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1
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; creating s. 634.2855, F.S.; authorizing
23 a governmental entity, public agency, institution,
24 person, firm, or legal entity to provide money to the
25 department to pursue unauthorized entities operating
26 as motor vehicle service agreement companies;
27 providing requirements for the deposit of the money;
28 providing that funds remaining at the end of any

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29 | fiscal year shall be available for carrying out duties
30 | and responsibilities of the department or the office;
31 | amending s. 634.312, F.S.; authorizing a home warranty
32 | association to effectuate a refund through the issuing
33 | sales representative; amending s. 634.314, F.S.;
34 | authorizing rather than requiring the office to
35 | examine home warranty associations; limiting the
36 | examination period to the most recent 5 years;
37 | limiting the cost of certain examinations; removing
38 | the requirement that the commission establish rules
39 | for conducting examinations; removing the criteria for
40 | determining whether an examination is warranted;
41 | creating s. 634.3385, F.S.; authorizing a governmental
42 | entity, public agency, institution, person, firm, or
43 | legal entity to provide money to the department to
44 | pursue unauthorized entities operating as home
45 | warranty associations; providing that funds remaining
46 | at the end of any fiscal year shall be available for
47 | carrying out duties and responsibilities of the
48 | department or the office; amending s. 634.414, F.S.;
49 | authorizing service warranty associations to
50 | effectuate refunds through the issuing sales
51 | representative; authorizing a service warranty
52 | association to issue refunds by cash, check, store
53 | credit, gift card, or other similar means; amending s.
54 | 634.416, F.S.; authorizing rather than requiring the
55 | office to examine service warranty associations;
56 | limiting the examination period to the most recent 5

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57 | years; limiting the costs of certain examinations;
58 | removing the requirement that the commission establish
59 | rules for conducting examinations; removing the
60 | criteria for determining whether an examination is
61 | warranted; removing provisions relating to the rates
62 | charged a to service warranty association for
63 | examinations; creating s. 634.4385, F.S.; authorizing
64 | a governmental entity, public agency, institution,
65 | person, firm, or legal entity to provide money to the
66 | department to pursue unauthorized entities operating
67 | as service warranty associations; providing that funds
68 | remaining at the end of any fiscal year shall be
69 | available for carrying out duties and responsibilities
70 | of the department or the office; providing an
71 | effective date.

72 |
73 | Be It Enacted by the Legislature of the State of Florida:

74 |
75 | Section 1. Subsection (8) of section 634.011, Florida
76 | Statutes, is amended to read:

77 | 634.011 Definitions.—As used in this part, the term:

78 | (8) "Motor vehicle service agreement" or "service
79 | agreement" means any contract or agreement indemnifying the
80 | service agreement holder for the motor vehicle listed on the
81 | service agreement and arising out of the ownership, operation,
82 | and use of the motor vehicle against loss caused by failure of
83 | any mechanical or other component part, or any mechanical or
84 | other component part that does not function as it was originally

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85 intended; however, nothing in this part shall prohibit or affect
86 the giving, free of charge, of the usual performance guarantees
87 by manufacturers or dealers in connection with the sale of motor
88 vehicles. Transactions exempt under s. 624.125 are expressly
89 excluded from this definition and are exempt from the provisions
90 of this part. ~~Service agreements that are sold to persons other~~
91 ~~than consumers and that cover motor vehicles used for commercial~~
92 ~~purposes are excluded from this definition and are exempt from~~
93 ~~regulation under the Florida Insurance Code.~~ The term "motor
94 vehicle service agreement" includes any contract or agreement
95 that provides:

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

100 (b) For payment of vehicle protection expenses.

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

112 b. "Vehicle protection product" means a product or system

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113 installed or applied to a motor vehicle or designed to prevent
114 the theft of the motor vehicle or assist in the recovery of the
115 stolen motor vehicle.

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

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

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

138 b. Pay a preestablished flat amount to the service
139 agreement holder.

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141 Payments shall not duplicate any benefits or expenses paid to
 142 the service agreement holder by the insurer providing
 143 comprehensive coverage under a motor vehicle insurance policy
 144 covering the stolen motor vehicle; however, the payment of
 145 vehicle protection expenses at a preestablished flat amount of
 146 \$5,000 or less does not duplicate any benefits or expenses
 147 payable under any comprehensive motor vehicle insurance policy;
 148 or

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

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

157 Section 2. Paragraph (b) of subsection (3) of section
 158 634.121, Florida Statutes, is amended, and paragraphs (c), (d),
 159 and (e) are added to that subsection, to read:

160 634.121 Forms, required procedures, provisions.—

161 (3)

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

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

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

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

171 4. For nonpayment of premium by the agreement holder, in
172 which case the service agreement company shall provide the
173 agreement holder notice of cancellation by certified mail.

174

175 If the service agreement is canceled by the insurer or service
176 agreement company, the return of premium must not be less than
177 100 percent of the paid unearned pro rata premium, less any
178 claims paid on the agreement. If, after 60 days, the service
179 agreement is canceled by the service agreement holder, the
180 insurer or service agreement company shall return directly to
181 the agreement holder not less than 90 percent of the unearned
182 pro rata premium, less any claims paid on the agreement. The
183 service agreement company remains responsible for full refunds
184 to the consumer on canceled service agreements. However, the
185 salesperson and agent are responsible for the refund of the
186 unearned pro rata commission. A service agreement company may
187 effectuate refunds through the issuing salesperson or agent in
188 accordance with paragraphs (c) and (d).

189 (c) If the service agreement company effectuates refunds
190 through the issuing salesperson or agent, the service agreement
191 company must send the unearned pro rata premium refund due, less
192 any unearned pro rata commission, to the salesperson or agent
193 effectuating the refund. Upon receipt, the salesperson or agent
194 must refund the unearned pro rata premium, including any
195 unearned pro rata commission, and the sales tax refund owed to
196 the service agreement holder.

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

201 1. A copy of the front and back of the cancelled check for
202 the applicable refund amount owed to the service agreement
203 holder;

204 2. A copy of the front of the check for the applicable
205 refund amount owed to the service agreement holder and a copy of
206 the statement from the bank account on which the check was drawn
207 showing that the check was cashed;

208 3. A copy of the front of the check issued by the service
209 agreement company to the salesperson or agent in the amount of
210 the service agreement company's portion of the refund owed to
211 the service agreement holder and a copy of the statement from
212 the bank account on which the check was drawn showing that the
213 check was cashed;

214 4. A copy of a completed buyer's order demonstrating that
215 the applicable refund amount owed to the service agreement
216 holder was credited toward the purchase or lease of another
217 vehicle;

218 5. Any document received from or sent to a lender, finance
219 company, or creditor demonstrating that a loan or amount
220 financed by the agreement holder was decreased by the amount of
221 the applicable refund amount owed to the service agreement
222 holder; or

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

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225 demonstrating that the applicable refund amount due to the
226 service agreement holder was properly made.

227
228 A salesperson or agent effectuating a refund shall maintain a
229 copy of the documentation required by this paragraph and shall
230 provide a copy to the service agreement company within 45 days
231 after a request is made by the department or the office to
232 either the service agreement company or the salesperson.

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

238 Section 3. Subsection (1) of section 634.141, Florida
239 Statutes, is amended to read:

240 634.141 Examination of companies.—

241 (1) Motor vehicle service agreement companies licensed
242 under this part may be subject to periodic examination by the
243 office in the same manner and subject to the same terms and
244 conditions as apply ~~applies~~ to insurers under part II of chapter
245 624. The office is not required to conduct periodic examinations
246 pursuant to this section, but may examine a service agreement
247 company at its discretion. An examination conducted pursuant to
248 this section may cover a period of only the most recent 5 years.
249 The costs of examinations conducted pursuant to ss.
250 624.316(2) (e) and 624.3161(3) may not exceed 10 percent of the
251 companies' reported net income for the prior year. The
252 commission may by rule establish provisions whereby a company

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253 | may be exempted from examination.

254 | Section 4. Section 634.2855, Florida Statutes, is created
255 | to read:

256 | 634.2855 Unauthorized entities; gifts and grants.—A
257 | governmental unit, public agency, institution, person, firm, or
258 | legal entity may provide money to the department to enable the
259 | department to pursue unauthorized entities operating in
260 | violation of this part. The department may transfer funds to the
261 | office to investigate, discipline, sanction, and take all action
262 | consistent with this part relative to unauthorized entities. All
263 | donations or grants of moneys to the department shall be
264 | deposited into the Insurance Regulatory Trust Fund and shall be
265 | separately accounted for in accordance with this section. Moneys
266 | deposited into the Insurance Regulatory Trust Fund pursuant to
267 | this section may be appropriated by the Legislature, pursuant to
268 | chapter 216, for the purpose of enabling the department or the
269 | office to carry out the provisions of this section.

270 | Notwithstanding s. 216.301 and pursuant to s. 216.351, any
271 | balance of moneys deposited into the Insurance Regulatory Trust
272 | Fund pursuant to this section remaining at the end of any fiscal
273 | year shall be available for carrying out the duties and
274 | responsibilities of the department or the office.

275 | Section 5. Subsection (5) of section 634.312, Florida
276 | Statutes, is amended to read:

277 | 634.312 Forms; required provisions and procedures.—

278 | (5) Each home warranty contract shall contain a
279 | cancellation provision. Any home warranty agreement may be
280 | canceled by the purchaser within 10 days after purchase. The

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281 refund must be 100 percent of the gross premium paid, less any
 282 claims paid on the agreement. A reasonable administrative fee
 283 may be charged, not to exceed 5 percent of the gross premium
 284 paid by the warranty agreement holder. After the home warranty
 285 agreement has been in effect for 10 days, if the contract is
 286 canceled by the warranty holder, a return of premium shall be
 287 based upon 90 percent of unearned pro rata premium less any
 288 claims that have been paid. If the contract is canceled by the
 289 association for any reason other than for fraud or
 290 misrepresentation, a return of premium shall be based upon 100
 291 percent of unearned pro rata premium, less any claims paid on
 292 the agreement. A home warranty association may effectuate a
 293 refund through the issuing sales representative.

294 Section 6. Section 634.314, Florida Statutes, is amended
 295 to read:

296 634.314 Examination of associations.-

297 ~~(1)~~ Home warranty associations licensed under this part
 298 may be subject to periodic examinations by the office, in the
 299 same manner and subject to the same terms and conditions as
 300 apply to insurers under part II of chapter 624 of the insurance
 301 code. The office is not required to conduct periodic
 302 examinations pursuant to this section, but may examine a home
 303 warranty company at its discretion. An examination conducted
 304 pursuant to this section may cover a period of only the most
 305 recent 5 years. The costs of examinations conducted pursuant to
 306 ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of
 307 the companies' reported net income for the prior year.

308 ~~(2) The office shall determine whether to conduct an~~

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309 ~~examination of a home warranty association by considering:~~
 310 ~~(a) The amount of time that the association has been~~
 311 ~~continuously licensed and operating under the same management~~
 312 ~~and control.~~

313 ~~(b) The association's history of compliance with~~
 314 ~~applicable law.~~

315 ~~(c) The number of consumer complaints against the~~
 316 ~~association.~~

317 ~~(d) The financial condition of the association,~~
 318 ~~demonstrated by the financial reports submitted pursuant to s.~~
 319 ~~634.313.~~

320 Section 7. Section 634.3385, Florida Statutes, is created
 321 to read:

322 634.3385 Unauthorized entities; gifts and grants.—A
 323 governmental unit, public agency, institution, person, firm, or
 324 legal entity may provide money to the department to enable the
 325 department to pursue unauthorized entities operating in
 326 violation of this part. The department may transfer funds to the
 327 office to investigate, discipline, sanction, and take all action
 328 consistent with this part relative to unauthorized entities. All
 329 donations or grants of moneys to the department shall be
 330 deposited into the Insurance Regulatory Trust Fund and shall be
 331 separately accounted for in accordance with this section. Moneys
 332 deposited into the Insurance Regulatory Trust Fund pursuant to
 333 this section may be appropriated by the Legislature, pursuant to
 334 chapter 216, for the purpose of enabling the department or the
 335 office to carry out the provisions of this section.
 336 Notwithstanding s. 216.301 and pursuant to s. 216.351, any

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

341 Section 8. Section 634.414, Florida Statutes, is amended
342 to read:

343 634.414 Forms; required provisions.—

344 (1) Each service warranty contract shall contain a
345 cancellation provision. If the contract is canceled by the
346 warranty holder, return of premium shall be based upon no less
347 than 90 percent of unearned pro rata premium less any claims
348 that have been paid or less the cost of repairs made on behalf
349 of the warranty holder. If the contract is canceled by the
350 association, return of premium shall be based upon 100 percent
351 of unearned pro rata premium, less any claims paid or the cost
352 of repairs made on behalf of the warranty holder. Service
353 warranty associations may effectuate refunds through the issuing
354 sales representative.

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

359 (3)-(2) By July 1, 2011, each service warranty contract
360 sold in this state must be accompanied by a written disclosure
361 to the consumer that the rate charged for the contract is not
362 subject to regulation by the office. A service warranty
363 association may comply with this requirement by including such
364 disclosure in its service warranty contract form or in a

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365 separate written notice provided to the consumer at the time of
366 sale.

367 Section 9. Section 634.416, Florida Statutes, is amended
368 to read:

369 634.416 Examination of associations.—

370 (1)~~(a)~~ Service warranty associations licensed under this
371 part may be subject to periodic examination by the office, in
372 the same manner and subject to the same terms and conditions
373 that apply to insurers under part II of chapter 624. The office
374 is not required to conduct periodic examinations pursuant to
375 this section, but may examine a service warranty company at its
376 discretion. An examination conducted pursuant to this section
377 may cover a period of only the most recent 5 years. The costs of
378 examinations conducted pursuant to ss. 624.316(2) (e) and
379 624.316(3) may not exceed 10 percent of the companies' reported
380 net income for the prior year.

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

383 1. ~~The amount of time that the association has been~~
384 ~~continuously licensed and operating under the same management~~
385 ~~and control.~~

386 2. ~~The association's history of compliance with applicable~~
387 ~~law.~~

388 3. ~~The number of consumer complaints against the~~
389 ~~association.~~

390 4. ~~The financial condition of the association,~~
391 ~~demonstrated by the financial reports submitted pursuant to s.~~
392 ~~634.313.~~

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

397 (2)~~(3)~~ On or before May 1 of each year, an association may
398 submit to the office the Form 10-K, as filed with the United
399 States Securities and Exchange Commission pursuant to the
400 Securities Exchange Act of 1934, as amended. Upon receipt and
401 review of the most current Form 10-K, the office may waive the
402 examination requirement; if the office determines not to waive
403 the examination, such examination will be limited to that
404 examination necessary to ensure compliance with this part. The
405 Form 10-K shall be accompanied by a filing fee of \$2,000 to be
406 deposited into the Insurance Regulatory Trust Fund.

407 ~~(3)~~~~(4)~~ ~~The office is not required to examine an~~
408 ~~association that has less than \$20,000 in gross written premiums~~
409 ~~as reflected in its most recent annual statement. The office may~~
410 ~~examine such an association if it has reason to believe that the~~
411 ~~association may be in violation of this part or is otherwise in~~
412 ~~an unsound financial condition. If the office examines an~~
413 ~~association that has less than \$20,000 in gross written~~
414 ~~premiums, the examination fee may not exceed 5 percent of the~~
415 ~~gross written premiums of the association.~~

416 Section 10. Section 634.4385, Florida Statutes, is created
417 to read:

418 634.4385 Unauthorized entities; gifts and grants.—A
419 governmental unit, public agency, institution, person, firm, or
420 legal entity may provide money to the department to enable the

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421 department to pursue unauthorized entities operating in
422 violation of this part. The department may transfer funds to the
423 office to investigate, discipline, sanction, and take all action
424 consistent with this part relative to unauthorized entities. All
425 donations or grants of moneys to the department shall be
426 deposited into the Insurance Regulatory Trust Fund and shall be
427 separately accounted for in accordance with this section. Moneys
428 deposited into the Insurance Regulatory Trust Fund pursuant to
429 this section may be appropriated by the Legislature, pursuant to
430 chapter 216, for the purpose of enabling the department or the
431 office to carry out the provisions of this section.
432 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
433 balance of moneys deposited into the Insurance Regulatory Trust
434 Fund pursuant to this section remaining at the end of any fiscal
435 year shall be available for carrying out the duties and
436 responsibilities of the department or the office.

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