

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Cruz offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (8) of section 634.011, Florida
8 Statutes, is amended to read:

9 634.011 Definitions.—As used in this part, the term:

10 (8) "Motor vehicle service agreement" or "service
11 agreement" means any contract or agreement indemnifying the
12 service agreement holder for the motor vehicle listed on the
13 service agreement and arising out of the ownership, operation,
14 and use of the motor vehicle against loss caused by failure of
15 any mechanical or other component part, or any mechanical or
16 other component part that does not function as it was originally
17 intended; however, nothing in this part shall prohibit or affect
18 the giving, free of charge, of the usual performance guarantees
19 by manufacturers or dealers in connection with the sale of motor

Amendment No.

20 vehicles. Transactions exempt under s. 624.125 are expressly
21 excluded from this definition and are exempt from the provisions
22 of this part. ~~Service agreements that are sold to persons other~~
23 ~~than consumers and that cover motor vehicles used for commercial~~
24 ~~purposes are excluded from this definition and are exempt from~~
25 ~~regulation under the Florida Insurance Code.~~ The term "motor
26 vehicle service agreement" includes any contract or agreement
27 that provides:

28 (a) For the coverage or protection defined in this
29 subsection and which is issued or provided in conjunction with
30 an additive product applied to the motor vehicle that is the
31 subject of such contract or agreement;

32 (b) For payment of vehicle protection expenses.

33 1.a. "Vehicle protection expenses" means a preestablished
34 flat amount payable for the loss of or damage to a vehicle or
35 expenses incurred by the service agreement holder for loss or
36 damage to a covered vehicle, including, but not limited to,
37 applicable deductibles under a motor vehicle insurance policy;
38 temporary vehicle rental expenses; expenses for a replacement
39 vehicle that is at least the same year, make, and model of the
40 stolen motor vehicle; sales taxes or registration fees for a
41 replacement vehicle that is at least the same year, make, and
42 model of the stolen vehicle; or other incidental expenses
43 specified in the agreement.

44 b. "Vehicle protection product" means a product or system
45 installed or applied to a motor vehicle or designed to prevent
46 the theft of the motor vehicle or assist in the recovery of the
47 stolen motor vehicle.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1011 (2012)

Amendment No.

48 2. Vehicle protection expenses shall be payable in the
49 event of loss or damage to the vehicle as a result of the
50 failure of the vehicle protection product to prevent the theft
51 of the motor vehicle or to assist in the recovery of the stolen
52 motor vehicle. Vehicle protection expenses covered under the
53 agreement shall be clearly stated in the service agreement form,
54 unless the agreement provides for the payment of a
55 preestablished flat amount, in which case the service agreement
56 form shall clearly identify such amount.

57 3. Motor vehicle service agreements providing for the
58 payment of vehicle protection expenses shall either:

59 a. Reimburse a service agreement holder for the following
60 expenses, at a minimum: deductibles applicable to comprehensive
61 coverage under the service agreement holder's motor vehicle
62 insurance policy; temporary vehicle rental expenses; sales taxes
63 and registration fees on a replacement vehicle that is at least
64 the same year, make, and model of the stolen motor vehicle; and
65 the difference between the benefits paid to the service
66 agreement holder for the stolen vehicle under the service
67 agreement holder's comprehensive coverage and the actual cost of
68 a replacement vehicle that is at least the same year, make, and
69 model of the stolen motor vehicle; or

70 b. Pay a preestablished flat amount to the service
71 agreement holder.

72
73 Payments shall not duplicate any benefits or expenses paid to
74 the service agreement holder by the insurer providing
75 comprehensive coverage under a motor vehicle insurance policy

004963 - h1011-strike.docx

Published On: 1/18/2012 12:58:42 PM

Amendment No.

76 covering the stolen motor vehicle; however, the payment of
77 vehicle protection expenses at a preestablished flat amount of
78 \$5,000 or less does not duplicate any benefits or expenses
79 payable under any comprehensive motor vehicle insurance policy;
80 or

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

84 2. "Paintless dent-removal" means the process of
85 removing dents, dings, and creases, including hail damage, from
86 a vehicle without affecting the existing paint finish, but does
87 not include services that involve the replacement of vehicle
88 body panels or sanding, bonding, or painting.

89 Section 2. Paragraph (b) of subsection (3) of section
90 634.121, Florida Statutes, is amended, and paragraphs (c), (d),
91 and (e) are added to that subsection, to read:

92 634.121 Forms, required procedures, provisions.-

93 (3)

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

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

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

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

Amendment No.

103 4. For nonpayment of premium by the agreement holder, in
104 which case the service agreement company shall provide the
105 agreement holder notice of cancellation by certified mail.
106

107 If the service agreement is canceled by the insurer or service
108 agreement company, the return of premium must not be less than
109 100 percent of the paid unearned pro rata premium, less any
110 claims paid on the agreement. If, after 60 days, the service
111 agreement is canceled by the service agreement holder, the
112 insurer or service agreement company shall return directly to
113 the agreement holder not less than 90 percent of the unearned
114 pro rata premium, less any claims paid on the agreement. The
115 service agreement company remains responsible for full refunds
116 to the consumer on canceled service agreements. However, the
117 salesperson and agent are responsible for the refund of the
118 unearned pro rata commission. A service agreement company may
119 effectuate refunds through the issuing salesperson or agent in
120 accordance with paragraphs (c) and (d).

121 (c) If the service agreement company effectuates refunds
122 through the issuing salesperson or agent, the service agreement
123 company must send the unearned pro rata premium refund due, less
124 any unearned pro rata commission, to the salesperson or agent
125 effectuating the refund. Upon receipt, the salesperson or agent
126 must refund the unearned pro rata premium, including any
127 unearned pro rata commission, and the sales tax refund owed to
128 the service agreement holder.

129 (d) The salesperson, agent, or service agreement company
130 shall maintain a copy of one of the following documents, as

004963 - h1011-strike.docx

Published On: 1/18/2012 12:58:42 PM

Amendment No.

131 applicable, demonstrating that the refund owed pursuant to
132 paragraph (c) has been refunded:

133 1. A copy of the front and back of the cancelled check for
134 the applicable refund amount owed to the service agreement
135 holder;

136 2. A copy of the front of the check for the applicable
137 refund amount owed to the service agreement holder and a copy of
138 the statement from the bank account on which the check was drawn
139 showing that the check was cashed;

140 3. A copy of the front of the check issued by the service
141 agreement company to the salesperson or agent in the amount of
142 the service agreement company's portion of the refund owed to
143 the service agreement holder and a copy of the statement from
144 the bank account on which the check was drawn showing that the
145 check was cashed;

146 4. A copy of a completed buyer's order demonstrating that
147 the applicable refund amount owed to the service agreement
148 holder was credited toward the purchase or lease of another
149 vehicle;

150 5. Any document received from or sent to a lender, finance
151 company, or creditor demonstrating that a loan or amount
152 financed by the agreement holder was decreased by the amount of
153 the applicable refund amount owed to the service agreement
154 holder; or

155 6. Any other evidence approved by the office in a written
156 communication to a person licensed pursuant to this part
157 demonstrating that the applicable refund amount due to the
158 service agreement holder was properly made.

Amendment No.

159
160 A salesperson or agent effectuating a refund shall maintain a
161 copy of the documentation required by this paragraph, and shall
162 provide a copy to the service agreement company within 45 days
163 after a request is made to either the service agreement company
164 or the salesperson by the department or the office.

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

170 Section 3. Section 634.141, Florida Statutes, is amended
171 to read:

172 634.141 Examination of companies.—

173 ~~(1)~~ Motor vehicle service agreement companies licensed
174 under this part may be subject to periodic examination by the
175 office in the same manner and subject to the same terms and
176 conditions as applies to insurers under part II of chapter 624.
177 The office is not required to conduct periodic examinations
178 pursuant to this section, but may examine a service agreement
179 company at its discretion. An examination conducted pursuant to
180 this section may cover a period of only the most recent 5 years.
181 The costs of examinations conducted pursuant to ss.
182 624.316(2) (e) and 624.3161(3) must not exceed ten percent of the
183 companies prior year reported net income. ~~The commission may by~~
184 ~~rule establish provisions whereby a company may be exempted from~~
185 examination.

Amendment No.

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

188 ~~(a) The amount of time that the company has been~~
189 ~~continuously licensed and operating under the same management~~
190 ~~and control.~~

191 ~~(b) The company's history of compliance with applicable~~
192 ~~law.~~

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

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

196 Section 4. Section 634.2855, Florida Statutes, is created
197 to read:

198 634.2855 Unauthorized entities; gifts and grants.—A
199 governmental unit, public agency, institution, person, firm, or
200 legal entity may provide money to the department to enable the
201 department to pursue unauthorized entities operating in
202 violation of this part. The department may transfer funds to
203 the office to investigate, discipline, sanction and take all
204 action consistent with this part relative to unauthorized
205 entities. All donations or grants of moneys to the department
206 shall be deposited into the Insurance Regulatory Trust Fund and
207 shall be separately accounted for in accordance with this
208 section. Moneys deposited into the Insurance Regulatory Trust
209 Fund pursuant to this section may be appropriated by the
210 Legislature, pursuant to the provisions of chapter 216, for the
211 purpose of enabling the department or the office to carry out
212 the provisions of this section. Notwithstanding the provisions
213 of s. 216.301 and pursuant to s. 216.351, any balance of moneys

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Published On: 1/18/2012 12:58:42 PM

Amendment No.

214 deposited into the Insurance Regulatory Trust Fund pursuant to
215 this section remaining at the end of any fiscal year shall be
216 available for carrying out the duties and responsibilities of
217 the department or the office.

218 Section 5. Subsection (5) of section 634.312, Florida
219 Statutes, is amended to read:

220 634.312 Forms; required provisions and procedures.—

221 (5) Each home warranty contract shall contain a
222 cancellation provision. Any home warranty agreement may be
223 canceled by the purchaser within 10 days after purchase. The
224 refund must be 100 percent of the gross premium paid, less any
225 claims paid on the agreement. A reasonable administrative fee
226 may be charged, not to exceed 5 percent of the gross premium
227 paid by the warranty agreement holder. After the home warranty
228 agreement has been in effect for 10 days, if the contract is
229 canceled by the warranty holder, a return of premium shall be
230 based upon 90 percent of unearned pro rata premium less any
231 claims that have been paid. If the contract is canceled by the
232 association for any reason other than for fraud or
233 misrepresentation, a return of premium shall be based upon 100
234 percent of unearned pro rata premium, less any claims paid on
235 the agreement. A home warranty association may effectuate a
236 refund through the issuing sales representative.

237 Section 6. Section 634.314, Florida Statutes, is amended
238 to read:

239 634.314 Examination of associations.—

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

004963 - h1011-strike.docx

Published On: 1/18/2012 12:58:42 PM

Amendment No.

242 same manner and subject to the same terms and conditions as
243 apply to insurers under part II of chapter 624 of the insurance
244 code. The office is not required to conduct periodic
245 examinations pursuant to this section, but may examine a home
246 warranty company at its discretion. An examination conducted
247 pursuant to this section may cover a period of only the most
248 recent 5 years. The costs of examinations conducted pursuant to
249 ss. 624.316(2)(e) and 624.3161(3) must not exceed not exceed ten
250 percent of the companies prior year reported net income.

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

253 ~~(a) The amount of time that the association has been~~
254 ~~continuously licensed and operating under the same management~~
255 ~~and control.~~

256 ~~(b) The association's history of compliance with~~
257 ~~applicable law.~~

258 ~~(c) The number of consumer complaints against the~~
259 ~~association.~~

260 ~~(d) The financial condition of the association,~~
261 ~~demonstrated by the financial reports submitted pursuant to s.~~
262 ~~634.313.~~

263 Section 7. Section 634.3385, Florida Statutes, is created
264 to read:

265 634.3385 Unauthorized entities; gifts and grants.—A
266 governmental unit, public agency, institution, person, firm, or
267 legal entity may provide money to the department to enable the
268 department to pursue unauthorized entities operating in
269 violation of this part. The department may transfer funds to

004963 - h1011-strike.docx

Published On: 1/18/2012 12:58:42 PM

Amendment No.

270 the office to investigate, discipline, sanction and take all
271 action consistent with this part relative to unauthorized
272 entities. All donations or grants of moneys to the department
273 shall be deposited into the Insurance Regulatory Trust Fund and
274 shall be separately accounted for in accordance with this
275 section. Moneys deposited into the Insurance Regulatory Trust
276 Fund pursuant to this section may be appropriated by the
277 Legislature, pursuant to the provisions of chapter 216, for the
278 purpose of enabling the department or the office to carry out
279 the provisions of this section. Notwithstanding the provisions
280 of s. 216.301 and pursuant to s. 216.351, any balance of moneys
281 deposited into the Insurance Regulatory Trust Fund pursuant to
282 this section remaining at the end of any fiscal year shall be
283 available for carrying out the duties and responsibilities of
284 the department or the office.

285 Section 8. Section 634.414, Florida Statutes, is amended
286 to read:

287 634.414 Forms; required provisions.-

288 (1) Each service warranty contract shall contain a
289 cancellation provision. If the contract is canceled by the
290 warranty holder, return of premium shall be based upon no less
291 than 90 percent of unearned pro rata premium less any claims
292 that have been paid or less the cost of repairs made on behalf
293 of the warranty holder. If the contract is canceled by the
294 association, return of premium shall be based upon 100 percent
295 of unearned pro rata premium, less any claims paid or the cost
296 of repairs made on behalf of the warranty holder. Service

Amendment No.

297 warranty associations may effectuate refunds through the issuing
298 sales representative.

299 (2) Refunds owed pursuant to this section may be made by
300 cash, check, store credit, gift card, or other similar means.
301 Upon request of the service warranty holder the refund shall be
302 remitted by check.

303 (3)~~(2)~~ By July 1, 2011, each service warranty contract
304 sold in this state must be accompanied by a written disclosure
305 to the consumer that the rate charged for the contract is not
306 subject to regulation by the office. A service warranty
307 association may comply with this requirement by including such
308 disclosure in its service warranty contract form or in a
309 separate written notice provided to the consumer at the time of
310 sale.

311 Section 9. Section 634.416, Florida Statutes, is amended
312 to read:

313 634.416 Examination of associations.-

314 ~~(1)(a)~~ Service warranty associations licensed under this
315 part may be subject to periodic examination by the office, in
316 the same manner and subject to the same terms and conditions
317 that apply to insurers under part II of chapter 624. The office
318 is not required to conduct periodic examinations pursuant to
319 this section, but may examine a service warranty company at its
320 discretion. An examination conducted pursuant to this section
321 may cover a period of only the most recent 5 years. The costs of
322 examinations conducted pursuant to ss. 624.316(2)(e) and
323 624.3161(3) must not exceed not exceed ten percent of the
324 companies prior year reported net income.

004963 - h1011-strike.docx

Published On: 1/18/2012 12:58:42 PM

Amendment No.

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

327 ~~1. The amount of time that the association has been~~
328 ~~continuously licensed and operating under the same management~~
329 ~~and control.~~

330 ~~2. The association's history of compliance with applicable~~
331 ~~law.~~

332 ~~3. The number of consumer complaints against the~~
333 ~~association.~~

334 ~~4. The financial condition of the association,~~
335 ~~demonstrated by the financial reports submitted pursuant to s.~~
336 ~~634.313.~~

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

341 ~~(3) On or before May 1 of each year, an association may~~
342 ~~submit to the office the Form 10-K, as filed with the United~~
343 ~~States Securities and Exchange Commission pursuant to the~~
344 ~~Securities Exchange Act of 1934, as amended. Upon receipt and~~
345 ~~review of the most current Form 10-K, the office may waive the~~
346 ~~examination requirement; if the office determines not to waive~~
347 ~~the examination, such examination will be limited to that~~
348 ~~examination necessary to ensure compliance with this part. The~~
349 ~~Form 10-K shall be accompanied by a filing fee of \$2,000 to be~~
350 ~~deposited into the Insurance Regulatory Trust Fund.~~

351 ~~(4) The office is not required to examine an association~~
352 ~~that has less than \$20,000 in gross written premiums as~~

004963 - h1011-strike.docx

Published On: 1/18/2012 12:58:42 PM

Amendment No.

353 ~~reflected in its most recent annual statement. The office may~~
354 ~~examine such an association if it has reason to believe that the~~
355 ~~association may be in violation of this part or is otherwise in~~
356 ~~an unsound financial condition.~~ If the office examines an
357 association that has less than \$20,000 in gross written
358 premiums, the examination fee may not exceed 5 percent of the
359 gross written premiums of the association.

360 Section 10. Section 634.4385, Florida Statutes, is created
361 to read:

362 634.4385 Unauthorized entities; gifts and grants.—A
363 governmental unit, public agency, institution, person, firm, or
364 legal entity may provide money to the department to enable the
365 department to pursue unauthorized entities operating in
366 violation of this part. The department may transfer funds to
367 the office to investigate, discipline, sanction and take all
368 action consistent with this part relative to unauthorized
369 entities. All donations or grants of moneys to the department
370 shall be deposited into the Insurance Regulatory Trust Fund and
371 shall be separately accounted for in accordance with this
372 section. Moneys deposited into the Insurance Regulatory Trust
373 Fund pursuant to this section may be appropriated by the
374 Legislature, pursuant to the provisions of chapter 216, for the
375 purpose of enabling the department or the office to carry out
376 the provisions of this section. Notwithstanding the provisions
377 of s. 216.301 and pursuant to s. 216.351, any balance of moneys
378 deposited into the Insurance Regulatory Trust Fund pursuant to
379 this section remaining at the end of any fiscal year shall be

Amendment No.

380 available for carrying out the duties and responsibilities of
381 the department or the office.

382 Section 11. This act shall take effect July 1, 2012.
383
384

385 -----

386 **T I T L E A M E N D M E N T**

387 Remove the entire title and insert:

388 A bill to be entitled

389 An act relating to warranty associations; amending s. 634.011,
390 F.S.; redefining motor vehicle service agreement; amending s.
391 634.121, F.S.; providing criteria for a motor vehicle service
392 agreement company to effectuate refunds through the issuing
393 salesperson or agent; requiring the salesperson, agent, or
394 service agreement company to maintain a copy of certain
395 documents; requiring a salesperson or agent to provide a copy of
396 a document to the service agreement company if requested by the
397 Department of Financial Services or the Office of Insurance
398 Regulation; requiring the Office of Insurance Regulation to
399 provide to the department findings that a salesperson or agent
400 exhibits a pattern or practice of failing to effectuate refunds
401 or to maintain and remit to the service agreement company the
402 required documentation; amending s. 634.141, F.S.; authorizing
403 rather than requiring the Office of Insurance Regulation to
404 examine service agreement companies; limiting the examination
405 period to the most recent 5 years limiting the costs of certain
406 examinations; removing the requirement that the Financial
407 Services Commission establish rules for conducting examinations;

004963 - h1011-strike.docx

Published On: 1/18/2012 12:58:42 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1011 (2012)

Amendment No.

408 removing the criteria for determining whether an examination is
409 warranted; creating s. 634.2855, F.S.; authorizing a
410 governmental entity, public agency, institution, person, firm,
411 or legal entity to provide money to the Department of Financial
412 Services to pursue unauthorized entities operating as motor
413 vehicle service agreement companies; amending s. 634.312, F.S.;
414 authorizing a home warranty association to effectuate a refund
415 through the issuing sales representative; amending s. 634.314,
416 F.S.; authorizing rather than requiring the Office of Insurance
417 Regulation to examine home warranty associations; limiting the
418 examination period to the most recent 5 years; removing the
419 requirement that the Financial Services Commission establish
420 rules for conducting examinations; removing the criteria for
421 determining whether an examination is warranted; creating s.
422 634.3385, F.S.; authorizing a governmental entity, public
423 agency, institution, person, firm, or legal entity to provide
424 money to the Department of Financial Services to pursue
425 unauthorized entities operating as home warranty associations;
426 amending s. 634.414, F.S.; authorizing service warranty
427 associations to effectuate refunds through the issuing sales
428 representative; authorizing a service warranty association to
429 issue refunds by cash, check, store credit, gift card, or other
430 similar means; amending s. 634.416, F.S.; authorizing rather
431 than requiring the Office of Insurance Regulation to examine
432 service warranty associations; limiting the examination period
433 to the most recent 5 years limiting the costs of certain
434 examinations; removing the requirement that the Financial
435 Services Commission establish rules for conducting examinations;

004963 - h1011-strike.docx

Published On: 1/18/2012 12:58:42 PM

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Bill No. HB 1011 (2012)

Amendment No.

436 removing the criteria for determining whether an examination is
437 warranted; removing provisions relating to the rates charged a
438 to service warranty association for examinations; removing the
439 provision authorizing the Office of Insurance Regulation to
440 waive the examination requirement upon receipt and review of the
441 Form 10-K; creating s. 634.4385, F.S.; authorizing a
442 governmental entity, public agency, institution, person, firm,
443 or legal entity to provide money to the Department of Financial
444 Services to pursue unauthorized entities operating as service
445 warranty associations; providing an effective date.