

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  
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  
 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 a to 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:

80 |  
 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

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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,  
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

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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  
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

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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.

146  
 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

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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;

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  
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



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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.

233  
 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  
 245 to 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:~~

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~~  
 269 ~~by 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

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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.

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

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309 refund through the issuing sales representative.

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

312 634.314 Examination of associations.—

313 ~~(1)~~ Home warranty associations licensed under this part  
314 may be subject to periodic examinations by the office, in the  
315 same manner and subject to the same terms and conditions as  
316 apply to insurers under part II of chapter 624 of the insurance  
317 code. The office is not required to conduct periodic  
318 examinations pursuant to this section, but may examine a home  
319 warranty company at its discretion. An examination conducted  
320 pursuant to this section may cover a period of only the most  
321 recent 5 years. The costs of examinations conducted pursuant to  
322 ss. 624.316(2) (e) and 624.3161(3) may not exceed 10 percent of  
323 the companies' reported 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~~  
330 ~~applicable 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

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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  
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  
358 to 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  
 376 sold in this state must be accompanied by a written disclosure  
 377 to the consumer that the rate charged for the contract is not  
 378 subject to regulation by the office. A service warranty  
 379 association may comply with this requirement by including such  
 380 disclosure in its service warranty contract form or in a  
 381 separate written notice provided to the consumer at the time of  
 382 sale.

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

385 634.416 Examination of associations.—

386 ~~(1)(a)~~ Service warranty associations licensed under this  
 387 part may be subject to periodic examination by the office, in  
 388 the same manner and subject to the same terms and conditions  
 389 that apply to insurers under part II of chapter 624. The office  
 390 is not required to conduct periodic examinations pursuant to  
 391 this section, but may examine a service warranty company at its  
 392 discretion. An examination conducted pursuant to this section

393 may cover a period of only the most recent 5 years. The costs of  
394 examinations conducted pursuant to ss. 624.316(2)(e) and  
395 624.3161(3) may not exceed 10 percent of the companies' reported  
396 net income for the prior year.

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

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

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

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

406 ~~4. The financial condition of the association,~~  
407 ~~demonstrated by the financial reports submitted pursuant to s.~~  
408 ~~634.313.~~

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

413 ~~(3) On or before May 1 of each year, an association may~~  
414 ~~submit to the office the Form 10-K, as filed with the United~~  
415 ~~States Securities and Exchange Commission pursuant to the~~  
416 ~~Securities Exchange Act of 1934, as amended. Upon receipt and~~  
417 ~~review of the most current Form 10-K, the office may waive the~~  
418 ~~examination requirement; if the office determines not to waive~~  
419 ~~the examination, such examination will be limited to that~~  
420 ~~examination necessary to ensure compliance with this part. The~~

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421 ~~Form 10-K shall be accompanied by a filing fee of \$2,000 to be~~  
422 ~~deposited into the Insurance Regulatory Trust Fund.~~

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

432 Section 10. Section 634.4385, Florida Statutes, is created  
433 to read:

434 634.4385 Unauthorized entities; gifts and grants.—A  
435 governmental unit, public agency, institution, person, firm, or  
436 legal entity may provide money to the department to enable the  
437 department to pursue unauthorized entities operating in  
438 violation of this part. The department may transfer funds to the  
439 office to investigate, discipline, sanction, and take all action  
440 consistent with this part relative to unauthorized entities. All  
441 donations or grants of moneys to the department shall be  
442 deposited into the Insurance Regulatory Trust Fund and shall be  
443 separately accounted for in accordance with this section. Moneys  
444 deposited into the Insurance Regulatory Trust Fund pursuant to  
445 this section may be appropriated by the Legislature, pursuant to  
446 chapter 216, for the purpose of enabling the department or the  
447 office to carry out the provisions of this section.  
448 Notwithstanding s. 216.301 and pursuant to s. 216.351, any



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449 balance of moneys deposited into the Insurance Regulatory Trust  
450 Fund pursuant to this section remaining at the end of any fiscal  
451 year shall be available for carrying out the duties and  
452 responsibilities of the department or the office.

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