

By Senator Oelrich

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1 A bill to be entitled
2 An act relating to warranty associations; amending s.
3 634.121, F.S.; providing criteria for a motor vehicle
4 service agreement company to effectuate refunds
5 through the issuing salesperson or agent; requiring
6 the salesperson, agent, or service agreement company
7 to maintain a copy of certain documents; requiring a
8 salesperson or agent to provide a copy of a document
9 to the service agreement company if requested by the
10 Department of Financial Services; requiring the Office
11 of Financial Regulation to provide to the department
12 findings that a salesperson or agent exhibits a
13 pattern or practice of failing to effectuate refunds
14 or to maintain and remit to the service agreement
15 company the required documentation; amending s.
16 634.141, F.S.; providing an exception to the
17 requirement that motor vehicle service agreement
18 companies undergo periodic examinations; authorizing
19 rather than requiring the Office of Financial
20 Regulation to examine service agreement companies;
21 limiting the examination period to the most recent 5
22 years; removing the requirement that the Financial
23 Services Commission establish rules for conducting
24 examinations; removing the criteria for determining
25 whether an examination is warranted; creating s.
26 634.2855, F.S.; authorizing a governmental entity,
27 public agency, institution, person, firm, or legal
28 entity to provide property or money to the Department
29 of Financial Services to pursue unauthorized entities

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30 operating as motor vehicle service agreement
31 companies; amending s. 634.312, F.S.; authorizing a
32 home warranty association to effectuate a refund
33 through the issuing sales representative; amending s.
34 634.314, F.S.; providing an exception to the
35 requirement that home warranty associations undergo
36 periodic examinations; authorizing rather than
37 requiring the Office of Financial Regulation to
38 examine home warranty associations; limiting the
39 examination period to the most recent 5 years;
40 removing the requirement that the Financial Services
41 Commission establish rules for conducting
42 examinations; removing the criteria for determining
43 whether an examination is warranted; creating s.
44 634.3385, F.S.; authorizing a governmental entity,
45 public agency, institution, person, firm, or legal
46 entity to provide property or money to the Department
47 of Financial Services to pursue unauthorized entities
48 operating as home warranty associations; amending s.
49 634.414, F.S.; authorizing service warranty
50 associations to effectuate refunds through the issuing
51 sales representative; authorizing a service warranty
52 association to issue refunds by cash, check, store
53 credit, gift card, or other similar means; amending s.
54 634.416, F.S.; providing an exception to the
55 requirement that service warranty associations undergo
56 periodic examinations; authorizing rather than
57 requiring the Office of Financial Regulation to
58 examine service warranty associations; limiting the

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59 examination period to the most recent 5 years;
60 removing the requirement that the Financial Services
61 Commission establish rules for conducting
62 examinations; removing the criteria for determining
63 whether an examination is warranted; removing
64 provisions relating to the rates charged a to service
65 warranty association for examinations; removing the
66 provision authorizing the Office of Financial
67 Regulation to waive the examination requirement upon
68 receipt and review of the Form 10-K; creating s.
69 634.4385, F.S.; authorizing a governmental entity,
70 public agency, institution, person, firm, or legal
71 entity to provide property or money to the Department
72 of Financial Services to pursue unauthorized entities
73 operating as service warranty associations; providing
74 an effective date.

75
76 Be It Enacted by the Legislature of the State of Florida:

77
78 Section 1. Paragraph (b) of subsection (3) of section
79 634.121, Florida Statutes, is amended, and paragraphs (c), (d),
80 and (e) are added to that subsection, to read:

81 634.121 Forms, required procedures, provisions.—

82 (3)

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

86 1. There has been a material misrepresentation or fraud at
87 the time of sale of the service agreement;

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88 2. The agreement holder has failed to maintain the motor
89 vehicle as prescribed by the manufacturer;

90 3. The odometer has been tampered with or disabled and the
91 agreement holder has failed to repair the odometer; or

92 4. For nonpayment of premium by the agreement holder, in
93 which case the service agreement company shall provide the
94 agreement holder notice of cancellation by certified mail.

95
96 If the service agreement is canceled by the insurer or service
97 agreement company, the return of premium must not be less than
98 100 percent of the paid unearned pro rata premium, less any
99 claims paid on the agreement. If, after 60 days, the service
100 agreement is canceled by the service agreement holder, the
101 insurer or service agreement company shall return directly to
102 the agreement holder not less than 90 percent of the unearned
103 pro rata premium, less any claims paid on the agreement. The
104 service agreement company remains responsible for full refunds
105 to the consumer on canceled service agreements. However, the
106 salesperson and agent are responsible for the refund of the
107 unearned pro rata commission. A service agreement company may
108 effectuate refunds through the issuing salesperson or agent in
109 accordance with paragraphs (c) and (d).

110 (c) If the service agreement company effectuates refunds
111 through the issuing salesperson or agent, the service agreement
112 company must send the unearned pro rata premium refund due, less
113 any unearned pro rata commission, to the salesperson or agent
114 effectuating the refund. Upon receipt, the salesperson or agent
115 must refund the unearned pro rata premium, including any
116 unearned pro rata commission, and the sales tax refund owed to

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117 the service agreement holder.

118 (d) The salesperson, agent, or service agreement company
119 shall maintain a copy of one of the following documents, as
120 applicable, demonstrating that the refund owed pursuant to
121 paragraph (c) has been refunded:

122 1. A copy of the front and back of the cancelled check for
123 the applicable refund amount owed to the service agreement
124 holder;

125 2. A copy of the front of the check for the applicable
126 refund amount owed to the service agreement holder and a copy of
127 the statement from the bank account on which the check was drawn
128 showing that the check was cashed;

129 3. A copy of the front of the check issued by the service
130 agreement company to the salesperson or agent in the amount of
131 the service agreement company's portion of the refund owed to
132 the service agreement holder and a copy of the statement from
133 the bank account on which the check was drawn showing that the
134 check was cashed;

135 4. A copy of a completed buyer's order demonstrating that
136 the applicable refund amount owed to the service agreement
137 holder was credited toward the purchase or lease of another
138 vehicle;

139 5. Any document received from or sent to a lender, finance
140 company, or creditor demonstrating that a loan or amount
141 financed by the agreement holder was decreased by the amount of
142 the applicable refund amount owed to the service agreement
143 holder; or

144 6. Any other evidence approved by the office in a written
145 communication to a person licensed pursuant to this part

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146 demonstrating that the applicable refund amount due to the
147 service agreement holder was properly made.

148

149 A salesperson or agent effectuating a refund shall maintain a
150 copy of the documentation required by this paragraph, and shall
151 provide a copy to the service agreement company within 45 days
152 after a request is made by the department.

153 (e) If the office finds that a salesperson or agent
154 exhibits a pattern or practice of failing to properly effectuate
155 refunds owed or to maintain and remit to the service agreement
156 company the documentation required by paragraph (d), the office
157 shall notify the department of its finding.

158 Section 2. Section 634.141, Florida Statutes, is amended to
159 read:

160 634.141 Examination of companies.—

161 ~~(1)~~ Motor vehicle service agreement companies licensed
162 under this part may be subject to periodic examination by the
163 office in the same manner and subject to the same terms and
164 conditions as applies to insurers under part II of chapter 624,
165 with the exception of ss. 624.316(2)(e) and 624.3161(3), which
166 do not apply to examinations conducted pursuant to this section.

167 The office is not required to conduct periodic examinations
168 pursuant to this section, but may examine a service agreement
169 company at its discretion. An examination conducted pursuant to
170 this section may cover a period of only the most recent 5 years.

171 ~~The commission may by rule establish provisions whereby a~~
172 ~~company may be exempted from examination.~~

173 ~~(2) The office shall determine whether to conduct an~~
174 ~~examination of a company by considering:~~

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175 ~~(a) The amount of time that the company has been~~
176 ~~continuously licensed and operating under the same management~~
177 ~~and control.~~

178 ~~(b) The company's history of compliance with applicable~~
179 ~~law.~~

180 ~~(c) The number of consumer complaints against the company.~~

181 ~~(d) The financial condition of the company, demonstrated by~~
182 ~~the financial reports submitted pursuant to s. 634.137.~~

183 Section 3. Section 634.2855, Florida Statutes, is created
184 to read:

185 634.2855 Unauthorized entities; gifts and grants.—A
186 governmental unit, public agency, institution, person, firm, or
187 legal entity may provide property or money to the department in
188 accordance with s. 626.9894 to enable the department to pursue
189 unauthorized entities operating in violation of this part. The
190 department may transfer funds or property to the office to
191 administer this section.

192 Section 4. Subsection (5) of section 634.312, Florida
193 Statutes, is amended to read:

194 634.312 Forms; required provisions and procedures.—

195 (5) Each home warranty contract shall contain a
196 cancellation provision. Any home warranty agreement may be
197 canceled by the purchaser within 10 days after purchase. The
198 refund must be 100 percent of the gross premium paid, less any
199 claims paid on the agreement. A reasonable administrative fee
200 may be charged, not to exceed 5 percent of the gross premium
201 paid by the warranty agreement holder. After the home warranty
202 agreement has been in effect for 10 days, if the contract is
203 canceled by the warranty holder, a return of premium shall be

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204 based upon 90 percent of unearned pro rata premium less any
205 claims that have been paid. If the contract is canceled by the
206 association for any reason other than for fraud or
207 misrepresentation, a return of premium shall be based upon 100
208 percent of unearned pro rata premium, less any claims paid on
209 the agreement. A home warranty association may effectuate a
210 refund through the issuing sales representative.

211 Section 5. Section 634.314, Florida Statutes, is amended to
212 read:

213 634.314 Examination of associations.—

214 ~~(1) Home warranty associations licensed under this part may~~
215 ~~be subject to periodic examinations by the office, in the same~~
216 ~~manner and subject to the same terms and conditions as apply to~~
217 ~~insurers under part II of chapter 624 of the insurance code,~~
218 ~~with the exception of ss. 624.316(2)(e) and 624.3161(3), which~~
219 ~~do not apply to examinations conducted pursuant to this section.~~
220 The office is not required to conduct periodic examinations
221 pursuant to this section, but may examine a service agreement
222 company at its discretion. An examination conducted pursuant to
223 this section may cover a period of only the most recent 5 years.

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

226 ~~(a) The amount of time that the association has been~~
227 ~~continuously licensed and operating under the same management~~
228 ~~and control.~~

229 ~~(b) The association's history of compliance with applicable~~
230 ~~law.~~

231 ~~(c) The number of consumer complaints against the~~
232 ~~association.~~

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233 ~~(d) The financial condition of the association,~~
234 ~~demonstrated by the financial reports submitted pursuant to s.~~
235 ~~634.313.~~

236 Section 6. Section 634.3385, Florida Statutes, is created
237 to read:

238 634.3385 Unauthorized entities, gifts and grants.—A
239 governmental unit, public agency, institution, person, firm, or
240 legal entity may provide property or money to the department in
241 accordance with s. 626.9894 to enable the department to pursue
242 unauthorized entities operating in violation of this part. The
243 department may transfer funds or property to the office to
244 administer this section.

245 Section 7. Section 634.414, Florida Statutes, is amended to
246 read:

247 634.414 Forms; required provisions.—

248 (1) Each service warranty contract shall contain a
249 cancellation provision. If the contract is canceled by the
250 warranty holder, return of premium shall be based upon no less
251 than 90 percent of unearned pro rata premium less any claims
252 that have been paid or less the cost of repairs made on behalf
253 of the warranty holder. If the contract is canceled by the
254 association, return of premium shall be based upon 100 percent
255 of unearned pro rata premium, less any claims paid or the cost
256 of repairs made on behalf of the warranty holder. Service
257 warranty associations may effectuate refunds through the issuing
258 sales representative.

259 (2) Refunds owed pursuant to this section may be made by
260 cash, check, store credit, gift card, or other similar means.

261 (3)~~(2)~~ By July 1, 2011, each service warranty contract sold

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262 in this state must be accompanied by a written disclosure to the
263 consumer that the rate charged for the contract is not subject
264 to regulation by the office. A service warranty association may
265 comply with this requirement by including such disclosure in its
266 service warranty contract form or in a separate written notice
267 provided to the consumer at the time of sale.

268 Section 8. Section 634.416, Florida Statutes, is amended to
269 read:

270 634.416 Examination of associations.—

271 ~~(1)(a)~~ Service warranty associations licensed under this
272 part may be subject to periodic examination by the office, in
273 the same manner and subject to the same terms and conditions
274 that apply to insurers under part II of chapter 624, with the
275 exception of ss. 624.316(2)(e) and 624.3161(3), which do not
276 apply to examinations conducted pursuant to this section. The
277 office is not required to conduct periodic examinations pursuant
278 to this section, but may examine a service agreement company at
279 its discretion. An examination conducted pursuant to this
280 section may cover a period of only the most recent 5 years.

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

283 1. ~~The amount of time that the association has been~~
284 ~~continuously licensed and operating under the same management~~
285 ~~and control.~~

286 2. ~~The association's history of compliance with applicable~~
287 ~~law.~~

288 3. ~~The number of consumer complaints against the~~
289 ~~association.~~

290 4. ~~The financial condition of the association, demonstrated~~

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291 ~~by the financial reports submitted pursuant to s. 634.313.~~

292 ~~(2) The rate charged a service warranty association by the~~
293 ~~office for examination may be adjusted to reflect the amount~~
294 ~~collected for the Form 10-K filing fee as provided in this~~
295 ~~section.~~

296 ~~(3) On or before May 1 of each year, an association may~~
297 ~~submit to the office the Form 10-K, as filed with the United~~
298 ~~States Securities and Exchange Commission pursuant to the~~
299 ~~Securities Exchange Act of 1934, as amended. Upon receipt and~~
300 ~~review of the most current Form 10-K, the office may waive the~~
301 ~~examination requirement; if the office determines not to waive~~
302 ~~the examination, such examination will be limited to that~~
303 ~~examination necessary to ensure compliance with this part. The~~
304 ~~Form 10-K shall be accompanied by a filing fee of \$2,000 to be~~
305 ~~deposited into the Insurance Regulatory Trust Fund.~~

306 ~~(4) The office is not required to examine an association~~
307 ~~that has less than \$20,000 in gross written premiums as~~
308 ~~reflected in its most recent annual statement. The office may~~
309 ~~examine such an association if it has reason to believe that the~~
310 ~~association may be in violation of this part or is otherwise in~~
311 ~~an unsound financial condition. If the office examines an~~
312 ~~association that has less than \$20,000 in gross written~~
313 ~~premiums, the examination fee may not exceed 5 percent of the~~
314 ~~gross written premiums of the association.~~

315 Section 9. Section 634.4385, Florida Statutes, is created
316 to read:

317 634.4385 Unauthorized entities; gifts and grants.—A
318 governmental unit, public agency, institution, person, firm, or
319 legal entity may provide property or money to the department in

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320 accordance with the provisions of s. 626.9894 to enable the
321 department to pursue unauthorized entities operating in
322 violation of this part. The department may transfer funds or
323 property to the office to administer this section.

324 Section 10. This act shall take effect July 1, 2012.