

Senate Bill No. 2240

An act relating to warranty associations; amending s. 634.011, F.S.; defining the term “additive product”; redefining the terms “motor vehicle service agreement” and “salesperson”; amending s. 634.044, F.S.; including part inventories among the allowable assets of a service agreement company; amending s. 634.137, F.S.; providing for submission of financial reports to the Department of Insurance in a computer-readable form; amending s. 634.171, F.S.; providing that a motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the company; repealing s. 634.281, F.S., which provides that service agreement companies and their salespersons shall be subject to pt. IX of ch. 626, F.S., relating to service agreement companies and their salespersons; creating s. 634.2815, F.S.; prohibiting engaging in any trade practice determined to be an unfair method of competition or an unfair or deceptive act or practice involving the business of motor vehicle service agreements; creating s. 634.282, F.S.; defining unfair methods of competition and unfair or deceptive acts or practices; creating s. 634.2825, F.S.; requiring vendors and lenders to separately state and identify the amount charged and to be paid for a motor vehicle service agreement; providing applicability; creating s. 634.283, F.S.; providing power of the Department of Insurance to examine and investigate the affairs of persons involved in the business of motor vehicle service agreements in the state; creating s. 634.284, F.S.; authorizing the department to conduct hearings with respect to specified prohibited practices; providing a fine for failure to comply with a subpoena or an order directing discovery; creating s. 634.285, F.S.; providing for the issuance of cease and desist orders by the department; providing specified penalties; creating s. 634.286, F.S.; providing for appeals of orders of the department; creating s. 634.287, F.S.; providing penalties for violation of a cease and desist order of the department; creating s. 634.288, F.S.; providing for civil liability; amending s. 634.3077, F.S.; eliminating specified assets to be deducted in computing the net asset requirement of a home warranty association; creating s. 634.3078, F.S.; specifying allowable assets and liabilities with respect to the determination of the financial condition of a service warranty association; amending s. 634.312, F.S.; amending provisions relating to the filing and approval of forms; amending s. 634.313, F.S.; providing for the submission of annual statements and financial reports to the Department of Insurance in a computer-readable form; amending s. 634.318, F.S.; providing that a home warranty association is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the home warranty agreements issued by the association; amending s. 634.331, F.S.; revising terminology with respect to coverage of property for sale; amending s. 634.415, F.S.; providing for the submission of statements and reports to the Department of Insurance in a computer-readable form; amending s.

634.419, F.S.; providing that a service warranty association is not required to be licensed as a sales representative to solicit, sell, or issue service warranty agreements issued by the association; amending s. 634.436, F.S.; including advertising, offering, or providing a free service warranty as an inducement to specified purchases or sales among acts or practices that constitute unfair methods of competition and unfair or deceptive acts or practices; amending ss. 624.124, 628.4615, F.S.; correcting cross-references; creating s. 634.289, F.S.; providing rulemaking authority; amending s. 634.302, F.S.; providing rulemaking authority; amending s. 634.402, F.S.; providing rulemaking authority; providing for effective dates.

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

Section 1. Present subsections (2) through (16) of section 634.011, Florida Statutes, are renumbered as subsections (3) through (17), respectively, present subsections (7) and (13) are amended, and a new subsection (2) is added to that section, to read:

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

(2) “Additive product” means any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle.

~~(8)(7)~~ “Motor vehicle service agreement” or “service agreement” means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles; and provided further, however, transactions exempt under s. 624.125 shall be expressly excluded from this definition and are exempt from the provisions of this part. The term “motor vehicle service agreement” includes any contract or agreement which provides the coverage or protection defined in this subsection and is issued or provided in conjunction with an additive product applied to the motor vehicle which is the subject of such contract or agreement.

~~(14)(13)~~ “Salesperson” means any dealership, corporation, partnership, or sole proprietorship employed or otherwise retained by an insurer or motor vehicle service agreement company for the purpose of selling or issuing motor vehicle service agreements or for the purpose of soliciting or retaining other salespersons.

Section 2. Subsection (1) of section 634.044, Florida Statutes, is amended to read:

634.044 Assets and liabilities.—

(1) ASSETS.—In any determination of the financial condition of a service agreement company, there shall be allowed as assets only those assets that are owned by the service agreement company and which assets consist of:

(a) Cash in the possession of the service agreement company, or in transit under its control, including the true balance of any deposit in a solvent bank, savings and loan association, or trust company which is domiciled in the United States.

(b) Investments, securities, properties, and loans acquired or held in accordance with this part, and in connection therewith the following items:

1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

2. Declared and unpaid dividends on stock and shares, unless the amount of the dividends has otherwise been allowed as an asset.

3. Interest due or accrued upon a collateral loan which is not in default in an amount not to exceed 1 year's interest thereon.

4. Interest due or accrued on deposits or certificates of deposit in solvent banks, savings and loan associations, and trust companies domiciled in the United States, and interest due or accrued on other assets, if such interest is in the judgment of the department a collectible asset.

5. Interest due or accrued on current mortgage loans, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.

6. Rent due or accrued on real property if such rent is not in arrears for more than 3 months. However, in no event shall rent accrued for a period in excess of 90 days be allowed as an asset.

7. The unaccrued portion of taxes paid prior to the due date on real property.

(c) Furniture, fixtures, furnishings, vehicles, and equipment, if the original cost of each item is at least \$200, which cost shall be amortized in full over a period not to exceed 5 calendar years, unless otherwise approved by the department.

(d) Part inventories maintained for the purpose of servicing products warranted. Part inventories must be listed at cost. Service agreement companies are required to maintain records to support valuation of part inventories.

~~(e)~~(d) The liquidation value of ~~or~~ prepaid expenses.

~~(f)~~(e) Other assets or receivables, not inconsistent with the provisions of this section, deemed by the department to be available for the payment of losses and claims, at values to be determined by the department.

The department, upon determining that a service agreement company's asset has not been evaluated according to applicable law or that it does not qualify as an asset, shall require the service agreement company to properly reevaluate the asset or replace the asset with an asset suitable to the department within 30 days of written notification by the department of this determination, if the removal of the asset from the organization's assets would impair the company's solvency.

Section 3. Subsection (5) is added to section 634.137, Florida Statutes, to read:

634.137 Financial and statistical reporting requirements.—

(5) The department may by rule require each motor vehicle service agreement company to submit to the department, as the department may designate, all or part of the information contained in the financial reports required by this section in a computer-readable form compatible with the electronic data processing system specified by the department.

Section 4. Section 634.171, Florida Statutes, is amended to read:

634.171 Salesperson to be licensed and appointed.—Salespersons for motor vehicle service agreement companies and insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated as prescribed in chapter 626 for insurance representatives in general. However, they shall be exempt from all other provisions of chapter 626 including fingerprinting, photo identification, education, and examination provisions. License, appointment, and other fees shall be those prescribed in s. 624.501. A licensed and appointed salesperson shall be directly responsible and accountable for all acts of her or his employees and other representatives. Each service agreement company or insurer shall, on forms prescribed by the department, within 30 days after termination of the appointment, notify the department of such termination. No employee or salesperson of a motor vehicle service agreement company or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent or solicitor, unless so qualified, licensed, and appointed therefor under the Florida Insurance Code. A motor vehicle service agreement company is not required to be licensed as a salesperson to solicit, sell, issue, or otherwise transact the motor vehicle service agreements issued by the motor vehicle service agreement company.

Section 5. Section 634.281, Florida Statutes, is repealed.

Section 6. Section 634.2815, Florida Statutes, is created to read:

634.2815 Unfair methods of competition and unfair or deceptive acts or practices prohibited.—No person may engage in this state in any trade practice which is defined in this part as, or determined pursuant to s. 634.282 to be, an unfair method of competition or an unfair or deceptive act or practice involving the business of motor vehicle service agreements.

Section 7. Section 634.282, Florida Statutes, is created to read:

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

(1) MISREPRESENTATION AND FALSE ADVERTISING.—Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any motor vehicle service agreement.

(b) Is misleading or is a misrepresentation as to the financial condition of any person.

(c) Uses any name or title of any contract misrepresenting the true nature thereof.

(d) Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any motor vehicle service agreement.

(e) Uses any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the state or federal government is responsible for the motor vehicle service agreement sales activity of any person or stands behind any person's credit or that any person, the state, or the federal government guarantees any returns on motor vehicle service agreements or is a source of payment of any motor vehicle service agreement obligation of or sold by any person.

(2) FALSE INFORMATION AND ADVERTISING GENERALLY.—Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public:

(a) In a newspaper, magazine, or other publication;

(b) In the form of a notice, circular, pamphlet, letter, or poster;

(c) Over any radio or television station; or

(d) Over the Internet, electronically, or in any other way,

an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of motor vehicle service agreements, which assertion, representation, or statement is untrue, deceptive, or misleading.

(3) DEFAMATION.—Knowingly making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of, any oral or written statement, or any pamphlet, circular, article, or literature, that is false or maliciously critical of, or derogatory to, any person and that is calculated to injure such person.

(4) BOYCOTT, COERCION, AND INTIMIDATION.—Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of motor vehicle service agreements.

(5) FALSE STATEMENTS AND ENTRIES.—

(a) Knowingly:

1. Filing with any supervisory or other public official;
2. Making, publishing, disseminating, or circulating;
3. Delivering to any person;
4. Placing before the public; or
5. Causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public,

any false statement.

(b) Knowingly making any false entry of a material fact in any book, report, or statement of any person, or knowingly failing to make a true entry of any material fact pertaining to the business of such person in any book, report, or statement of such person.

(6) UNFAIR DISCRIMINATION.—Knowingly making or permitting any unfair discrimination between individuals of the same actuarially supportable class and essentially the same hazard, in the amount of premium, policy fees, or rates charged for any motor vehicle service agreement, in any of the terms or conditions of such agreement, or in any other manner whatsoever.

(7) UNLAWFUL REBATES.—Except as otherwise expressly provided by law, or in an applicable filing with the department, knowingly:

(a) Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the motor vehicle service agreement issued thereon;

(b) Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such motor vehicle service agreement, any unlawful rebate of premiums payable on the agreement, any special favor or advantage in the benefits thereon, or any valuable consideration or inducement not specified in the agreement;

(c) Giving, selling, or purchasing, or offering to give, sell, or purchase, as an inducement to such motor vehicle service agreement or in connection therewith, any stocks, bonds, or other securities of any insurance company, service agreement company, or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the motor vehicle service agreement.

(8) UNFAIR CLAIM SETTLEMENT PRACTICES.—

(a) Attempting to settle claims on the basis of an application or any other material document that was altered without notice to, or knowledge or consent of, the service agreement holder;

(b) Making a material misrepresentation to the service agreement holder for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract on less favorable terms than those provided in, and contemplated by, such contract; or

(c) Committing or performing with such frequency as to indicate a general business practice any of the following practices:

1. Failure to adopt and implement internal standards for the investigation of claims;

2. Misrepresentation of pertinent facts or contract provisions relating to coverages at issue;

3. Failure to acknowledge and act promptly upon communications with respect to claims;

4. Denial of claims without conducting reasonable investigations based upon available information;

5. Failure to affirm or deny full or partial coverage of claims and, as to partial coverage, the dollar amount or extent of coverage, or failure to provide a written statement that the claim is being investigated, upon written request of the service agreement holder within 30 days after proof-of-loss statements have been completed;

6. Failure to promptly provide a reasonable explanation to the service agreement holder of the basis in the contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

7. Failure to promptly notify the service agreement holder of any additional information necessary for the processing of a claim; or

8. Failure to clearly explain the nature of the requested information and the reasons such information is necessary.

(9) FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS.—Failing to maintain a complete record of all complaints received since the date of the last examination. For purposes of this paragraph, “complaint” means any written communication primarily expressing a grievance.

(10) DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT.—Refusing to issue a contract solely because of an individual’s race, color, creed, marital status, sex, or national origin.

(11) MISREPRESENTATION IN SERVICE AGREEMENT APPLICATIONS.—Knowingly making a false or fraudulent written or oral statement

or representation on, or relative to, an application or negotiation for a motor vehicle service agreement for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, service agreement company, agent, broker, salesperson, or individual.

(12) FREE SERVICE AGREEMENTS.—

(a) Advertising, offering, or providing a free motor vehicle service agreement as an inducement to the purchase or sale of real or personal property or of services directly or indirectly connected with such real or personal property.

(b) For the purposes of this subsection, a “free” motor vehicle service agreement is:

1. A motor vehicle service agreement for which no identifiable and additional charge is made to the purchaser of such real property, personal property, or services.

2. A motor vehicle service agreement for which an identifiable or additional charge is made in an amount less than the cost of such motor vehicle service agreement as to the seller or other person, other than the service agreement company, providing the same.

3. Using the word “free” or words that imply the provision of a motor vehicle service agreement without a cost in connection with the advertising or offering for sale of any kind of goods, merchandise, or services.

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

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

(b) Knowingly collecting as a premium or charge for a motor vehicle service agreement any sum in excess of or less than the premium or charge applicable to such motor vehicle service agreement, in accordance with the applicable classifications and rates as filed with the department, and as specified in the motor vehicle service agreement.

(14) INTERLOCKING OWNERSHIP AND MANAGEMENT.—

(a) Any motor vehicle service agreement company may retain, invest in, or acquire the whole or any part of the capital of any other motor vehicle service agreement company, or have a common management with any other motor vehicle service agreement company, unless such retention, investment, acquisition, or common management is inconsistent with any other provision of this part, or unless by reason thereof the business of such insurers with the public is conducted in a manner that substantially lessens competition generally in the insurance business.

(b) Any person otherwise qualified may be a director of two or more motor vehicle service agreement companies that are competitors, unless the effect thereof is substantially to lessen competition between motor vehicle service agreement companies generally or materially tend to create a monopoly.

(15) FALSE CLAIMS; OBTAINING OR RETAINING MONEY DISHONESTLY.—

(a) Any salesperson who causes to be presented to any motor vehicle service agreement company a false claim for payment, knowing the same to be false; or

(b) Any salesperson who represents any motor vehicle service agreement company or collects or does business without the authority of the motor vehicle service agreement company, secures cash advances by false statements, or fails to turn over when required, or satisfactorily account for, all collections of such motor vehicle service agreement company,

in addition to the other penalties provided in this act, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(16) SLIDING.—Sliding is the act or practice of:

(a) Representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of a motor vehicle service agreement when such coverage or product is not required;

(b) Representing to the applicant that a specific ancillary coverage or product is included in the motor vehicle service agreement contract applied for without an additional charge when such charge is required; or

(c) Charging an applicant for a specific ancillary coverage or product, in addition to the cost of the motor vehicle service agreement coverage applied for, without the informed consent of the applicant.

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

Section 8. Section 634.2825, Florida Statutes, is created to read:

634.2825 Motor vehicle service agreement cost specified in “price package”.—

(1) When the premium or charge for a motor vehicle service agreement or involving such property or merchandise is included in the overall purchase price or financing of the purchase of merchandise or property, the vendor or lender shall separately state and identify the amount charged and to be paid for the motor vehicle service agreement, and the classifications, if any, upon which based; and the inclusion or exclusion of the cost of a motor vehicle service agreement in such purchase price or financing shall not

increase, reduce, or otherwise affect any other factor involved in the cost of merchandise, property, or financing as to the purchaser or borrower.

(2) This section does not apply to transactions that are subject to the provisions of part I of chapter 520, entitled "The Motor Vehicle Retail Sales Finance Act."

Section 9. Section 634.283, Florida Statutes, is created to read:

634.283 Power of department to examine and investigate.—The department may examine and investigate the affairs of every person involved in the business of motor vehicle service agreements in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by s. 634.2815.

Section 10. Section 634.284, Florida Statutes, is created to read:

634.284 Prohibited practices; hearings, witnesses, appearances, production of books, and service of process.—

(1) Whenever the department has reason to believe that any person has engaged, or is engaging, in this state in any unfair method of competition or any unfair or deceptive act or practice as defined in s. 634.282, or is engaging in the business of motor vehicle service agreements without being properly licensed as required by this part, and that a proceeding by the department in respect thereto would be in the interest of the public, the department shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The department, a duly empowered hearing officer, or an administrative law judge shall, during the conduct of such hearing, have those powers enumerated in s. 120.569; however, the penalty for failure to comply with a subpoena or with an order directing discovery is limited to a fine not to exceed \$1,000 per violation.

(3) A statement of charges, notice, or order under this part may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at her or his residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of the service, is proof of the same; and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as provided in this subsection, is proof of service of the same.

Section 11. Section 634.285, Florida Statutes, is created to read:

634.285 Cease and desist and penalty orders.—After the hearing provided for in s. 634.284, the department shall enter a final order in accordance with s. 120.569. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of a

service agreement business, the department also shall issue an order requiring the violator to cease and desist from engaging in such method of competition, act, or practice or the unlawful transaction of service agreement business. Further, the department may, at its discretion, order any one or more of the following penalties:

(1) The suspension or revocation of such person's license, or eligibility for any license, if the person knew, or reasonably should have known, that she or he was in violation of this part.

(2) If it is determined that the person charged has provided or offered to provide motor vehicle service agreements without proper licensure, the imposition of an administrative penalty not to exceed \$1,000 for each service agreement contract offered or effectuated.

Section 12. Section 634.286, Florida Statutes, is created to read:

634.286 Appeals from orders of the department.—Any person subject to an order of the department under s. 634.285 may obtain a review of such order by filing an appeal therefrom in accordance with the provisions and procedures for appeal from the orders of the department in general under s. 120.68.

Section 13. Section 634.287, Florida Statutes, is created to read:

634.287 Penalty for violation of cease and desist order.—Any person who violates a cease and desist order of the department under s. 634.285 while such order is in effect, after notice and hearing as provided in s. 634.284, is subject, at the discretion of the department, to any one or more of the following penalties:

(1) A monetary penalty of not more than \$50,000 as to all matters determined in such hearing.

(2) The suspension or revocation of such person's license or eligibility to hold a license.

Section 14. Section 634.288, Florida Statutes, is created to read:

634.288 Civil liability.—The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department will abrogate such rights to damages or other relief in any court.

Section 15. Effective January 1, 2002, section 634.3077, Florida Statutes, is amended to read:

634.3077 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts in force. Such assets shall be held in the form of cash or invested in securities for investments as provided in part II of chapter 625.

(2) An association shall maintain, at a minimum, net assets equal to one-sixth of the written premiums it receives for the issuance and delivery of any binder or warranty in force. Net assets may be less than one-sixth of the premiums written provided the association has net assets of not less than \$500,000 and maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40 percent of the gross written premiums received by it from all warranty contracts in force which shall be held in the form of cash or invested in securities for investments as provided in part II of chapter 625.

~~(3) In computing the net asset requirement, goodwill, franchises, customer lists, patents or trademarks, receivables from or advances to officers, directors, employees, salespersons, or affiliated companies, and assets deposited outside the United States shall be deducted from the net assets of the association.~~

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

(a) In the event that the home warranty association is unable to fulfill its obligation under its contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to persons making claims under such contracts.

(b) The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

(c) The policy may not be canceled or not renewed by either the insurer or the association unless 60 days' written notice thereof has been given to the department by the insurer before the date of such cancellation or non-renewal.

~~(4)(5)~~ An association that purchases contractual liability insurance on the warranties that it issues shall provide the department with claim statistics required to be filed by associations not purchasing such insurance.

Section 16. Effective January 1, 2002, section 634.3078, Florida Statutes, is created to read:

634.3078 Assets and liabilities.—

(1) ASSETS.—In any determination of the financial condition of a home warranty association, there shall be allowed as assets only those assets that are owned by the home warranty association company and which assets consist of:

(a) Cash in the possession of the home warranty association, or in transit under its control, including the true balance of any deposit in a solvent bank, savings and loan association, or trust company that is domiciled in the United States.

(b) Investments, securities, properties, and loans acquired or held in accordance with this part and, in connection therewith, the following items:

1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

2. Declared and unpaid dividends on stock and shares, unless the amount of the dividends has otherwise been allowed as an asset.

3. Interest due or accrued upon a collateral loan that is not in default in an amount not to exceed 1 year's interest thereon.

4. Interest due or accrued on deposits or certificates of deposit in solvent banks, savings and loan associations, and trust companies domiciled in the United States, and interest due or accrued on other assets, if such interest is in the judgment of the department a collectible asset.

5. Interest due or accrued on current mortgage loans, in an amount not exceeding the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but interest accrued for a period in excess of 90 days may not be allowed as an asset.

6. Rent due or accrued on real property if such rent is not in arrears for more than 3 months. However, rent accrued for a period in excess of 90 days may not be allowed as an asset.

7. The unaccrued portion of taxes paid prior to the due date on real property.

(c) Furniture, fixtures, furnishings, vehicles, and equipment, if the original cost of each item is at least \$200, which cost shall be amortized in full over a period not to exceed 5 calendar years, unless otherwise approved by the department.

(d) Part inventories maintained for the purpose of servicing products warranted. Part inventories must be listed at cost. Home warranty associations companies are required to maintain records to support valuation of part inventories.

(e) The liquidation value of prepaid expenses.

(f) Other assets or receivables, not inconsistent with the provisions of this section, deemed by the department to be available for the payment of losses and claims, at values to be determined by the department.

The department, upon determining that a home warranty association's asset has not been evaluated according to applicable law or that it does not

qualify as an asset, shall require the home warranty association to properly reevaluate the asset or replace the asset with an asset suitable to the department within 30 days after written notification by the department of this determination, if the removal of the asset from the organization's assets would impair the company's solvency.

(2) ASSETS NOT ALLOWED.—In addition to assets impliedly excluded by the provisions of subsection (1), the following assets expressly shall not be allowed as assets in any determination of the financial condition of a home warranty association:

(a) Goodwill, agreement holder lists, patents, trade names, agreements not to compete, and other like intangible assets.

(b) Any note or account receivable from or advances to officers, directors, or controlling stockholders, whether secured or not, and advances to employees, agents, or other persons on personal security only.

(c) Stock of the home warranty association owned by it directly or owned by it through any entity in which the organization owns or controls, directly or indirectly, more than 25 percent of the ownership interest.

(d) Leasehold improvements, stationery, and literature, except that leasehold improvements made prior to October 1, 2001, shall be allowed as an asset and shall be amortized over the shortest of the following periods:

1. The life of the lease.
2. The useful life of the improvements.
3. The 3-year period following October 1, 2001.

(e) Furniture, fixtures, furnishings, vehicles, and equipment, other than those items authorized under paragraph (1)(c).

(f) Notes or other evidences of indebtedness which are secured by mortgages or deeds of trust which are in default and beyond the express period specified in the instrument for curing the default.

(g) Bonds in default for more than 60 days.

(h) Deferred costs other than the liquidation value of prepaid expenses except for those companies that reserve 100 percent of gross written premium.

(i) Any note, account receivable, advance, or other evidence of indebtedness, or investment in:

1. The parent of the home warranty association;
2. Any entity directly or indirectly controlled by the home warranty association's parent;
3. An affiliate of the parent or the home warranty association; or

4. Officers, directors, shareholders, employees, or salespersons of the home warranty association; however, premium receivables under 45 days old may be considered an admitted asset.

The department may, however, allow all or a portion of such asset, at values to be determined by the department, if deemed by the department to be available for the payment of losses and claims.

(3) LIABILITIES.—In any determination of the financial condition of a home warranty association, liabilities to be charged against its assets shall include, but not be limited to:

(a) The amount, in conformity with generally accepted accounting principles, necessary to pay all of its unpaid losses and claims incurred for or on behalf of an agreement holder, on or prior to the end of the reporting period, whether reported or unreported.

(b) Taxes, expenses, and other obligations due or accrued at the date of the statement.

(c) Reserve for unearned premiums.

The department, upon determining that the home warranty association has failed to report liabilities that should have been reported, shall require a correct report which reflects the proper liabilities to be submitted by the home warranty association to the department within 10 working days after receipt of written notification.

Section 17. Effective January 1, 2002, subsection (7) is added to section 634.312, Florida Statutes, to read:

634.312 Filing, approval of forms.—

(7) All home warranty contracts must disclose any exclusions, restrictions, or limitations on the benefits offered or the coverage provided by the home warranty contract in boldfaced type, and must contain, in boldfaced type, a statement on the front page of the contract substantially similar to the following: “Certain items and events are not covered by this contract. Please refer to the exclusions listed on page ___ of this document.”

Section 18. Subsection (5) is added to section 634.313, Florida Statutes, to read:

634.313 Tax on premiums; annual statement; reports.—

(5) The department may by rule require each home warranty association to submit to the department, as the department may designate, all or part of the information contained in the financial reports required by this section in a computer-readable form compatible with the electronic data processing system specified by the department.

Section 19. Section 634.318, Florida Statutes, is amended to read:

634.318 License and appointment of sales representatives.—Sales representatives for home warranty associations and insurers shall be licensed, appointed, renewed, continued, reinstated, or terminated in the same manner as prescribed in chapter 626 for insurance representatives in general, except they shall be exempt from the fingerprinting, photo identification card, education, and examination provisions. License, appointment, and other fees shall be those as prescribed in s. 624.501. No employee or sales representative of a home warranty association or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold herself or himself out in any manner to be an insurance agent or solicitor, unless so qualified, licensed, and appointed therefor under the insurance code. A home warranty association is not required to be licensed as a sales representative to solicit, sell, issue, or otherwise transact the home warranty agreements issued by the home warranty association.

Section 20. Section 634.331, Florida Statutes, is amended to read:

634.331 Coverage of property for sale.—A home warranty may provide coverage of residential property during the listing period of such property for a period not to exceed 12 months, provided that the home warranty company charges the warranty purchaser a separately identifiable charge for the listing list period coverage in an amount equal to at least 15 percent of the annual premium charged for the home warranty and the charge for such coverage is due at the earlier of the end of the listing period or the date the sale of the residential property is closed.

Section 21. Subsection (6) is added to section 634.415, Florida Statutes, to read:

634.415 Tax on premiums; annual statement; reports; quarterly statements.—

(6) The department may by rule require each service warranty association to submit to the department, as the department may designate, all or part of the information contained in the financial statements and reports required by this section in a computer-readable form compatible with the electronic data processing system specified by the department.

Section 22. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required.—No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part shall not be required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products.

Section 23. Subsection (8) is added to section 634.436, Florida Statutes, to read:

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

(8) FREE SERVICE WARRANTIES.—

(a) Advertising, offering, or providing a free service warranty as an inducement to the purchase or sale of real or personal property or of services directly or indirectly connected with such real or personal property.

(b) For the purposes of this subsection, a “free” service warranty is:

1. A service warranty for which no identifiable and additional charge is made to the purchaser of such real property, personal property, or services.

2. A service warranty for which an identifiable or additional charge is made in an amount less than the cost of such service warranty as to the seller or other person, other than the service warranty association, providing the same.

3. A service warranty with respect to which the word “free” or words implying that the provision of the service warranty is without cost are used in connection with the advertising or offering for sale of any kind of goods, merchandise, or services.

Section 24. Section 624.124, Florida Statutes, is amended to read:

624.124 Motor vehicle services; exemption from code.—Any person may, in exchange for fees, dues, charges, or other consideration, provide any of the following services related to the ownership, operation, use, or maintenance of a motor vehicle without being deemed an insurer and without being subject to the provisions of this code:

(1) Towing service.

(2) Procuring from an insurer group coverage for bail and arrest bonds or for accidental death and dismemberment.

(3) Emergency service.

(4) Procuring prepaid legal services, or providing reimbursement for legal services, except that this shall not be deemed to be an exemption from chapter 642.

(5) Offering assistance in locating or recovering stolen or missing motor vehicles.

(6) Paying emergency living and transportation expenses of the owner of a motor vehicle when the motor vehicle is damaged.

For purposes of this section, “motor vehicle” has the same meaning specified by s. 634.011(7) ~~s. 634.011(6)~~.

Section 25. Subsection (1) of section 628.4615, Florida Statutes, is amended to read:

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

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

(a) A motor vehicle service agreement company authorized to issue motor vehicle service agreements as those terms are defined in s. 634.011(8) and (9) ~~s. 634.011(7) and (8)~~;

(b) A home warranty association authorized to issue “home warranties” as those terms are defined in s. 634.301(4) and (5);

(c) A service warranty association authorized to issue “service warranties” as those terms are defined in s. 634.401(14) and (15);

(d) An optometric service plan corporation authorized to issue optometric service plan contracts as those terms are defined in s. 637.001(2) and (3);

(e) A pharmaceutical service plan corporation authorized to issue pharmaceutical service plan contracts as those terms are defined in s. 637.1701(2) and (3);

(f) A dental service plan corporation licensed to issue contracts for dental services pursuant to a dental service plan as that term is defined in s. 637.401(1);

(g) An ambulance service association authorized to issue ambulance service contracts as those terms are defined in s. 638.021(1) and (2);

(h) An authorized health maintenance organization operating pursuant to s. 641.21;

(i) An authorized prepaid health clinic operating pursuant to s. 641.405;

(j) A legal expense insurance corporation authorized to engage in a legal expense insurance business pursuant to s. 642.021;

(k) A provider which is licensed to operate a facility which undertakes to provide continuing care as those terms are defined in s. 651.011(2), (5), (6), and (7);

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

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

(n) A corporation authorized to accept donor annuity agreements pursuant to s. 627.481.

Section 26. Section 634.289, Florida Statutes, is created to read:

634.289 Rules.—The department may adopt rules, in accordance with chapter 120, to identify specific methods of competition or acts or practices that are prohibited by s. 634.282, but these rules shall not enlarge upon or extend the provisions of that section.

Section 27. Section 634.302, Florida Statutes, is amended to read:

634.302 Powers of department; rules.—The department shall administer this part, and, to that end, it has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part. Such rules may include rules that identify specific methods of competition or acts or practices that are prohibited by s. 634.336, but the rules shall not enlarge upon or extend the provisions of that section.

Section 28. Section 634.402, Florida Statutes, is amended to read:

634.402 Powers of department; rules.—The department shall administer this part, and to that end it has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part. Such rules may identify specific methods of competition or acts or practices that are prohibited by s. 634.436, but shall not enlarge upon or extend the provisions of that section.

Section 29. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor June 19, 2001.

Filed in Office Secretary of State June 19, 2001.