claims paid on  
787 the agreement.

788 Section 16. Section 634.3123, Florida Statutes, is amended  
789 to read:

790 634.3123 Noncompliant ~~Grounds for disapproval of forms.~~—The  
791 office may order a home warranty association to stop using any  
792 contract shall disapprove any form that filed under s. 634.312  
793 or withdraw any previous approval if the form:

794 (1) Is in violation of or does not comply with this part.

795 (2) Contains or incorporates by reference, when such  
796 incorporation is otherwise permissible, any inconsistent,  
797 ambiguous, or misleading clauses or exceptions or conditions  
798 which deceptively affect the risk purported to be assumed in the  
799 general coverage of the contract.

800 (3) Has any title, heading, or other indication of its  
801 provisions which is misleading.

802 (4) Is printed or otherwise reproduced in such a manner as  
803 to render any material provision of the form illegible.

804 (5) Provides that the cost of renewal exceeds the then-  
805 current cost for new warranty contracts, unless the increase is  
806 supported by the claims history or claims cost data, or impose a  
807 fee for inspection of the premises.

808 Section 17. Section 634.314, Florida Statutes, is amended  
809 to read:

810 634.314 Examination of associations.—

811 (1) Home warranty associations licensed under this part may  
812 ~~shall~~ be subject to periodic examinations by the office, in the

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813 same manner and subject to the same terms and conditions as  
814 apply to insurers under part II of chapter 624 of the insurance  
815 code.

816 (2) The office shall determine whether to conduct an  
817 examination of a home warranty association by considering:

818 (a) The amount of time that the association has been  
819 continuously licensed and operating under the same management  
820 and control;

821 (b) The association's history of compliance with applicable  
822 law;

823 (c) The number of consumer complaints against the  
824 association; and

825 (d) The financial condition of the association,  
826 demonstrated by the financial reports submitted pursuant to s.  
827 634.313.

828 Section 18. Paragraph (b) of subsection (1) of section  
829 634.3205, Florida Statutes, is amended to read:

830 634.3205 Rebating; when allowed.—

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

833 (b) The rebate shall be in accordance with a rebating  
834 schedule filed with and approved by the ~~sales representative~~  
835 ~~with the~~ home warranty association issuing the home warranty to  
836 which the rebate applies. The home warranty association shall  
837 maintain a copy of all rebating schedules for a period of 3  
838 years.

839 Section 19. Subsection (8) of section 634.336, Florida  
840 Statutes, is amended, and subsection (9) is added to that  
841 section, to read:

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842           634.336 Unfair methods of competition and unfair or  
843 deceptive acts or practices defined.—The following methods,  
844 acts, or practices are defined as unfair methods of competition  
845 and unfair or deceptive acts or practices:

846           (8) COERCION OF DEBTORS.—When a home warranty is sold ~~as~~  
847 ~~authorized by s. 634.301(3)(b):~~

848           (a) Requiring, as a condition precedent or condition  
849 subsequent to the lending of the money or the extension of the  
850 credit or any renewal thereof, that the person to whom such  
851 credit is extended purchase a home warranty; or

852           (b) Failing to provide the advice required by s. 634.344.

853           (9) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE.—

854           (a) Failing to provide a consumer with a complete sample  
855 copy of the terms and conditions of the home warranty contract  
856 prior to the time of sale upon a request for the same by the  
857 consumer.

858           (b) A home warranty association may comply with this  
859 provision by providing the consumer with a sample copy of the  
860 terms and conditions of the home warranty contract or by  
861 directing the consumer to a website that displays a complete  
862 sample of the terms and conditions of the contract.

863           Section 20. Section 634.344, Florida Statutes, is amended  
864 to read:

865           634.344 Coercion of debtor prohibited.—

866           (1) When a home warranty is sold in connection with the  
867 lending of money ~~as authorized by s. 634.301(3)(b)~~, a ~~no~~ person  
868 may not require, as a condition precedent or condition  
869 subsequent to the lending of the money or the extension of the  
870 credit or any renewal thereof, that the person to whom such

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871 money or credit is extended purchase a home warranty.

872 (2) When a home warranty is purchased in connection with  
873 the lending of money ~~as authorized by s. 634.301(3)(b)~~, the  
874 insurer or home warranty association or the sales representative  
875 of the insurer or home warranty association shall advise the  
876 borrower or purchaser in writing that Florida law prohibits the  
877 lender from requiring the purchase of a home warranty as a  
878 condition precedent or condition subsequent to the making of the  
879 loan.

880 Section 21. Subsection (5) of section 634.401, Florida  
881 Statutes, is amended to read:

882 634.401 Definitions.—As used in this part, the term:

883 (5) "Indemnify" means to undertake repair or replacement of  
884 a consumer product, or pay compensation for such repair or  
885 replacement by cash, check, store credit, gift card, or other  
886 similar means, in return for the payment of a segregated  
887 premium, when such consumer product suffers operational failure.

888 Section 22. Subsection (5) is added to section 634.403,  
889 Florida Statutes, to read:

890 634.403 License required.—

891 (5) Any person who provides, offers to provide, or holds  
892 oneself out as providing or offering to provide a service  
893 warranty in this state or from this state without holding a  
894 subsisting license commits, in addition to any other violation,  
895 a misdemeanor of the first degree, punishable as provided in s.  
896 775.082 or s. 775.083.

897 Section 23. Paragraph (e) of subsection (3) of section  
898 634.406, Florida Statutes, is amended to read:

899 634.406 Financial requirements.—

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900 (3) An association will not be required to establish an  
901 unearned premium reserve if it has purchased contractual  
902 liability insurance which demonstrates to the satisfaction of  
903 the office that 100 percent of its claim exposure is covered by  
904 such policy. The contractual liability insurance shall be  
905 obtained from an insurer that holds a certificate of authority  
906 to do business within the state. For the purposes of this  
907 subsection, the contractual liability policy shall contain the  
908 following provisions:

909 (e) In the event the issuer of the contractual liability  
910 policy is fulfilling the service warranty covered by policy and  
911 in the event the service warranty holder cancels the service  
912 warranty, it is the responsibility of the contractual liability  
913 policy issuer to effectuate a full refund of unearned premium to  
914 the consumer. This refund shall be subject to the cancellation  
915 fee provisions of s. 634.414(3). The salesperson or agent shall  
916 refund to the contractual liability policy issuer the unearned  
917 pro rata commission.

918 Section 24. Section 634.414, Florida Statutes, is amended  
919 to read:

920 634.414 Cancellation provisions required ~~Filing; approval~~  
921 ~~of forms.~~

922 ~~(1) No service warranty form or related form shall be~~  
923 ~~issued or used in this state unless it has been filed with and~~  
924 ~~approved by the office. Upon application for a license, the~~  
925 ~~office shall require the applicant to submit for approval each~~  
926 ~~brochure, pamphlet, circular, form letter, advertisement, or~~  
927 ~~other sales literature or advertising communication addressed or~~  
928 ~~intended for distribution. The office shall disapprove any~~



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929 ~~document which is untrue, deceptive, or misleading or which~~  
930 ~~contains misrepresentations or omissions of material facts.~~

931 ~~(a) After an application has been approved, a licensee is~~  
932 ~~not required to submit brochures or advertisement to the office~~  
933 ~~for approval; however, a licensee may not have published, and a~~  
934 ~~person may not publish, any brochure or advertisement which is~~  
935 ~~untrue, deceptive, or misleading or which contains~~  
936 ~~misrepresentations or omissions of material fact.~~

937 ~~(b) For purposes of this section, brochures and advertising~~  
938 ~~includes, but is not limited to, any report, circular, public~~  
939 ~~announcement, certificate, or other printed matter or~~  
940 ~~advertising material which is designed or used to solicit or~~  
941 ~~induce any persons to enter into any service warranty agreement.~~

942 ~~(2) Each filing shall be made not less than 30 days in~~  
943 ~~advance of its issuance or use. At the expiration of 30 days~~  
944 ~~from date of filing, a form so filed shall be deemed approved~~  
945 ~~unless prior thereto it has been affirmatively disapproved by~~  
946 ~~written order of the office.~~

947 ~~(3) Each service warranty contract shall contain a~~  
948 ~~cancellation provision. If ~~In the event~~ the contract is canceled~~  
949 ~~by the warranty holder, return of premium shall be based upon no~~  
950 ~~less than 90 percent of unearned pro rata premium less any~~  
951 ~~claims that have been paid or less the cost of repairs made on~~  
952 ~~behalf of the warranty holder. If ~~In the event~~ the contract is~~  
953 ~~canceled by the association, return of premium shall be based~~  
954 ~~upon 100 percent of unearned pro rata premium, less any claims~~  
955 ~~paid or the cost of repairs made on behalf of the warranty~~  
956 ~~holder.~~

957 ~~(4) The name of the service warranty association issuing~~

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958 ~~the contract must be more prominent than any other company name~~  
959 ~~or program name on the service warranty form or sales brochure.~~

960 Section 25. Section 634.4145, Florida Statutes, is amended  
961 to read:

962 634.4145 Noncompliant ~~Grounds for disapproval of forms.~~—The  
963 office may order a service warranty association to stop using  
964 any contract ~~shall disapprove any form that filed under s.~~  
965 ~~634.414 if the form:~~

966 (1) Violates this part;

967 (2) Is misleading in any respect;

968 (3) Is reproduced so that any material provision is  
969 substantially illegible; or

970 (4) Contains provisions which are unfair or inequitable or  
971 which encourage misrepresentation.

972 Section 26. Section 634.415, Florida Statutes, is amended  
973 to read:

974 634.415 Tax on premiums; annual statement; reports; ~~and~~  
975 ~~quarterly statements.~~—

976 (1) In addition to the license fees provided in this part  
977 for service warranty associations and license taxes as provided  
978 in the insurance code as to insurers, each such association and  
979 insurer shall, annually on or before March 1, file with the  
980 office its annual statement, in the form prescribed by the  
981 commission, showing all premiums or assessments received by it  
982 in connection with the issuance of service warranties in this  
983 state during the preceding calendar year and using accounting  
984 principles which will enable the office to ascertain whether the  
985 financial requirements set forth in s. 634.406 have been  
986 satisfied.

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987 (2) The gross amount of premiums and assessments is subject  
988 to the sales tax imposed by s. 212.0506.

989 (3) The office may levy a fine of up to \$100 a day for each  
990 day an association neglects to file the annual statement in the  
991 form and within the time provided by this part. The amount of  
992 the fine shall be established by rules adopted by the  
993 commission. The office shall deposit all sums collected by it  
994 under this section to the credit of the Insurance Regulatory  
995 Trust Fund.

996 ~~(4) In addition to an annual statement, the office may~~  
997 ~~require of licensees, under oath and in the form prescribed by~~  
998 ~~it, quarterly statements or special reports which it deems~~  
999 ~~necessary to the proper supervision of licensees under this~~  
1000 ~~part. For manufacturers as defined in s. 634.401, the office~~  
1001 ~~shall require only the annual audited financial statements of~~  
1002 ~~the warranty operations and corporate reports as filed by the~~  
1003 ~~manufacturer with the Securities and Exchange Commission,~~  
1004 ~~provided that the office may require additional reporting by~~  
1005 ~~manufacturers upon a showing by the office that annual reporting~~  
1006 ~~is insufficient to protect the interest of purchasers of service~~  
1007 ~~warranty agreements in this state or fails to provide sufficient~~  
1008 ~~proof of the financial status required by this part.~~

1009 (4)~~(5)~~ The office may suspend or revoke the license of a  
1010 service warranty association failing to file its annual  
1011 statement ~~or quarterly report~~ when due.

1012 (5)~~(6)~~ The commission may by rule require each service  
1013 warranty association to submit to the office, as the commission  
1014 may designate, all or part of the information contained in the  
1015 financial statements and reports required by this section in a

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1016 computer-readable form compatible with the electronic data  
1017 processing system specified by the office.

1018 Section 27. Section 634.416, Florida Statutes, is amended  
1019 to read:

1020 634.416 Examination of associations.—

1021 (1) (a) Service warranty associations licensed under this  
1022 part may be ~~are~~ subject to periodic examination by the office,  
1023 in the same manner and subject to the same terms and conditions  
1024 that apply to insurers under part II of chapter 624.

1025 (b) The office shall determine whether to conduct an  
1026 examination of a service warranty association by considering:

1027 1. The amount of time that the association has been  
1028 continuously licensed and operating under the same management  
1029 and control;

1030 2. The association's history of compliance with applicable  
1031 law;

1032 3. The number of consumer complaints against the  
1033 association; and

1034 4. The financial condition of the association, demonstrated  
1035 by the financial reports submitted pursuant to s. 634.313.

1036 (2) ~~However,~~ The rate charged a service warranty  
1037 association by the office for examination may be adjusted to  
1038 reflect the amount collected for the Form 10-K filing fee as  
1039 provided in this section.

1040 (3) On or before May 1 of each year, an association may  
1041 submit to the office the Form 10-K, as filed with the United  
1042 States Securities and Exchange Commission pursuant to the  
1043 Securities Exchange Act of 1934, as amended. Upon receipt and  
1044 review of the most current Form 10-K, the office may waive the

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1045 examination requirement; if the office determines not to waive  
1046 the examination, such examination will be limited to that  
1047 examination necessary to ensure compliance with this part. The  
1048 Form 10-K shall be accompanied by a filing fee of \$2,000 to be  
1049 deposited into the Insurance Regulatory Trust Fund.

1050 (4)~~(2)~~ The office is not required to examine an association  
1051 that has less than \$20,000 in gross written premiums as  
1052 reflected in its most recent annual statement. The office may  
1053 examine such an association if it has reason to believe that the  
1054 association may be in violation of this part or is otherwise in  
1055 an unsound financial condition. If the office examines an  
1056 association that has less than \$20,000 in gross written  
1057 premiums, the examination fee may not exceed 5 percent of the  
1058 gross written premiums of the association.

1059 Section 28. Paragraph (b) of subsection (1) of section  
1060 634.4225, Florida Statutes, is amended to read:

1061 634.4225 Rebating; when allowed.—

1062 (1) No sales representative shall rebate any portion of his  
1063 or her commission except as follows:

1064 (b) The rebate shall be in accordance with a rebating  
1065 schedule filed with and approved by the ~~sales representative~~  
1066 ~~with the~~ association issuing the service warranty to which the  
1067 rebate applies. The association shall maintain a copy of all  
1068 rebating schedules for a period of 3 years.

1069 Section 29. Subsection (9) is added to section 634.436,  
1070 Florida Statutes, to read:

1071 634.436 Unfair methods of competition and unfair or  
1072 deceptive acts or practices defined.—The following methods,  
1073 acts, or practices are defined as unfair methods of competition

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1074 and unfair or deceptive acts or practices:

1075 (9) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE.-

1076 (a) Failing to provide a consumer with a complete sample  
1077 copy of the terms and conditions of the service warranty prior  
1078 to the time of sale upon a request for the same by the consumer.

1079 (b) A service warranty association may comply with this  
1080 provision by providing the consumer with a sample copy of the  
1081 terms and conditions of the warranty contract or by directing  
1082 the consumer to a website that displays a complete sample of the  
1083 terms and conditions of the contract.

1084 Section 30. Section 634.1216, Florida Statutes, is  
1085 repealed.

1086 Section 31. Subsections (2) and (3) of section 634.136,  
1087 Florida Statutes, are repealed.

1088 Section 32. Section 634.3126, Florida Statutes, is  
1089 repealed.

1090 Section 33. Subsection (4) of section 634.313, Florida  
1091 Statutes, is repealed.

1092 Section 34. This act shall take effect July 1, 2010.