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1 A bill to be entitled
2 An act relating to warranty associations; amending s.
3 634.121, F.S.; providing criteria for a motor vehicle
4 service agreement company to effectuate refunds
5 through the issuing salesperson or agent; requiring
6 the salesperson, agent, or service agreement company
7 to maintain a copy of certain documents; requiring a
8 salesperson or agent to provide a copy of a document
9 to the service agreement company if requested by the
10 Department of Financial Services; requiring the Office
11 of Financial Regulation to provide to the department
12 findings that a salesperson or agent exhibits a
13 pattern or practice of failing to effectuate refunds
14 or to maintain and remit to the service agreement
15 company the required documentation; amending s.
16 634.141, F.S.; providing an exception to the
17 requirement that motor vehicle service agreement
18 companies undergo periodic examinations; authorizing
19 rather than requiring the Office of Financial
20 Regulation to examine service agreement companies;
21 limiting the examination period to the most recent 5
22 years; removing the requirement that the Financial
23 Services Commission establish rules for conducting
24 examinations; removing the criteria for determining
25 whether an examination is warranted; creating s.
26 634.2855, F.S.; authorizing a governmental entity,
27 public agency, institution, person, firm, or legal
28 entity to provide property or money to the Department

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 | of Financial Services to pursue unauthorized entities
30 | operating as motor vehicle service agreement
31 | companies; amending s. 634.312, F.S.; authorizing a
32 | home warranty association to effectuate a refund
33 | through the issuing sales representative; amending s.
34 | 634.314, F.S.; providing an exception to the
35 | requirement that home warranty associations undergo
36 | periodic examinations; authorizing rather than
37 | requiring the Office of Financial Regulation to
38 | examine home warranty associations; limiting the
39 | examination period to the most recent 5 years;
40 | removing the requirement that the Financial Services
41 | Commission establish rules for conducting
42 | examinations; removing the criteria for determining
43 | whether an examination is warranted; creating s.
44 | 634.3385, F.S.; authorizing a governmental entity,
45 | public agency, institution, person, firm, or legal
46 | entity to provide property or money to the Department
47 | of Financial Services to pursue unauthorized entities
48 | operating as home warranty associations; amending s.
49 | 634.414, F.S.; authorizing service warranty
50 | associations to effectuate refunds through the issuing
51 | sales 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.; providing an exception to the
55 | requirement that service warranty associations undergo
56 | periodic examinations; authorizing rather than

57 requiring the Office of Financial Regulation to
 58 examine service warranty associations; limiting the
 59 examination period to the most recent 5 years;
 60 removing the requirement that the Financial Services
 61 Commission establish rules for conducting
 62 examinations; removing the criteria for determining
 63 whether an examination is warranted; removing
 64 provisions relating to the rates charged a to service
 65 warranty association for examinations; removing the
 66 provision authorizing the Office of Financial
 67 Regulation to waive the examination requirement upon
 68 receipt and review of the Form 10-K; creating s.
 69 634.4385, F.S.; authorizing a governmental entity,
 70 public agency, institution, person, firm, or legal
 71 entity to provide property or money to the Department
 72 of Financial Services to pursue unauthorized entities
 73 operating as service warranty associations; providing
 74 an effective date.

75
 76 Be It Enacted by the Legislature of the State of Florida:

77
 78 Section 1. Paragraph (b) of subsection (3) of section
 79 634.121, Florida Statutes, is amended, and paragraphs (c), (d),
 80 and (e) are added to that subsection, to read:

81 634.121 Forms, required procedures, provisions.—

82 (3)

83 (b) After the service agreement has been in effect for 60
 84 days, it may not be canceled by the insurer or service agreement

85 company unless:

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

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

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

92 4. For nonpayment of premium by the agreement holder, in
93 which case the service agreement company shall provide the
94 agreement holder notice of cancellation by certified mail.

95
96 If the service agreement is canceled by the insurer or service
97 agreement company, the return of premium must not be less than
98 100 percent of the paid unearned pro rata premium, less any
99 claims paid on the agreement. If, after 60 days, the service
100 agreement is canceled by the service agreement holder, the
101 insurer or service agreement company shall return directly to
102 the agreement holder not less than 90 percent of the unearned
103 pro rata premium, less any claims paid on the agreement. The
104 service agreement company remains responsible for full refunds
105 to the consumer on canceled service agreements. However, the
106 salesperson and agent are responsible for the refund of the
107 unearned pro rata commission. A service agreement company may
108 effectuate refunds through the issuing salesperson or agent in
109 accordance with paragraphs (c) and (d).

110 (c) If the service agreement company effectuates refunds
111 through the issuing salesperson or agent, the service agreement
112 company must send the unearned pro rata premium refund due, less

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113 any unearned pro rata commission, to the salesperson or agent
114 effectuating the refund. Upon receipt, the salesperson or agent
115 must refund the unearned pro rata premium, including any
116 unearned pro rata commission, and the sales tax refund owed to
117 the service agreement holder.

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

122 1. A copy of the front and back of the cancelled check for
123 the applicable refund amount owed to the service agreement
124 holder;

125 2. A copy of the front of the check for the applicable
126 refund amount owed to the service agreement holder and a copy of
127 the statement from the bank account on which the check was drawn
128 showing that the check was cashed;

129 3. A copy of the front of the check issued by the service
130 agreement company to the salesperson or agent in the amount of
131 the service agreement company's portion of the refund owed to
132 the service agreement holder and a copy of the statement from
133 the bank account on which the check was drawn showing that the
134 check was cashed;

135 4. A copy of a completed buyer's order demonstrating that
136 the applicable refund amount owed to the service agreement
137 holder was credited toward the purchase or lease of another
138 vehicle;

139 5. Any document received from or sent to a lender, finance
140 company, or creditor demonstrating that a loan or amount

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141 financed by the agreement holder was decreased by the amount of
142 the applicable refund amount owed to the service agreement
143 holder; or

144 6. Any other evidence approved by the office in a written
145 communication to a person licensed pursuant to this part
146 demonstrating that the applicable refund amount due to the
147 service agreement holder was properly made.

148
149 A salesperson or agent effectuating a refund shall maintain a
150 copy of the documentation required by this paragraph, and shall
151 provide a copy to the service agreement company within 45 days
152 after a request is made by the department.

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

158 Section 2. Section 634.141, Florida Statutes, is amended
159 to read:

160 634.141 Examination of companies.—

161 ~~(1)~~ Motor vehicle service agreement companies licensed
162 under this part may be subject to periodic examination by the
163 office in the same manner and subject to the same terms and
164 conditions as applies to insurers under part II of chapter 624,
165 with the exception of ss. 624.316(2)(e) and 624.3161(3), which
166 do not apply to examinations conducted pursuant to this section.
167 The office is not required to conduct periodic examinations
168 pursuant to this section, but may examine a service agreement

169 company at its discretion. An examination conducted pursuant to
 170 this section may cover a period of only the most recent 5 years.
 171 ~~The commission may by rule establish provisions whereby a~~
 172 ~~company may be exempted from examination.~~

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

175 ~~(a) The amount of time that the company has been~~
 176 ~~continuously licensed and operating under the same management~~
 177 ~~and control.~~

178 ~~(b) The company's history of compliance with applicable~~
 179 ~~law.~~

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

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

183 Section 3. Section 634.2855, Florida Statutes, is created
 184 to read:

185 634.2855 Unauthorized entities; gifts and grants.—A
 186 governmental unit, public agency, institution, person, firm, or
 187 legal entity may provide property or money to the department in
 188 accordance with s. 626.9894 to enable the department to pursue
 189 unauthorized entities operating in violation of this part. The
 190 department may transfer funds or property to the office to
 191 administer this section.

192 Section 4. Subsection (5) of section 634.312, Florida
 193 Statutes, is amended to read:

194 634.312 Forms; required provisions and procedures.—

195 (5) Each home warranty contract shall contain a
 196 cancellation provision. Any home warranty agreement may be

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197 canceled by the purchaser within 10 days after purchase. The
 198 refund must be 100 percent of the gross premium paid, less any
 199 claims paid on the agreement. A reasonable administrative fee
 200 may be charged, not to exceed 5 percent of the gross premium
 201 paid by the warranty agreement holder. After the home warranty
 202 agreement has been in effect for 10 days, if the contract is
 203 canceled by the warranty holder, a return of premium shall be
 204 based upon 90 percent of unearned pro rata premium less any
 205 claims that have been paid. If the contract is canceled by the
 206 association for any reason other than for fraud or
 207 misrepresentation, a return of premium shall be based upon 100
 208 percent of unearned pro rata premium, less any claims paid on
 209 the agreement. A home warranty association may effectuate a
 210 refund through the issuing sales representative.

211 Section 5. Section 634.314, Florida Statutes, is amended
 212 to read:

213 634.314 Examination of associations.—

214 ~~(1)~~ Home warranty associations licensed under this part
 215 may be subject to periodic examinations by the office, in the
 216 same manner and subject to the same terms and conditions as
 217 apply to insurers under part II of chapter 624 of the insurance
 218 code, with the exception of ss. 624.316(2)(e) and 624.3161(3),
 219 which do not apply to examinations conducted pursuant to this
 220 section. The office is not required to conduct periodic
 221 examinations pursuant to this section, but may examine a service
 222 agreement company at its discretion. An examination conducted
 223 pursuant to this section may cover a period of only the most
 224 recent 5 years.

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

227 ~~(a) The amount of time that the association has been~~
 228 ~~continuously licensed and operating under the same management~~
 229 ~~and control.~~

230 ~~(b) The association's history of compliance with~~
 231 ~~applicable law.~~

232 ~~(c) The number of consumer complaints against the~~
 233 ~~association.~~

234 ~~(d) The financial condition of the association,~~
 235 ~~demonstrated by the financial reports submitted pursuant to s.~~
 236 ~~634.313.~~

237 Section 6. Section 634.3385, Florida Statutes, is created
 238 to read:

239 634.3385 Unauthorized entities, gifts and grants.—A
 240 governmental unit, public agency, institution, person, firm, or
 241 legal entity may provide property or money to the department in
 242 accordance with s. 626.9894 to enable the department to pursue
 243 unauthorized entities operating in violation of this part. The
 244 department may transfer funds or property to the office to
 245 administer this section.

246 Section 7. Section 634.414, Florida Statutes, is amended
 247 to read:

248 634.414 Forms; required provisions.—

249 (1) Each service warranty contract shall contain a
 250 cancellation provision. If the contract is canceled by the
 251 warranty holder, return of premium shall be based upon no less
 252 than 90 percent of unearned pro rata premium less any claims

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

260 (2) Refunds owed pursuant to this section may be made by
 261 cash, check, store credit, gift card, or other similar means.

262 (3)~~(2)~~ By July 1, 2011, each service warranty contract
 263 sold in this state must be accompanied by a written disclosure
 264 to the consumer that the rate charged for the contract is not
 265 subject to regulation by the office. A service warranty
 266 association may comply with this requirement by including such
 267 disclosure in its service warranty contract form or in a
 268 separate written notice provided to the consumer at the time of
 269 sale.

270 Section 8. Section 634.416, Florida Statutes, is amended
 271 to read:

272 634.416 Examination of associations.—

273 ~~(1)(a)~~ Service warranty associations licensed under this
 274 part may be subject to periodic examination by the office, in
 275 the same manner and subject to the same terms and conditions
 276 that apply to insurers under part II of chapter 624, with the
 277 exception of ss. 624.316(2)(e) and 624.3161(3), which do not
 278 apply to examinations conducted pursuant to this section. The
 279 office is not required to conduct periodic examinations pursuant
 280 to this section, but may examine a service agreement company at

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281 its discretion. An examination conducted pursuant to this
282 section may cover a period of only the most recent 5 years.

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

285 1. ~~The amount of time that the association has been~~
286 ~~continuously licensed and operating under the same management~~
287 ~~and control.~~

288 2. ~~The association's history of compliance with applicable~~
289 ~~law.~~

290 3. ~~The number of consumer complaints against the~~
291 ~~association.~~

292 4. ~~The financial condition of the association,~~
293 ~~demonstrated by the financial reports submitted pursuant to s.~~
294 ~~634.313.~~

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

299 ~~(3) On or before May 1 of each year, an association may~~
300 ~~submit to the office the Form 10-K, as filed with the United~~
301 ~~States Securities and Exchange Commission pursuant to the~~
302 ~~Securities Exchange Act of 1934, as amended. Upon receipt and~~
303 ~~review of the most current Form 10-K, the office may waive the~~
304 ~~examination requirement; if the office determines not to waive~~
305 ~~the examination, such examination will be limited to that~~
306 ~~examination necessary to ensure compliance with this part. The~~
307 ~~Form 10-K shall be accompanied by a filing fee of \$2,000 to be~~
308 ~~deposited into the Insurance Regulatory Trust Fund.~~

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

318 Section 9. Section 634.4385, Florida Statutes, is created
 319 to read:

320 634.4385 Unauthorized entities; gifts and grants.—A
 321 governmental unit, public agency, institution, person, firm, or
 322 legal entity may provide property or money to the department in
 323 accordance with the provisions of s. 626.9894 to enable the
 324 department to pursue unauthorized entities operating in
 325 violation of this part. The department may transfer funds or
 326 property to the office to administer this section.

327 Section 10. This act shall take effect July 1, 2012.