

By the Committees on Budget Subcommittee on General Government Appropriations; and Banking and Insurance; and Senator Oelrich

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1                                   A bill to be entitled  
2           An act relating to warranty associations; amending s.  
3           634.011, F.S.; revising the definition of the term  
4           "motor vehicle service agreement"; amending s.  
5           634.121, F.S.; providing criteria for a motor vehicle  
6           service agreement company to effectuate refunds  
7           through the issuing salesperson or agent; requiring  
8           the salesperson, agent, or service agreement company  
9           to maintain a copy of certain documents; requiring a  
10          salesperson or agent to provide a copy of a document  
11          to the service agreement company if requested by the  
12          Department of Financial Services or the Office of  
13          Insurance Regulation; requiring the office to provide  
14          to the department findings that a salesperson or agent  
15          exhibits a pattern or practice of failing to  
16          effectuate refunds or to maintain and remit to the  
17          service agreement company the required documentation;  
18          amending s. 634.141, F.S.; authorizing rather than  
19          requiring the office to examine service agreement  
20          companies; limiting the examination period to the most  
21          recent 5 years; limiting the cost of certain  
22          examinations; 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  
29          fiscal year shall be available for carrying out duties

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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  
57 years; limiting the costs of certain examinations;  
58 removing the requirement that the commission establish

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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  
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

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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  
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

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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.

140  
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

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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;

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.

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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.

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;

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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  
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.



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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  
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

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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  
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

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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 to  
295 read:

296 634.314 Examination of associations.—

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

308 ~~(2) The office shall determine whether to conduct an~~  
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 applicable~~  
314 ~~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.~~

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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  
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 to  
342 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

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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 sold  
360 in this state must be accompanied by a written disclosure to the  
361 consumer that the rate charged for the contract is not subject  
362 to regulation by the office. A service warranty association may  
363 comply with this requirement by including such disclosure in its  
364 service warranty contract form or in a separate written notice  
365 provided to the consumer at the time of sale.

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

368 634.416 Examination of associations.—

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

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378 624.3161(3) may not exceed 10 percent of the companies' reported  
379 net income for the prior year.

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

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

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

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

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

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

395 (2)(3) On or before May 1 of each year, an association may  
396 submit to the office the Form 10-K, as filed with the United  
397 States Securities and Exchange Commission pursuant to the  
398 Securities Exchange Act of 1934, as amended. Upon receipt and  
399 review of the most current Form 10-K, the office may waive the  
400 examination requirement; if the office determines not to waive  
401 the examination, such examination will be limited to that  
402 examination necessary to ensure compliance with this part. The  
403 Form 10-K shall be accompanied by a filing fee of \$2,000 to be  
404 deposited into the Insurance Regulatory Trust Fund.

405 (3)(4) ~~The office is not required to examine an association~~  
406 ~~that has less than \$20,000 in gross written premiums as~~

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

414 Section 10. Section 634.4385, Florida Statutes, is created  
415 to read:

416 634.4385 Unauthorized entities; gifts and grants.—A  
417 governmental unit, public agency, institution, person, firm, or  
418 legal entity may provide money to the department to enable the  
419 department to pursue unauthorized entities operating in  
420 violation of this part. The department may transfer funds to the  
421 office to investigate, discipline, sanction, and take all action  
422 consistent with this part relative to unauthorized entities. All  
423 donations or grants of moneys to the department shall be  
424 deposited into the Insurance Regulatory Trust Fund and shall be  
425 separately accounted for in accordance with this section. Moneys  
426 deposited into the Insurance Regulatory Trust Fund pursuant to  
427 this section may be appropriated by the Legislature, pursuant to  
428 chapter 216, for the purpose of enabling the department or the  
429 office to carry out the provisions of this section.  
430 Notwithstanding s. 216.301 and pursuant to s. 216.351, any  
431 balance of moneys deposited into the Insurance Regulatory Trust  
432 Fund pursuant to this section remaining at the end of any fiscal  
433 year shall be available for carrying out the duties and  
434 responsibilities of the department or the office.

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