

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1262

INTRODUCER: Banking and Insurance Committee and Senator Oelrich

SUBJECT: Warranty Associations

DATE: February 27, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	<b>Fav/CS</b>
2.	Betta	DeLoach	BGA	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill provides criteria for motor vehicle service agreement companies to effectuate refunds through the issuing salesperson or agent. The bill authorizes home and service warranty associations to effectuate refunds through the issuing sales representative. The bill authorizes rather than requires the examination of warranty associations. Additionally, the bill creates provisions authorizing the donation or grant of money to the Department of Financial Services (DFS) to pursue unauthorized warranty associations.

This bill substantially amends the following sections of the Florida Statutes: 634.011, 634.121, 634.141, 634.312, 634.314, 634.414, and 634.416.

This bill creates the following sections of the Florida Statutes: 634.2855, 634.3385, and 634.4385.

## II. Present Situation:

Motor vehicle service agreement companies, home warranty associations, and service warranty associations are governed under ch. 634, F.S. The Office of Insurance Regulation (OIR) is responsible for regulating warranty associations within Florida.

### Warranty Agreements

*Motor Vehicle Service Agreement:* Motor vehicle service agreements are defined as indemnifying the service agreement holder (owner) of the motor vehicle listed on the service agreement from losses caused by the failure or improper function of any mechanical or other component part arising out of the ownership, operation, and use of the motor vehicle. Included in the definition are agreements that provide for coverage issued in conjunction with an additive product applied to the motor vehicle, payment of vehicle protection expenses, and payment for paintless dent-removal services. Service agreements that cover motor vehicles used for commercial purposes and sold to persons other than consumers are excluded from the definition and are exempt from regulation under the Florida Insurance Code.<sup>1</sup>

*Home Warranty:* Any organization, other than an authorized insurer, that issues home warranties is a home warranty association. Home warranties are agreements 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.<sup>2</sup>

*Service Warranty:* A service warranty is a maintenance service contract equal to or greater than one year in length or an agreement for a specific duration to perform the repair, replacement, or maintenance of a consumer product, or for indemnification for repair, replacement, or maintenance, for operational or structural failure due to a defect in materials or workmanship, normal wear and tear, power surge, or accidental damage from handling in return for the payment of a segregated charge by the consumer.<sup>3</sup> Under s. 634.401, F.S., indemnify means to undertake repair or replacement of a consumer product, or pay compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

### Agreement Cancellation

*Motor Vehicle Service Agreement:* Any motor vehicle service agreement is cancelable by the purchaser (agreement holder) within 60 days after purchase. The purchaser is entitled to a refund of 100 percent of the gross premium paid minus any claims paid on the service agreement.<sup>4</sup> An administrative fee of not more than five percent of the gross premium paid by the agreement holder may be assessed. Once a motor vehicle service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

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<sup>1</sup> Section 634.011(8), F.S.

<sup>2</sup> Section 634.301(2), F.S.

<sup>3</sup> Section 634.401(13), F.S.

<sup>4</sup> Section 634.121(3)(a), F.S.

1. there has been a material misrepresentation or fraud at the time of sale of the service agreement;
2. the agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
3. the odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or
4. for nonpayment of premium by the agreement holder.<sup>5</sup>

If the insurer or service agreement company cancels the service agreement, the refund to the agreement holder must not be less than 100 percent of the paid unearned pro rata premium minus any claims paid on the agreement. However, if the agreement is canceled after 60 days by the agreement holder, the insurer or service agreement company must return directly to the holder not less than 90 percent of the unearned pro rata premium minus any claims paid on the agreement.<sup>6</sup> A full refund to the agreement holder on canceled service agreements remains the responsibility of the service agreement company; however, the salesperson and agent are responsible for refunding the unearned pro rata commission. Under current law the company may effectuate refunds through the issuing salesperson or agent.<sup>7</sup>

*Home Warranty:* Under s. 634.312, F.S., 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 minus any claims paid on the agreement. An administrative fee not to exceed five percent of the gross premium paid by the warranty agreement holder may be charged. If canceled after 10 days by the warranty holder, the return of premium shall be based upon 90 percent of unearned pro rata premium minus any claims that have been paid. If canceled by the home warranty 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, minus any claims paid.<sup>8</sup> Current law does not explicitly authorize a home warranty association to effectuate refunds through the issuing salesperson or agent.

*Service Warranty:* If a service warranty is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium minus any claims that have been paid, or the cost of repairs made on behalf of the warranty holder. If the association cancels the agreement the return of premium shall be based upon 100 percent of unearned pro rata premium minus any claims paid or the cost of repairs made.<sup>9</sup> Current law does not explicitly authorize a service warranty association to effectuate refunds through the issuing salesperson or agent.

### **Examination of Companies**

The OIR's financial examination of motor vehicle service agreement companies, home warranty associations, and service warranty associations is subject to the same procedures as required under part II of ch. 624. The OIR may examine the companies as often as may be warranted for

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<sup>5</sup> Section 634.121(3)(b), F.S.

<sup>6</sup> Section 634.121(3)(b)(4), F.S.

<sup>7</sup> Section 634.121(3)(b)(4), F.S.

<sup>8</sup> Section 634.312(5), F.S.

<sup>9</sup> Section 634.414(1), F.S.

the protection of policyholders and the public interest, but must examine each company not less frequently than once every five years.<sup>10</sup> Criteria are provided for the OIR to consider in determining whether to conduct an examination of a company or association. The examinations may be conducted by an independent certified public accountant, actuary, investment specialist, information technology specialist, or reinsurance specialist with the costs paid for by the companies.<sup>11</sup>

Section 634.141, F.S., authorizes the establishment of rules whereby a motor vehicle service company may be exempted from examination. Motor vehicle service agreement companies that meet certain criteria and file an exemption fee of \$2,000 to be deposited in the Regulatory Trust Fund may be exempt from examination.<sup>12</sup> On or before May 1 of each year, a service warranty association may submit to the OIR a Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934. The OIR may waive the examination requirement for service warranty associations upon receipt and review of the Form 10-K and deposit of the \$2,000 filing into the Insurance Regulatory Trust Fund. According to the OIR, currently there are approximately 15 entities with exemption requests.<sup>13</sup>

The OIR is not required to examine a service warranty association that has less than \$20,000 in gross written premiums as reflected in its most recent annual statement, but may if it has reason to believe that the association is noncompliant or is otherwise in an unsound financial condition. If the OIR examines an association that has less than \$20,000 in gross written premiums, the examination fee may not exceed five percent of the gross written premiums of the association.<sup>14</sup>

### **Gifts and Grants to Combat Unauthorized Entities**

Under s. 626.9894, F.S., the DFS is authorized to accept, for purposes of anti-fraud efforts, any donation or grant of property or moneys from any governmental unit, public agency, institution, person, firm, or corporation. All rights to the gifts and grants are immediately vested in the Division of Insurance Fraud and deposited into the Insurance Regulatory Trust Fund. The moneys deposited into the Insurance Regulatory Trust Fund shall be separately accounted for and may be appropriated by the Legislature for the purpose of enabling the division to carry out its responsibilities, or for the purpose of funding or defraying the costs of dedicated fraud prosecutors.<sup>15</sup>

## **III. Effect of Proposed Changes:**

### **Motor Vehicle Service Agreement**

The provision excluding service agreements sold to persons other than consumers and that cover motor vehicles used for commercial purposes is deleted by the bill. Therefore, motor vehicle service agreement coverage for commercial vehicles having a gross weight rating of less than

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<sup>10</sup> Section 624.316(2)(a), F.S.

<sup>11</sup> Section 624.316(2)(e), F.S.

<sup>12</sup> The Office of Insurance Regulation, Rule 69O-200.014, FAC.

<sup>13</sup> The Office of Insurance Regulation Staff Analysis, January 10, 2012.

<sup>14</sup> Section 634.416, F.S.

<sup>15</sup> Section 626.9894, F.S.

10,000 pounds will be required to be offered through a regulated company. Vehicles over 10,000 pounds will continue to not be covered.<sup>16</sup> This assures that small business owners get the same consumer protection that private motor vehicle owners receive.

### **Agreement Cancellation**

Under the bill if a motor vehicle service agreement company effectuates refunds through the issuing salesperson or agent, the company must send to the salesperson or agent effectuating the refund the unearned pro rata premium refund due less any unearned pro rata commission. The salesperson or agent must then refund the unearned pro rata premium including any unearned pro rata commission and the sales tax to the service agreement holder. The bill requires the salesperson, agent, or company maintain a copy of certain specified documents demonstrating the refund to the service agreement holder occurred. The salesperson or agent effectuating the refund shall provide a copy of the required documentation to the company within 45 days after a request is made by the DFS or the OIR. If the OIR finds that a salesperson or agent exhibits a pattern or practice of failing to properly effectuate refunds owed or to maintain and remit to the service agreement company the required documentation, the OIR shall notify the DFS.

The bill creates the option to effectuate a refund through the issuing sales representatives for home warranty associations or service warranty associations, but does not provide detail or require certain documentation be retained regarding the effectuation of the refund. However, according to the OIR there are no procedures in place for the sales representatives or agents of home or service warranty associations to effectuate refunds.<sup>17</sup> The bill provides that refunds for service warranties may be made by cash, check, store credit, gift card, or other similar means. The bill provides that upon the request of the service warranty holder the refund must be remitted by check.

### **Examination of Companies**

The bill provides that the OIR is not required to conduct periodic examinations of motor vehicle service agreement companies, home warranty associations, or service warranty associations but may at the OIR's discretion. An examination may only cover a period of the most recent five years. The bill provides that the costs of an examination conducted by an independent examiner is limited to no more than 10 percent of the companies' prior year reported net income. The criteria provided for the OIR to consider in determining whether to conduct an examination of a company or association is eliminated. The bill deletes authorization for the creation of the exemption processes and fees for motor vehicle service agreement companies. For service warranty associations, the bill deletes language specific to the rate charged for service warranty providers and the filing fee of \$2,000 for the Form 10-K filed with the United States Securities and Exchange Commission. The bill maintains that if the OIR examines a service warranty association that has less than \$20,000 in gross written premiums, the examination fee may not exceed five percent of the gross written premiums of the association.

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<sup>16</sup> Section 634.011(6)(a)(1), F.S.

<sup>17</sup> The Office of Insurance Regulation Staff Analysis, January 10, 2012.

### **Gifts and Grants to Combat Unauthorized Entities**

The bill creates new provisions that allow a governmental unit, public agency, institution, person, firm, or legal entity to provide money, and not property, to the DFS to enable the DFS to pursue unauthorized entities operating in violation of provisions relating to warranty associations. The DFS may transfer the funds to the OIR to pursue unauthorized entities. The bill requires all donations to the DFS to be deposited into the Insurance Regulatory Trust Fund (fund) and separately accounted for. The bill allows money deposited into the fund to be appropriated by the Legislature pursuant to ch. 216, F.S., for the purpose of enabling the DFS or the OIR to pursue unauthorized warranty entities. The bill provides that any balance of moneys deposited into the fund for the purpose of pursuing unauthorized warranty entities and remaining at the end of any fiscal year shall be available for carrying out the duties of the DFS or the OIR.

The bill has an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The OIR will no longer conduct regularly scheduled examinations of warranty associations; therefore, the warranty associations will save costs associated with preparing for and undergoing the examinations. The warranty associations will also save on the costs of an independent examiner, since the fees are capped at 10 percent of their prior year net income. Entities that currently apply for exemption will no longer have to pay the \$2,000 filing fee. There are currently 15 associations that have applied for exemption.

C. Government Sector Impact:

The Department of Financial Services will receive grants and donations under the newly created provisions for pursuing unauthorized warranty associations; however, this

revenue is considered as non-recurring since it is not guaranteed.<sup>18</sup> The exemption fee of \$2,000 required for the exemption from examination will no longer be collected or deposited into the Insurance Regulatory Trust Fund. There are currently 15 associations that have applied for exemption.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance Committee on January 26, 2012:**

The committee substitute retains many of the same provisions of the bill as filed and makes the following major changes:

- Deletes the provision in current law that provides service agreements sold to persons other than consumers, and that cover motor vehicles used for commercial purposes are excluded from the definition of motor vehicle service agreement and are exempt from regulation under the Florida Insurance Code.
- Clarifies the provisions in the bill authorizing donations to the Department of Financial Services (DFS) for the purpose of pursuing unauthorized entities that violate the laws regarding warranty associations.
- Caps the costs associated with the Office of Insurance Regulation's (OIR) use of independent examiners.
- Makes technical changes to correct drafting errors.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>18</sup> The Department of Financial Services Staff Analysis and Fiscal Impact Statement, December 29, 2011.