

By the Committee on Banking and Insurance; and Senator Oelrich

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1 A bill to be entitled
2 An act relating to warranty associations; amending s.
3 634.011, F.S.; revising the definition of the term
4 “motor vehicle service agreement”; amending s.
5 634.121, F.S.; providing criteria for a motor vehicle
6 service agreement company to effectuate refunds
7 through the issuing salesperson or agent; requiring
8 the salesperson, agent, or service agreement company
9 to maintain a copy of certain documents; requiring a
10 salesperson or agent to provide a copy of a document
11 to the service agreement company if requested by the
12 Department of Financial Services or the Office of
13 Insurance Regulation; requiring the office to provide
14 to the department findings that a salesperson or agent
15 exhibits a pattern or practice of failing to
16 effectuate refunds or to maintain and remit to the
17 service agreement company the required documentation;
18 amending s. 634.141, F.S.; authorizing rather than
19 requiring the office to examine service agreement
20 companies; limiting the examination period to the most
21 recent 5 years; limiting the cost of certain
22 examinations; removing the requirement that the
23 Financial Services Commission establish rules for
24 conducting examinations; removing the criteria for
25 determining whether an examination is warranted;
26 creating s. 634.2855, F.S.; authorizing a governmental
27 entity, public agency, institution, person, firm, or
28 legal entity to provide money to the department to
29 pursue unauthorized entities operating as motor

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30 vehicle service agreement companies; providing
31 requirements for the deposit of the money; providing
32 that funds remaining at the end of any fiscal year
33 shall be available for carrying out duties and
34 responsibilities of the department or the office;
35 amending s. 634.312, F.S.; authorizing a home warranty
36 association to effectuate a refund through the issuing
37 sales representative; amending s. 634.314, F.S.;

38 authorizing rather than requiring the office to
39 examine home warranty associations; limiting the
40 examination period to the most recent 5 years;
41 limiting the cost of certain examinations; removing
42 the requirement that the commission establish rules
43 for conducting examinations; removing the criteria for
44 determining whether an examination is warranted;

45 creating s. 634.3385, F.S.; authorizing a governmental
46 entity, public agency, institution, person, firm, or
47 legal entity to provide money to the department to
48 pursue unauthorized entities operating as home
49 warranty associations; providing that funds remaining
50 at the end of any fiscal year shall be available for
51 carrying out duties and responsibilities of the
52 department or the office; amending s. 634.414, F.S.;

53 authorizing service warranty associations to
54 effectuate refunds through the issuing sales
55 representative; authorizing a service warranty
56 association to issue refunds by cash, check, store
57 credit, gift card, or other similar means; amending s.
58 634.416, F.S.; authorizing rather than requiring the

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59 office to examine service warranty associations;
60 limiting the examination period to the most recent 5
61 years; limiting the costs of certain examinations;
62 removing the requirement that the commission establish
63 rules for conducting examinations; removing the
64 criteria for determining whether an examination is
65 warranted; removing provisions relating to the rates
66 charged to a service warranty association for
67 examinations; removing the provision authorizing the
68 office to waive the examination requirement upon
69 receipt and review of the Form 10-K; creating s.
70 634.4385, F.S.; authorizing a governmental entity,
71 public agency, institution, person, firm, or legal
72 entity to provide money to the department to pursue
73 unauthorized entities operating as service warranty
74 associations; providing that funds remaining at the
75 end of any fiscal year shall be available for carrying
76 out duties and responsibilities of the department or
77 the office; providing an effective date.

78
79 Be It Enacted by the Legislature of the State of Florida:

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

83 634.011 Definitions.—As used in this part, the term:

84 (8) "Motor vehicle service agreement" or "service
85 agreement" means any contract or agreement indemnifying the
86 service agreement holder for the motor vehicle listed on the
87 service agreement and arising out of the ownership, operation,

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88 and use of the motor vehicle against loss caused by failure of
89 any mechanical or other component part, or any mechanical or
90 other component part that does not function as it was originally
91 intended; however, nothing in this part shall prohibit or affect
92 the giving, free of charge, of the usual performance guarantees
93 by manufacturers or dealers in connection with the sale of motor
94 vehicles. Transactions exempt under s. 624.125 are expressly
95 excluded from this definition and are exempt from the provisions
96 of this part. ~~Service agreements that are sold to persons other~~
97 ~~than consumers and that cover motor vehicles used for commercial~~
98 ~~purposes are excluded from this definition and are exempt from~~
99 ~~regulation under the Florida Insurance Code.~~ The term "motor
100 vehicle service agreement" includes any contract or agreement
101 that provides:

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

106 (b) For payment of vehicle protection expenses.

107 1.a. "Vehicle protection expenses" means a preestablished
108 flat amount payable for the loss of or damage to a vehicle or
109 expenses incurred by the service agreement holder for loss or
110 damage to a covered vehicle, including, but not limited to,
111 applicable deductibles under a motor vehicle insurance policy;
112 temporary vehicle rental expenses; expenses for a replacement
113 vehicle that is at least the same year, make, and model of the
114 stolen motor vehicle; sales taxes or registration fees for a
115 replacement vehicle that is at least the same year, make, and
116 model of the stolen vehicle; or other incidental expenses

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117 specified in the agreement.

118 b. "Vehicle protection product" means a product or system
119 installed or applied to a motor vehicle or designed to prevent
120 the theft of the motor vehicle or assist in the recovery of the
121 stolen motor vehicle.

122 2. Vehicle protection expenses shall be payable in the
123 event of loss or damage to the vehicle as a result of the
124 failure of the vehicle protection product to prevent the theft
125 of the motor vehicle or to assist in the recovery of the stolen
126 motor vehicle. Vehicle protection expenses covered under the
127 agreement shall be clearly stated in the service agreement form,
128 unless the agreement provides for the payment of a
129 preestablished flat amount, in which case the service agreement
130 form shall clearly identify such amount.

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

133 a. Reimburse a service agreement holder for the following
134 expenses, at a minimum: deductibles applicable to comprehensive
135 coverage under the service agreement holder's motor vehicle
136 insurance policy; temporary vehicle rental expenses; sales taxes
137 and registration fees on a replacement vehicle that is at least
138 the same year, make, and model of the stolen motor vehicle; and
139 the difference between the benefits paid to the service
140 agreement holder for the stolen vehicle under the service
141 agreement holder's comprehensive coverage and the actual cost of
142 a replacement vehicle that is at least the same year, make, and
143 model of the stolen motor vehicle; or

144 b. Pay a preestablished flat amount to the service
145 agreement holder.

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147 Payments shall not duplicate any benefits or expenses paid to
148 the service agreement holder by the insurer providing
149 comprehensive coverage under a motor vehicle insurance policy
150 covering the stolen motor vehicle; however, the payment of
151 vehicle protection expenses at a preestablished flat amount of
152 \$5,000 or less does not duplicate any benefits or expenses
153 payable under any comprehensive motor vehicle insurance policy;
154 or

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

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

163 Section 2. Paragraph (b) of subsection (3) of section
164 634.121, Florida Statutes, is amended, and paragraphs (c), (d),
165 and (e) are added to that subsection, to read:

166 634.121 Forms, required procedures, provisions.-

167 (3)

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

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

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

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

177 4. For nonpayment of premium by the agreement holder, in
178 which case the service agreement company shall provide the
179 agreement holder notice of cancellation by certified mail.

180
181 If the service agreement is canceled by the insurer or service
182 agreement company, the return of premium must not be less than
183 100 percent of the paid unearned pro rata premium, less any
184 claims paid on the agreement. If, after 60 days, the service
185 agreement is canceled by the service agreement holder, the
186 insurer or service agreement company shall return directly to
187 the agreement holder not less than 90 percent of the unearned
188 pro rata premium, less any claims paid on the agreement. The
189 service agreement company remains responsible for full refunds
190 to the consumer on canceled service agreements. However, the
191 salesperson and agent are responsible for the refund of the
192 unearned pro rata commission. A service agreement company may
193 effectuate refunds through the issuing salesperson or agent in
194 accordance with paragraphs (c) and (d).

195 (c) If the service agreement company effectuates refunds
196 through the issuing salesperson or agent, the service agreement
197 company must send the unearned pro rata premium refund due, less
198 any unearned pro rata commission, to the salesperson or agent
199 effectuating the refund. Upon receipt, the salesperson or agent
200 must refund the unearned pro rata premium, including any
201 unearned pro rata commission, and the sales tax refund owed to
202 the service agreement holder.

203 (d) The salesperson, agent, or service agreement company

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204 shall maintain a copy of one of the following documents, as
205 applicable, demonstrating that the refund owed pursuant to
206 paragraph (c) has been refunded:

207 1. A copy of the front and back of the cancelled check for
208 the applicable refund amount owed to the service agreement
209 holder;

210 2. A copy of the front of the check for the applicable
211 refund amount owed to the service agreement holder and a copy of
212 the statement from the bank account on which the check was drawn
213 showing that the check was cashed;

214 3. A copy of the front of the check issued by the service
215 agreement company to the salesperson or agent in the amount of
216 the service agreement company's portion of the refund owed to
217 the service agreement holder and a copy of the statement from
218 the bank account on which the check was drawn showing that the
219 check was cashed;

220 4. A copy of a completed buyer's order demonstrating that
221 the applicable refund amount owed to the service agreement
222 holder was credited toward the purchase or lease of another
223 vehicle;

224 5. Any document received from or sent to a lender, finance
225 company, or creditor demonstrating that a loan or amount
226 financed by the agreement holder was decreased by the amount of
227 the applicable refund amount owed to the service agreement
228 holder; or

229 6. Any other evidence approved by the office in a written
230 communication to a person licensed pursuant to this part
231 demonstrating that the applicable refund amount due to the
232 service agreement holder was properly made.

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234 A salesperson or agent effectuating a refund shall maintain a
235 copy of the documentation required by this paragraph and shall
236 provide a copy to the service agreement company within 45 days
237 after a request is made by the department or the office to
238 either the service agreement company or the salesperson.

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

244 Section 3. Section 634.141, Florida Statutes, is amended to
245 read:

246 634.141 Examination of companies.—

247 ~~(1)~~ Motor vehicle service agreement companies licensed
248 under this part may be subject to periodic examination by the
249 office in the same manner and subject to the same terms and
250 conditions as apply ~~applies~~ to insurers under part II of chapter
251 624. The office is not required to conduct periodic examinations
252 pursuant to this section, but may examine a service agreement
253 company at its discretion. An examination conducted pursuant to
254 this section may cover a period of only the most recent 5 years.
255 The costs of examinations conducted pursuant to ss.

256 624.316(2) (e) and 624.3161(3) may not exceed 10 percent of the
257 companies' reported net income for the prior year. The
258 ~~commission may by rule establish provisions whereby a company~~
259 ~~may be exempted from examination.~~

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

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262 ~~(a) The amount of time that the company has been~~
263 ~~continuously licensed and operating under the same management~~
264 ~~and control.~~

265 ~~(b) The company's history of compliance with applicable~~
266 ~~law.~~

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

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

270 Section 4. Section 634.2855, Florida Statutes, is created
271 to read:

272 634.2855 Unauthorized entities; gifts and grants.—A
273 governmental unit, public agency, institution, person, firm, or
274 legal entity may provide money to the department to enable the
275 department to pursue unauthorized entities operating in
276 violation of this part. The department may transfer funds to the
277 office to investigate, discipline, sanction, and take all action
278 consistent with this part relative to unauthorized entities. All
279 donations or grants of moneys to the department shall be
280 deposited into the Insurance Regulatory Trust Fund and shall be
281 separately accounted for in accordance with this section. Moneys
282 deposited into the Insurance Regulatory Trust Fund pursuant to
283 this section may be appropriated by the Legislature, pursuant to
284 chapter 216, for the purpose of enabling the department or the
285 office to carry out the provisions of this section.
286 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
287 balance of moneys deposited into the Insurance Regulatory Trust
288 Fund pursuant to this section remaining at the end of any fiscal
289 year shall be available for carrying out the duties and
290 responsibilities of the department or the office.

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

293 634.312 Forms; required provisions and procedures.—

294 (5) Each home warranty contract shall contain a
295 cancellation provision. Any home warranty agreement may be
296 canceled by the purchaser within 10 days after purchase. The
297 refund must be 100 percent of the gross premium paid, less any
298 claims paid on the agreement. A reasonable administrative fee
299 may be charged, not to exceed 5 percent of the gross premium
300 paid by the warranty agreement holder. After the home warranty
301 agreement has been in effect for 10 days, if the contract is
302 canceled by the warranty holder, a return of premium shall be
303 based upon 90 percent of unearned pro rata premium less any
304 claims that have been paid. If the contract is canceled by the
305 association for any reason other than for fraud or
306 misrepresentation, a return of premium shall be based upon 100
307 percent of unearned pro rata premium, less any claims paid on
308 the agreement. A home warranty association may effectuate a
309 refund through the issuing sales representative.

310 Section 6. Section 634.314, Florida Statutes, is amended to
311 read:

312 634.314 Examination of associations.—

313 ~~(1)~~ Home warranty associations licensed under this part may
314 be subject to periodic examinations by the office, in the same
315 manner and subject to the same terms and conditions as apply to
316 insurers under part II of chapter 624 of the insurance code. The
317 office is not required to conduct periodic examinations pursuant
318 to this section, but may examine a home warranty company at its
319 discretion. An examination conducted pursuant to this section

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320 may cover a period of only the most recent 5 years. The costs of
321 examinations conducted pursuant to ss. 624.316(2)(e) and
322 624.3161(3) may not exceed 10 percent of the companies' reported
323 net income for the prior year.

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

326 ~~(a) The amount of time that the association has been~~
327 ~~continuously licensed and operating under the same management~~
328 ~~and control.~~

329 ~~(b) The association's history of compliance with applicable~~
330 ~~law.~~

331 ~~(c) The number of consumer complaints against the~~
332 ~~association.~~

333 ~~(d) The financial condition of the association,~~
334 ~~demonstrated by the financial reports submitted pursuant to s.~~
335 ~~634.313.~~

336 Section 7. Section 634.3385, Florida Statutes, is created
337 to read:

338 634.3385 Unauthorized entities; gifts and grants.—A
339 governmental unit, public agency, institution, person, firm, or
340 legal entity may provide money to the department to enable the
341 department to pursue unauthorized entities operating in
342 violation of this part. The department may transfer funds to the
343 office to investigate, discipline, sanction, and take all action
344 consistent with this part relative to unauthorized entities. All
345 donations or grants of moneys to the department shall be
346 deposited into the Insurance Regulatory Trust Fund and shall be
347 separately accounted for in accordance with this section. Moneys
348 deposited into the Insurance Regulatory Trust Fund pursuant to

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349 this section may be appropriated by the Legislature, pursuant to
350 chapter 216, for the purpose of enabling the department or the
351 office to carry out the provisions of this section.

352 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
353 balance of moneys deposited into the Insurance Regulatory Trust
354 Fund pursuant to this section remaining at the end of any fiscal
355 year shall be available for carrying out the duties and
356 responsibilities of the department or the office.

357 Section 8. Section 634.414, Florida Statutes, is amended to
358 read:

359 634.414 Forms; required provisions.—

360 (1) Each service warranty contract shall contain a
361 cancellation provision. If the contract is canceled by the
362 warranty holder, return of premium shall be based upon no less
363 than 90 percent of unearned pro rata premium less any claims
364 that have been paid or less the cost of repairs made on behalf
365 of the warranty holder. If the contract is canceled by the
366 association, return of premium shall be based upon 100 percent
367 of unearned pro rata premium, less any claims paid or the cost
368 of repairs made on behalf of the warranty holder. Service
369 warranty associations may effectuate refunds through the issuing
370 sales representative.

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

375 (3)~~(2)~~ By July 1, 2011, each service warranty contract sold
376 in this state must be accompanied by a written disclosure to the
377 consumer that the rate charged for the contract is not subject

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378 to regulation by the office. A service warranty association may
379 comply with this requirement by including such disclosure in its
380 service warranty contract form or in a separate written notice
381 provided to the consumer at the time of sale.

382 Section 9. Section 634.416, Florida Statutes, is amended to
383 read:

384 634.416 Examination of associations.—

385 ~~(1)(a)~~ Service warranty associations licensed under this
386 part may be subject to periodic examination by the office, in
387 the same manner and subject to the same terms and conditions
388 that apply to insurers under part II of chapter 624. The office
389 is not required to conduct periodic examinations pursuant to
390 this section, but may examine a service warranty company at its
391 discretion. An examination conducted pursuant to this section
392 may cover a period of only the most recent 5 years. The costs of
393 examinations conducted pursuant to ss. 624.316(2)(e) and
394 624.316(3) may not exceed 10 percent of the companies' reported
395 net income for the prior year.

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

398 ~~1. The amount of time that the association has been~~
399 ~~continuously licensed and operating under the same management~~
400 ~~and control.~~

401 ~~2. The association's history of compliance with applicable~~
402 ~~law.~~

403 ~~3. The number of consumer complaints against the~~
404 ~~association.~~

405 ~~4. The financial condition of the association, demonstrated~~
406 ~~by the financial reports submitted pursuant to s. 634.313.~~

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

411 ~~(3) On or before May 1 of each year, an association may~~
412 ~~submit to the office the Form 10-K, as filed with the United~~
413 ~~States Securities and Exchange Commission pursuant to the~~
414 ~~Securities Exchange Act of 1934, as amended. Upon receipt and~~
415 ~~review of the most current Form 10-K, the office may waive the~~
416 ~~examination requirement; if the office determines not to waive~~
417 ~~the examination, such examination will be limited to that~~
418 ~~examination necessary to ensure compliance with this part. The~~
419 ~~Form 10-K shall be accompanied by a filing fee of \$2,000 to be~~
420 ~~deposited into the Insurance Regulatory Trust Fund.~~

421 ~~(4) The office is not required to examine an association~~
422 ~~that has less than \$20,000 in gross written premiums as~~
423 ~~reflected in its most recent annual statement. The office may~~
424 ~~examine such an association if it has reason to believe that the~~
425 ~~association may be in violation of this part or is otherwise in~~
426 ~~an unsound financial condition. If the office examines an~~
427 ~~association that has less than \$20,000 in gross written~~
428 ~~premiums, the examination fee may not exceed 5 percent of the~~
429 ~~gross written premiums of the association.~~

430 Section 10. Section 634.4385, Florida Statutes, is created
431 to read:

432 634.4385 Unauthorized entities; gifts and grants.—A
433 governmental unit, public agency, institution, person, firm, or
434 legal entity may provide money to the department to enable the
435 department to pursue unauthorized entities operating in

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436 violation of this part. The department may transfer funds to the
437 office to investigate, discipline, sanction, and take all action
438 consistent with this part relative to unauthorized entities. All
439 donations or grants of moneys to the department shall be
440 deposited into the Insurance Regulatory Trust Fund and shall be
441 separately accounted for in accordance with this section. Moneys
442 deposited into the Insurance Regulatory Trust Fund pursuant to
443 this section may be appropriated by the Legislature, pursuant to
444 chapter 216, for the purpose of enabling the department or the
445 office to carry out the provisions of this section.
446 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
447 balance of moneys deposited into the Insurance Regulatory Trust
448 Fund pursuant to this section remaining at the end of any fiscal
449 year shall be available for carrying out the duties and
450 responsibilities of the department or the office.

451 Section 11. This act shall take effect July 1, 2012.