



157488

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/26/2012	.	
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The Committee on Banking and Insurance (Oelrich) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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

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

(8) "Motor vehicle service agreement" or "service agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of



157488

13 any mechanical or other component part, or any mechanical or  
14 other component part that does not function as it was originally  
15 intended; however, nothing in this part shall prohibit or affect  
16 the giving, free of charge, of the usual performance guarantees  
17 by manufacturers or dealers in connection with the sale of motor  
18 vehicles. Transactions exempt under s. 624.125 are expressly  
19 excluded from this definition and are exempt from the provisions  
20 of this part. ~~Service agreements that are sold to persons other~~  
21 ~~than consumers and that cover motor vehicles used for commercial~~  
22 ~~purposes are excluded from this definition and are exempt from~~  
23 ~~regulation under the Florida Insurance Code.~~ The term "motor  
24 vehicle service agreement" includes any contract or agreement  
25 that provides:

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

30 (b) For payment of vehicle protection expenses.

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



157488

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

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

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

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

68           b. Pay a preestablished flat amount to the service  
69 agreement holder.

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157488

71 Payments shall not duplicate any benefits or expenses paid to  
72 the service agreement holder by the insurer providing  
73 comprehensive coverage under a motor vehicle insurance policy  
74 covering the stolen motor vehicle; however, the payment of  
75 vehicle protection expenses at a preestablished flat amount of  
76 \$5,000 or less does not duplicate any benefits or expenses  
77 payable under any comprehensive motor vehicle insurance policy;  
78 or

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

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

87 Section 2. Paragraph (b) of subsection (3) of section  
88 634.121, Florida Statutes, is amended, and paragraphs (c), (d),  
89 and (e) are added to that subsection, to read:

90 634.121 Forms, required procedures, provisions.—

91 (3)

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

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

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

99 3. The odometer has been tampered with or disabled and the



100 agreement holder has failed to repair the odometer; or  
101 4. For nonpayment of premium by the agreement holder, in  
102 which case the service agreement company shall provide the  
103 agreement holder notice of cancellation by certified mail.  
104

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

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

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



157488

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

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

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

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

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

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

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

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157488

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

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

168 Section 3. Section 634.141, Florida Statutes, is amended to  
169 read:

170 634.141 Examination of companies.—

171 ~~(1) Motor vehicle service agreement companies licensed~~  
172 ~~under this part may be subject to periodic examination by the~~  
173 ~~office in the same manner and subject to the same terms and~~  
174 ~~conditions as apply ~~applies~~ to insurers under part II of chapter~~  
175 ~~624. The office is not required to conduct periodic examinations~~  
176 ~~pursuant to this section, but may examine a service agreement~~  
177 ~~company at its discretion. An examination conducted pursuant to~~  
178 ~~this section may cover a period of only the most recent 5 years.~~  
179 ~~The costs of examinations conducted pursuant to ss.~~

180 ~~624.316(2) (e) and 624.3161(3) may not exceed 10 percent of the~~  
181 ~~companies' reported net income for the prior year. ~~The~~~~  
182 ~~commission may by rule establish provisions whereby a company~~  
183 ~~may be exempted from examination.~~

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

186 ~~(a) The amount of time that the company has been~~



157488

187 ~~continuously licensed and operating under the same management~~  
188 ~~and control.~~

189 ~~(b) The company's history of compliance with applicable~~  
190 ~~law.~~

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

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

194 Section 4. Section 634.2855, Florida Statutes, is created  
195 to read:

196 634.2855 Unauthorized entities; gifts and grants.—A  
197 governmental unit, public agency, institution, person, firm, or  
198 legal entity may provide money to the department to enable the  
199 department to pursue unauthorized entities operating in  
200 violation of this part. The department may transfer funds to the  
201 office to investigate, discipline, sanction, and take all action  
202 consistent with this part relative to unauthorized entities. All  
203 donations or grants of moneys to the department shall be  
204 deposited into the Insurance Regulatory Trust Fund and shall be  
205 separately accounted for in accordance with this section. Moneys  
206 deposited into the Insurance Regulatory Trust Fund pursuant to  
207 this section may be appropriated by the Legislature, pursuant to  
208 chapter 216, for the purpose of enabling the department or the  
209 office to carry out the provisions of this section.

210 Notwithstanding s. 216.301 and pursuant to s. 216.351, any  
211 balance of moneys deposited into the Insurance Regulatory Trust  
212 Fund pursuant to this section remaining at the end of any fiscal  
213 year shall be available for carrying out the duties and  
214 responsibilities of the department or the office.

215 Section 5. Subsection (5) of section 634.312, Florida





157488

216 Statutes, is amended to read:

217 634.312 Forms; required provisions and procedures.—

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

234 Section 6. Section 634.314, Florida Statutes, is amended to  
235 read:

236 634.314 Examination of associations.—

237 ~~(1)~~ Home warranty associations licensed under this part may  
238 be subject to periodic examinations by the office, in the same  
239 manner and subject to the same terms and conditions as apply to  
240 insurers under part II of chapter 624 of the insurance code. The  
241 office is not required to conduct periodic examinations pursuant  
242 to this section, but may examine a home warranty company at its  
243 discretion. An examination conducted pursuant to this section  
244 may cover a period of only the most recent 5 years. The costs of



157488

245 examinations conducted pursuant to ss. 624.316(2)(e) and  
246 624.3161(3) may not exceed 10 percent of the companies' reported  
247 net income for the prior year.

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

250 ~~(a) The amount of time that the association has been~~  
251 ~~continuously licensed and operating under the same management~~  
252 ~~and control.~~

253 ~~(b) The association's history of compliance with applicable~~  
254 ~~law.~~

255 ~~(c) The number of consumer complaints against the~~  
256 ~~association.~~

257 ~~(d) The financial condition of the association,~~  
258 ~~demonstrated by the financial reports submitted pursuant to s.~~  
259 ~~634.313.~~

260 Section 7. Section 634.3385, Florida Statutes, is created  
261 to read:

262 634.3385 Unauthorized entities; gifts and grants.—A  
263 governmental unit, public agency, institution, person, firm, or  
264 legal entity may provide money to the department to enable the  
265 department to pursue unauthorized entities operating in  
266 violation of this part. The department may transfer funds to the  
267 office to investigate, discipline, sanction, and take all action  
268 consistent with this part relative to unauthorized entities. All  
269 donations or grants of moneys to the department shall be  
270 deposited into the Insurance Regulatory Trust Fund and shall be  
271 separately accounted for in accordance with this section. Moneys  
272 deposited into the Insurance Regulatory Trust Fund pursuant to  
273 this section may be appropriated by the Legislature, pursuant to



157488

274 chapter 216, for the purpose of enabling the department or the  
275 office to carry out the provisions of this section.  
276 Notwithstanding s. 216.301 and pursuant to s. 216.351, any  
277 balance of moneys deposited into the Insurance Regulatory Trust  
278 Fund pursuant to this section remaining at the end of any fiscal  
279 year shall be available for carrying out the duties and  
280 responsibilities of the department or the office.

281 Section 8. Section 634.414, Florida Statutes, is amended to  
282 read:

283 634.414 Forms; required provisions.—

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

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

299 (3)~~(2)~~ By July 1, 2011, each service warranty contract sold  
300 in this state must be accompanied by a written disclosure to the  
301 consumer that the rate charged for the contract is not subject  
302 to regulation by the office. A service warranty association may



157488

303 comply with this requirement by including such disclosure in its  
304 service warranty contract form or in a separate written notice  
305 provided to the consumer at the time of sale.

306 Section 9. Section 634.416, Florida Statutes, is amended to  
307 read:

308 634.416 Examination of associations.—

309 ~~(1)(a)~~ Service warranty associations licensed under this  
310 part may be subject to periodic examination by the office, in  
311 the same manner and subject to the same terms and conditions  
312 that apply to insurers under part II of chapter 624. The office  
313 is not required to conduct periodic examinations pursuant to  
314 this section, but may examine a service warranty company at its  
315 discretion. An examination conducted pursuant to this section  
316 may cover a period of only the most recent 5 years. The costs of  
317 examinations conducted pursuant to ss. 624.316(2)(e) and  
318 624.316(3) may not exceed 10 percent of the companies' reported  
319 net income for the prior year.

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

322 ~~1. The amount of time that the association has been~~  
323 ~~continuously licensed and operating under the same management~~  
324 ~~and control.~~

325 ~~2. The association's history of compliance with applicable~~  
326 ~~law.~~

327 ~~3. The number of consumer complaints against the~~  
328 ~~association.~~

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

331 ~~(2) The rate charged a service warranty association by the~~



157488

332 ~~office for examination may be adjusted to reflect the amount~~  
333 ~~collected for the Form 10-K filing fee as provided in this~~  
334 ~~section.~~

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

345 ~~(4) The office is not required to examine an association~~  
346 ~~that has less than \$20,000 in gross written premiums as~~  
347 ~~reflected in its most recent annual statement. The office may~~  
348 ~~examine such an association if it has reason to believe that the~~  
349 ~~association may be in violation of this part or is otherwise in~~  
350 ~~an unsound financial condition. If the office examines an~~  
351 ~~association that has less than \$20,000 in gross written~~  
352 ~~premiums, the examination fee may not exceed 5 percent of the~~  
353 ~~gross written premiums of the association.~~

354 Section 10. Section 634.4385, Florida Statutes, is created  
355 to read:

356 634.4385 Unauthorized entities; gifts and grants.—A  
357 governmental unit, public agency, institution, person, firm, or  
358 legal entity may provide money to the department to enable the  
359 department to pursue unauthorized entities operating in  
360 violation of this part. The department may transfer funds to the



157488

361 office to investigate, discipline, sanction, and take all action  
362 consistent with this part relative to unauthorized entities. All  
363 donations or grants of moneys to the department shall be  
364 deposited into the Insurance Regulatory Trust Fund and shall be  
365 separately accounted for in accordance with this section. Moneys  
366 deposited into the Insurance Regulatory Trust Fund pursuant to  
367 this section may be appropriated by the Legislature, pursuant to  
368 chapter 216, for the purpose of enabling the department or the  
369 office to carry out the provisions of this section.  
370 Notwithstanding s. 216.301 and pursuant to s. 216.351, any  
371 balance of moneys deposited into the Insurance Regulatory Trust  
372 Fund pursuant to this section remaining at the end of any fiscal  
373 year shall be available for carrying out the duties and  
374 responsibilities of the department or the office.

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

376  
377 ===== T I T L E A M E N D M E N T =====

378 And the title is amended as follows:

379 Delete everything before the enacting clause  
380 and insert:

381 A bill to be entitled

382 An act relating to warranty associations; amending s.  
383 634.011, F.S.; revising the definition of the term  
384 "motor vehicle service agreement"; amending s.  
385 634.121, F.S.; providing criteria for a motor vehicle  
386 service agreement company to effectuate refunds  
387 through the issuing salesperson or agent; requiring  
388 the salesperson, agent, or service agreement company  
389 to maintain a copy of certain documents; requiring a



390 salesperson or agent to provide a copy of a document  
391 to the service agreement company if requested by the  
392 Department of Financial Services or the Office of  
393 Insurance Regulation; requiring the office to provide  
394 to the department findings that a salesperson or agent  
395 exhibits a pattern or practice of failing to  
396 effectuate refunds or to maintain and remit to the  
397 service agreement company the required documentation;  
398 amending s. 634.141, F.S.; authorizing rather than  
399 requiring the office to examine service agreement  
400 companies; limiting the examination period to the most  
401 recent 5 years; limiting the cost of certain  
402 examinations; removing the requirement that the  
403 Financial Services Commission establish rules for  
404 conducting examinations; removing the criteria for  
405 determining whether an examination is warranted;  
406 creating s. 634.2855, F.S.; authorizing a governmental  
407 entity, public agency, institution, person, firm, or  
408 legal entity to provide money to the department to  
409 pursue unauthorized entities operating as motor  
410 vehicle service agreement companies; providing  
411 requirements for the deposit of the money; providing  
412 that funds remaining at the end of any fiscal year  
413 shall be available for carrying out duties and  
414 responsibilities of the department or the office;  
415 amending s. 634.312, F.S.; authorizing a home warranty  
416 association to effectuate a refund through the issuing  
417 sales representative; amending s. 634.314, F.S.;  
418 authorizing rather than requiring the office to



157488

419 examine home warranty associations; limiting the  
420 examination period to the most recent 5 years;  
421 limiting the cost of certain examinations; removing  
422 the requirement that the commission establish rules  
423 for conducting examinations; removing the criteria for  
424 determining whether an examination is warranted;  
425 creating s. 634.3385, F.S.; authorizing a governmental  
426 entity, public agency, institution, person, firm, or  
427 legal entity to provide money to the department to  
428 pursue unauthorized entities operating as home  
429 warranty associations; providing that funds remaining  
430 at the end of any fiscal year shall be available for  
431 carrying out duties and responsibilities of the  
432 department or the office; amending s. 634.414, F.S.;  
433 authorizing service warranty associations to  
434 effectuate refunds through the issuing sales  
435 representative; authorizing a service warranty  
436 association to issue refunds by cash, check, store  
437 credit, gift card, or other similar means; amending s.  
438 634.416, F.S.; authorizing rather than requiring the  
439 office to examine service warranty associations;  
440 limiting the examination period to the most recent 5  
441 years; limiting the costs of certain examinations;  
442 removing the requirement that the commission establish  
443 rules for conducting examinations; removing the  
444 criteria for determining whether an examination is  
445 warranted; removing provisions relating to the rates  
446 charged a to service warranty association for  
447 examinations; removing the provision authorizing the





157488

448 office to waive the examination requirement upon  
449 receipt and review of the Form 10-K; creating s.  
450 634.4385, F.S.; authorizing a governmental entity,  
451 public agency, institution, person, firm, or legal  
452 entity to provide money to the department to pursue  
453 unauthorized entities operating as service warranty  
454 associations; providing that funds remaining at the  
455 end of any fiscal year shall be available for carrying  
456 out duties and responsibilities of the department or  
457 the office; providing an effective date.