

Committee Substitute for Senate Bill No. 1620

An act relating to warranty associations; amending s. 634.031, F.S.; exempting certain licensed motor vehicle service agreement company affiliates from application of motor vehicle service agreement requirements under certain circumstances; providing criteria and requirements for the exemption; providing a circumstance for denying the exemption and subjecting the affiliate to such requirements; providing certain liability; creating s. 634.042, F.S.; prohibiting a motor vehicle service agreement company from investing or lending company funds for specified purposes; amending s. 634.301, F.S.; revising a definition of “home warranty” to specify nonapplication to certain contracts or agreements; creating s. 634.3076, F.S.; prohibiting a home warranty association from investing or lending association funds for specified purposes; amending s. 634.3077, F.S.; specifying an additional requirement for contractual liability insurance purchased by a home warranty association; amending s. 634.312, F.S.; revising a prohibition against the Office of Insurance Regulation for nonapproval of certain forms; specifying cancellation requirements for home warranty contracts; providing return of premium requirements; authorizing an administrative fee; specifying refund amounts for a home warranty under certain circumstances; amending s. 634.336, F.S.; removing cancellation practices from the provisions that constitute unfair methods of competition and unfair or deceptive acts or practices; creating s. 634.4062, F.S.; prohibiting a service warranty association from investing or lending association funds for specified purposes; repealing s. 634.345, F.S., relating to a buyer’s right to cancel a home warranty; providing an effective date.

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

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

634.031 License required.—

(6) Any person that is an affiliate of a licensed motor vehicle service agreement company which is domiciled in this state and which uses contractual liability insurance to qualify with the requirements of s. 634.041 is exempt from application of this part if the person does not issue, market, or cause to be marketed motor vehicle service agreements to residents of this state and does not administer motor vehicle service agreements that were originally issued to residents of this state. Any affiliated person operating from this state under this subsection must use a licensed motor vehicle service agreement company to administer all service agreements issued by such person in other states. If the office determines, after notice and opportunity for hearing in accordance with s. 120.569, that a person’s intentional business practices do not comply with any part of the exemption requirements of this subsection, the person shall be subject to this part. The motor

vehicle service agreement company shall be liable for all acts of and responsible for all violations of this part by an affiliated person operating from this state.

Section 2. Section 634.042, Florida Statutes, is created to read:

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

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

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

(3) “Home warranty” or “warranty” means any contract or agreement:

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

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

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

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

Section 4. Section 634.3076, Florida Statutes, is created to read:

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

Section 5. Paragraph (d) is added to subsection (3) of section 634.3077, Florida Statutes, to read:

634.3077 Financial requirements.—

(3) 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 office 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 office 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:

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

Section 6. Subsection (3) of section 634.312, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

634.312 Filing, approval of forms.—

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

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

Section 7. Subsection (8) of section 634.336, Florida Statutes, is amended to read:

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

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

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

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

Section 8. Section 634.4062, Florida Statutes, is created to read:

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

Section 9. Section 634.345, Florida Statutes, is repealed.

Section 10. This act shall take effect July 1, 2006.

Approved by the Governor June 22, 2006.

Filed in Office Secretary of State June 22, 2006.