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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; removing the requirement that the  
23      Financial Services Commission establish rules for  
24      conducting examinations; removing the criteria for  
25      determining whether an examination is warranted;  
26      creating s. 634.2855, F.S.; authorizing a governmental  
27      entity, public agency, institution, person, firm, or  
28      legal entity to provide money to the department to

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

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57 credit, gift card, or other similar means; amending s.  
58 634.416, F.S.; authorizing rather than requiring the  
59 office to examine service warranty associations;  
60 limiting the examination period to the most recent 5  
61 years; limiting the costs of certain examinations;  
62 removing the requirement that the commission establish  
63 rules for conducting examinations; removing the  
64 criteria for determining whether an examination is  
65 warranted; removing provisions relating to the rates  
66 charged a to service warranty association for  
67 examinations; removing the provision authorizing the  
68 office to waive the examination requirement upon  
69 receipt and review of the Form 10-K; creating s.  
70 634.4385, F.S.; authorizing a governmental entity,  
71 public agency, institution, person, firm, or legal  
72 entity to provide money to the department to pursue  
73 unauthorized entities operating as service warranty  
74 associations; providing that funds remaining at the  
75 end of any fiscal year shall be available for carrying  
76 out duties and responsibilities of the department or  
77 the office; providing an effective date.

78  
79 Be It Enacted by the Legislature of the State of Florida:

80  
81 Section 1. Subsection (8) of section 634.011, Florida  
82 Statutes, is amended to read:

83 634.011 Definitions.—As used in this part, the term:  
84 (8) "Motor vehicle service agreement" or "service

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85 agreement" means any contract or agreement indemnifying the  
86 service agreement holder for the motor vehicle listed on the  
87 service agreement and arising out of the ownership, operation,  
88 and use of the motor vehicle against loss caused by failure of  
89 any mechanical or other component part, or any mechanical or  
90 other component part that does not function as it was originally  
91 intended; however, nothing in this part shall prohibit or affect  
92 the giving, free of charge, of the usual performance guarantees  
93 by manufacturers or dealers in connection with the sale of motor  
94 vehicles. Transactions exempt under s. 624.125 are expressly  
95 excluded from this definition and are exempt from the provisions  
96 of this part. ~~Service agreements that are sold to persons other~~  
97 ~~than consumers and that cover motor vehicles used for commercial~~  
98 ~~purposes are excluded from this definition and are exempt from~~  
99 ~~regulation under the Florida Insurance Code.~~ The term "motor  
100 vehicle service agreement" includes any contract or agreement  
101 that provides:

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

106 (b) For payment of vehicle protection expenses.

107 1.a. "Vehicle protection expenses" means a preestablished  
108 flat amount payable for the loss of or damage to a vehicle or  
109 expenses incurred by the service agreement holder for loss or  
110 damage to a covered vehicle, including, but not limited to,  
111 applicable deductibles under a motor vehicle insurance policy;  
112 temporary vehicle rental expenses; expenses for a replacement

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113 vehicle that is at least the same year, make, and model of the  
114 stolen motor vehicle; sales taxes or registration fees for a  
115 replacement vehicle that is at least the same year, make, and  
116 model of the stolen vehicle; or other incidental expenses  
117 specified in the agreement.

118       b. "Vehicle protection product" means a product or system  
119 installed or applied to a motor vehicle or designed to prevent  
120 the theft of the motor vehicle or assist in the recovery of the  
121 stolen motor vehicle.

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

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

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

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141 agreement holder's comprehensive coverage and the actual cost of  
142 a replacement vehicle that is at least the same year, make, and  
143 model of the stolen motor vehicle; or

144       b. Pay a preestablished flat amount to the service  
145 agreement holder.

146  
147 Payments shall not duplicate any benefits or expenses paid to  
148 the service agreement holder by the insurer providing  
149 comprehensive coverage under a motor vehicle insurance policy  
150 covering the stolen motor vehicle; however, the payment of  
151 vehicle protection expenses at a preestablished flat amount of  
152 \$5,000 or less does not duplicate any benefits or expenses  
153 payable under any comprehensive motor vehicle insurance policy;  
154 or

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

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

163       Section 2. Paragraph (b) of subsection (3) of section  
164 634.121, Florida Statutes, is amended, and paragraphs (c), (d),  
165 and (e) are added to that subsection, to read:

166       634.121 Forms, required procedures, provisions.—

167       (3)

168       (b) After the service agreement has been in effect for 60

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169 days, it may not be canceled by the insurer or service agreement  
170 company unless:

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

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

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

177 4. For nonpayment of premium by the agreement holder, in  
178 which case the service agreement company shall provide the  
179 agreement holder notice of cancellation by certified mail.  
180

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

195 (c) If the service agreement company effectuates refunds  
196 through the issuing salesperson or agent, the service agreement

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197 company must send the unearned pro rata premium refund due, less  
198 any unearned pro rata commission, to the salesperson or agent  
199 effectuating the refund. Upon receipt, the salesperson or agent  
200 must refund the unearned pro rata premium, including any  
201 unearned pro rata commission, and the sales tax refund owed to  
202 the service agreement holder.

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

207 1. A copy of the front and back of the cancelled check for  
208 the applicable refund amount owed to the service agreement  
209 holder;

210 2. A copy of the front of the check for the applicable  
211 refund amount owed to the service agreement holder and a copy of  
212 the statement from the bank account on which the check was drawn  
213 showing that the check was cashed;

214 3. A copy of the front of the check issued by the service  
215 agreement company to the salesperson or agent in the amount of  
216 the service agreement company's portion of the refund owed to  
217 the service agreement holder and a copy of the statement from  
218 the bank account on which the check was drawn showing that the  
219 check was cashed;

220 4. A copy of a completed buyer's order demonstrating that  
221 the applicable refund amount owed to the service agreement  
222 holder was credited toward the purchase or lease of another  
223 vehicle;

224 5. Any document received from or sent to a lender, finance



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225 company, or creditor demonstrating that a loan or amount  
226 financed by the agreement holder was decreased by the amount of  
227 the applicable refund amount owed to the service agreement  
228 holder; or

229 6. Any other evidence approved by the office in a written  
230 communication to a person licensed pursuant to this part  
231 demonstrating that the applicable refund amount due to the  
232 service agreement holder was properly made.

233  
234 A salesperson or agent effectuating a refund shall maintain a  
235 copy of the documentation required by this paragraph and shall  
236 provide a copy to the service agreement company within 45 days  
237 after a request is made by the department or the office to  
238 either the service agreement company or the salesperson.

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

244 Section 3. Section 634.141, Florida Statutes, is amended  
245 to read:

246 634.141 Examination of companies.—

247 ~~(1)~~ Motor vehicle service agreement companies licensed  
248 under this part may be subject to periodic examination by the  
249 office in the same manner and subject to the same terms and  
250 conditions as apply ~~applies~~ to insurers under part II of chapter  
251 624. The office is not required to conduct periodic examinations  
252 pursuant to this section, but may examine a service agreement

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253 company at its discretion. An examination conducted pursuant to  
254 this section may cover a period of only the most recent 5 years.  
255 The costs of examinations conducted pursuant to ss.  
256 624.316(2) (e) and 624.3161(3) may not exceed 10 percent of the  
257 companies' reported net income for the prior year. The  
258 ~~commission may by rule establish provisions whereby a company~~  
259 ~~may be exempted from examination.~~

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

262 ~~(a) The amount of time that the company has been~~  
263 ~~continuously licensed and operating under the same management~~  
264 ~~and control.~~

265 ~~(b) The company's history of compliance with applicable~~  
266 ~~law.~~

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

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

270 Section 4. Section 634.2855, Florida Statutes, is created  
271 to read:

272 634.2855 Unauthorized entities; gifts and grants.—A  
273 governmental unit, public agency, institution, person, firm, or  
274 legal entity may provide money to the department to enable the  
275 department to pursue unauthorized entities operating in  
276 violation of this part. The department may transfer funds to the  
277 office to investigate, discipline, sanction, and take all action  
278 consistent with this part relative to unauthorized entities. All  
279 donations or grants of moneys to the department shall be  
280 deposited into the Insurance Regulatory Trust Fund and shall be

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281 separately accounted for in accordance with this section. Moneys  
282 deposited into the Insurance Regulatory Trust Fund pursuant to  
283 this section may be appropriated by the Legislature, pursuant to  
284 chapter 216, for the purpose of enabling the department or the  
285 office to carry out the provisions of this section.

286 Notwithstanding s. 216.301 and pursuant to s. 216.351, any  
287 balance of moneys deposited into the Insurance Regulatory Trust  
288 Fund pursuant to this section remaining at the end of any fiscal  
289 year shall be available for carrying out the duties and  
290 responsibilities of the department or the office.

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

293 634.312 Forms; required provisions and procedures.—

294 (5) Each home warranty contract shall contain a  
295 cancellation provision. Any home warranty agreement may be  
296 canceled by the purchaser within 10 days after purchase. The  
297 refund must be 100 percent of the gross premium paid, less any  
298 claims paid on the agreement. A reasonable administrative fee  
299 may be charged, not to exceed 5 percent of the gross premium  
300 paid by the warranty agreement holder. After the home warranty  
301 agreement has been in effect for 10 days, if the contract is  
302 canceled by the warranty holder, a return of premium shall be  
303 based upon 90 percent of unearned pro rata premium less any  
304 claims that have been paid. If the contract is canceled by the  
305 association for any reason other than for fraud or  
306 misrepresentation, a return of premium shall be based upon 100  
307 percent of unearned pro rata premium, less any claims paid on  
308 the agreement. A home warranty association may effectuate a

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309 refund through the issuing sales representative.

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

312 634.314 Examination of associations.—

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

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

326 ~~(a) The amount of time that the association has been~~  
327 ~~continuously licensed and operating under the same management~~  
328 ~~and control.~~

329 ~~(b) The association's history of compliance with~~  
330 ~~applicable law.~~

331 ~~(c) The number of consumer complaints against the~~  
332 ~~association.~~

333 ~~(d) The financial condition of the association,~~  
334 ~~demonstrated by the financial reports submitted pursuant to s.~~  
335 ~~634.313.~~

336 Section 7. Section 634.3385, Florida Statutes, is created

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to read:

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

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

634.414 Forms; required provisions.—

(1) Each service warranty contract shall contain a cancellation provision. If the contract is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of repairs made on behalf

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of the warranty holder. If the contract is canceled by the association, return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder. Service warranty associations may effectuate refunds through the issuing sales representative.

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

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

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

634.416 Examination of associations.—

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

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

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

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

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

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

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

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

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

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

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

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

634.4385 Unauthorized entities; gifts and grants.—A governmental unit, public agency, institution, person, firm, or legal entity may provide money to the department to enable the department to pursue unauthorized entities operating in violation of this part. The department may transfer funds to the office to investigate, discipline, sanction, and take all action consistent with this part relative to unauthorized entities. All donations or grants of moneys to the department shall be deposited into the Insurance Regulatory Trust Fund and shall be separately accounted for in accordance with this section. Moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section may be appropriated by the Legislature, pursuant to chapter 216, for the purpose of enabling the department or the office to carry out the provisions of this section.

Notwithstanding s. 216.301 and pursuant to s. 216.351, any



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

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