



213656

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government Appropriations (Jones) 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



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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.



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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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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



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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



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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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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. Subsection (1) of section 634.141, Florida  
169 Statutes, is amended to 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 Section 4. Section 634.2855, Florida Statutes, is created  
185 to read:

186 634.2855 Unauthorized entities; gifts and grants.—A



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187 governmental unit, public agency, institution, person, firm, or  
188 legal entity may provide money to the department to enable the  
189 department to pursue unauthorized entities operating in  
190 violation of this part. The department may transfer funds to the  
191 office to investigate, discipline, sanction, and take all action  
192 consistent with this part relative to unauthorized entities. All  
193 donations or grants of moneys to the department shall be  
194 deposited into the Insurance Regulatory Trust Fund and shall be  
195 separately accounted for in accordance with this section. Moneys  
196 deposited into the Insurance Regulatory Trust Fund pursuant to  
197 this section may be appropriated by the Legislature, pursuant to  
198 chapter 216, for the purpose of enabling the department or the  
199 office to carry out the provisions of this section.  
200 Notwithstanding s. 216.301 and pursuant to s. 216.351, any  
201 balance of moneys deposited into the Insurance Regulatory Trust  
202 Fund pursuant to this section remaining at the end of any fiscal  
203 year shall be available for carrying out the duties and  
204 responsibilities of the department or the office.

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

207 634.312 Forms; required provisions and procedures.—

208 (5) Each home warranty contract shall contain a  
209 cancellation provision. Any home warranty agreement may be  
210 canceled by the purchaser within 10 days after purchase. The  
211 refund must be 100 percent of the gross premium paid, less any  
212 claims paid on the agreement. A reasonable administrative fee  
213 may be charged, not to exceed 5 percent of the gross premium  
214 paid by the warranty agreement holder. After the home warranty  
215 agreement has been in effect for 10 days, if the contract is





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216 canceled by the warranty holder, a return of premium shall be  
217 based upon 90 percent of unearned pro rata premium less any  
218 claims that have been paid. If the contract is canceled by the  
219 association for any reason other than for fraud or  
220 misrepresentation, a return of premium shall be based upon 100  
221 percent of unearned pro rata premium, less any claims paid on  
222 the agreement. A home warranty association may effectuate a  
223 refund through the issuing sales representative.

224 Section 6. Section 634.314, Florida Statutes, is amended to  
225 read:

226 634.314 Examination of associations.-

227 ~~(1)~~ Home warranty associations licensed under this part may  
228 be subject to periodic examinations by the office, in the same  
229 manner and subject to the same terms and conditions as apply to  
230 insurers under part II of chapter 624 of the insurance code. The  
231 office is not required to conduct periodic examinations pursuant  
232 to this section, but may examine a home warranty company at its  
233 discretion. An examination conducted pursuant to this section  
234 may cover a period of only the most recent 5 years. The costs of  
235 examinations conducted pursuant to ss. 624.316(2)(e) and  
236 624.3161(3) may not exceed 10 percent of the companies' reported  
237 net income for the prior year.

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

240 ~~(a) The amount of time that the association has been~~  
241 ~~continuously licensed and operating under the same management~~  
242 ~~and control.~~

243 ~~(b) The association's history of compliance with applicable~~  
244 ~~law.~~



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245       ~~(c) The number of consumer complaints against the~~  
246 ~~association.~~

247       ~~(d) The financial condition of the association,~~  
248 ~~demonstrated by the financial reports submitted pursuant to s.~~  
249 ~~634.313.~~

250       Section 7. Section 634.3385, Florida Statutes, is created  
251 to read:

252       634.3385 Unauthorized entities; gifts and grants.—A  
253 governmental unit, public agency, institution, person, firm, or  
254 legal entity may provide money to the department to enable the  
255 department to pursue unauthorized entities operating in  
256 violation of this part. The department may transfer funds to the  
257 office to investigate, discipline, sanction, and take all action  
258 consistent with this part relative to unauthorized entities. All  
259 donations or grants of moneys to the department shall be  
260 deposited into the Insurance Regulatory Trust Fund and shall be  
261 separately accounted for in accordance with this section. Moneys  
262 deposited into the Insurance Regulatory Trust Fund pursuant to  
263 this section may be appropriated by the Legislature, pursuant to  
264 chapter 216, for the purpose of enabling the department or the  
265 office to carry out the provisions of this section.  
266 Notwithstanding s. 216.301 and pursuant to s. 216.351, any  
267 balance of moneys deposited into the Insurance Regulatory Trust  
268 Fund pursuant to this section remaining at the end of any fiscal  
269 year shall be available for carrying out the duties and  
270 responsibilities of the department or the office.

271       Section 8. Section 634.414, Florida Statutes, is amended to  
272 read:

273       634.414 Forms; required provisions.—



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274 (1) Each service warranty contract shall contain a  
275 cancellation provision. If the contract is canceled by the  
276 warranty holder, return of premium shall be based upon no less  
277 than 90 percent of unearned pro rata premium less any claims  
278 that have been paid or less the cost of repairs made on behalf  
279 of the warranty holder. If the contract is canceled by the  
280 association, return of premium shall be based upon 100 percent  
281 of unearned pro rata premium, less any claims paid or the cost  
282 of repairs made on behalf of the warranty holder. Service  
283 warranty associations may effectuate refunds through the issuing  
284 sales representative.

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

289 ~~(3)~~ By July 1, 2011, each service warranty contract sold  
290 in this state must be accompanied by a written disclosure to the  
291 consumer that the rate charged for the contract is not subject  
292 to regulation by the office. A service warranty association may  
293 comply with this requirement by including such disclosure in its  
294 service warranty contract form or in a separate written notice  
295 provided to the consumer at the time of sale.

296 Section 9. Section 634.416, Florida Statutes, is amended to  
297 read:

298 634.416 Examination of associations.—

299 (1) ~~(a)~~ Service warranty associations licensed under this  
300 part may be subject to periodic examination by the office, in  
301 the same manner and subject to the same terms and conditions  
302 that apply to insurers under part II of chapter 624. The office



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303 is not required to conduct periodic examinations pursuant to  
304 this section, but may examine a service warranty company at its  
305 discretion. An examination conducted pursuant to this section  
306 may cover a period of only the most recent 5 years. The costs of  
307 examinations conducted pursuant to ss. 624.316(2)(e) and  
308 624.3161(3) may not exceed 10 percent of the companies' reported  
309 net income for the prior year.

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

312 ~~1. The amount of time that the association has been~~  
313 ~~continuously licensed and operating under the same management~~  
314 ~~and control.~~

315 ~~2. The association's history of compliance with applicable~~  
316 ~~law.~~

317 ~~3. The number of consumer complaints against the~~  
318 ~~association.~~

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

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

325 (2)(3) On or before May 1 of each year, an association may  
326 submit to the office the Form 10-K, as filed with the United  
327 States Securities and Exchange Commission pursuant to the  
328 Securities Exchange Act of 1934, as amended. Upon receipt and  
329 review of the most current Form 10-K, the office may waive the  
330 examination requirement; if the office determines not to waive  
331 the examination, such examination will be limited to that



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332 examination necessary to ensure compliance with this part. The  
333 Form 10-K shall be accompanied by a filing fee of \$2,000 to be  
334 deposited into the Insurance Regulatory Trust Fund.

335 ~~(3)(4) The office is not required to examine an association~~  
336 ~~that has less than \$20,000 in gross written premiums as~~  
337 ~~reflected in its most recent annual statement. The office may~~  
338 ~~examine such an association if it has reason to believe that the~~  
339 ~~association may be in violation of this part or is otherwise in~~  
340 ~~an unsound financial condition.~~ If the office examines an  
341 association that has less than \$20,000 in gross written  
342 premiums, the examination fee may not exceed 5 percent of the  
343 gross written premiums of the association.

344 Section 10. Section 634.4385, Florida Statutes, is created  
345 to read:

346 634.4385 Unauthorized entities; gifts and grants.—A  
347 governmental unit, public agency, institution, person, firm, or  
348 legal entity may provide money to the department to enable the  
349 department to pursue unauthorized entities operating in  
350 violation of this part. The department may transfer funds to the  
351 office to investigate, discipline, sanction, and take all action  
352 consistent with this part relative to unauthorized entities. All  
353 donations or grants of moneys to the department shall be  
354 deposited into the Insurance Regulatory Trust Fund and shall be  
355 separately accounted for in accordance with this section. Moneys  
356 deposited into the Insurance Regulatory Trust Fund pursuant to  
357 this section may be appropriated by the Legislature, pursuant to  
358 chapter 216, for the purpose of enabling the department or the  
359 office to carry out the provisions of this section.  
360 Notwithstanding s. 216.301 and pursuant to s. 216.351, any



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

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

366  
367 ===== T I T L E A M E N D M E N T =====

368 And the title is amended as follows:

369 Delete everything before the enacting clause  
370 and insert:

371 A bill to be entitled  
372 An act relating to warranty associations; amending s.  
373 634.011, F.S.; revising the definition of the term  
374 "motor vehicle service agreement"; amending s.  
375 634.121, F.S.; providing criteria for a motor vehicle  
376 service agreement company to effectuate refunds  
377 through the issuing salesperson or agent; requiring  
378 the salesperson, agent, or service agreement company  
379 to maintain a copy of certain documents; requiring a  
380 salesperson or agent to provide a copy of a document  
381 to the service agreement company if requested by the  
382 Department of Financial Services or the Office of  
383 Insurance Regulation; requiring the office to provide  
384 to the department findings that a salesperson or agent  
385 exhibits a pattern or practice of failing to  
386 effectuate refunds or to maintain and remit to the  
387 service agreement company the required documentation;  
388 amending s. 634.141, F.S.; authorizing rather than  
389 requiring the office to examine service agreement



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390 companies; limiting the examination period to the most  
391 recent 5 years; limiting the cost of certain  
392 examinations; creating s. 634.2855, F.S.; authorizing  
393 a governmental entity, public agency, institution,  
394 person, firm, or legal entity to provide money to the  
395 department to pursue unauthorized entities operating  
396 as motor vehicle service agreement companies;  
397 providing requirements for the deposit of the money;  
398 providing that funds remaining at the end of any  
399 fiscal year shall be available for carrying out duties  
400 and responsibilities of the department or the office;  
401 amending s. 634.312, F.S.; authorizing a home warranty  
402 association to effectuate a refund through the issuing  
403 sales representative; amending s. 634.314, F.S.;  
404 authorizing rather than requiring the office to  
405 examine home warranty associations; limiting the  
406 examination period to the most recent 5 years;  
407 limiting the cost of certain examinations; removing  
408 the requirement that the commission establish rules  
409 for conducting examinations; removing the criteria for  
410 determining whether an examination is warranted;  
411 creating s. 634.3385, F.S.; authorizing a governmental  
412 entity, public agency, institution, person, firm, or  
413 legal entity to provide money to the department to  
414 pursue unauthorized entities operating as home  
415 warranty associations; providing that funds remaining  
416 at the end of any fiscal year shall be available for  
417 carrying out duties and responsibilities of the  
418 department or the office; amending s. 634.414, F.S.;



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419 authorizing service warranty associations to  
420 effectuate refunds through the issuing sales  
421 representative; authorizing a service warranty  
422 association to issue refunds by cash, check, store  
423 credit, gift card, or other similar means; amending s.  
424 634.416, F.S.; authorizing rather than requiring the  
425 office to examine service warranty associations;  
426 limiting the examination period to the most recent 5  
427 years; limiting the costs of certain examinations;  
428 removing the requirement that the commission establish  
429 rules for conducting examinations; removing the  
430 criteria for determining whether an examination is  
431 warranted; removing provisions relating to the rates  
432 charged a to service warranty association for  
433 examinations; creating s. 634.4385, F.S.; authorizing  
434 a governmental entity, public agency, institution,  
435 person, firm, or legal entity to provide money to the  
436 department to pursue unauthorized entities operating  
437 as service warranty associations; providing that funds  
438 remaining at the end of any fiscal year shall be  
439 available for carrying out duties and responsibilities  
440 of the department or the office; providing an  
441 effective date.