

CHAPTER 2012-77

Committee Substitute for Committee Substitute for House Bill No. 1011

An act relating to warranty associations; amending s. 634.011, F.S.; revising the definition of the term “motor vehicle service agreement”; amending s. 634.121, F.S.; providing criteria for a motor vehicle service agreement company to effectuate refunds through the issuing salesperson or agent; requiring the salesperson, agent, or service agreement company to maintain a copy of certain documents; requiring a salesperson or agent to provide a copy of a document to the service agreement company if requested by the Department of Financial Services or the Office of Insurance Regulation; requiring the office to provide to the department findings that a salesperson or agent exhibits a pattern or practice of failing to effectuate refunds or to maintain and remit to the service agreement company the required documentation; amending s. 634.141, F.S.; authorizing rather than requiring the office to examine service agreement companies; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; creating s. 634.2855, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as motor vehicle service agreement companies; providing requirements for the deposit of the money; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.312, F.S.; authorizing a home warranty association to effectuate a refund through the issuing sales representative; amending s. 634.314, F.S.; authorizing rather than requiring the office to examine home warranty associations; limiting the examination period to the most recent 5 years; limiting the cost of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; creating s. 634.3385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as home warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; amending s. 634.414, F.S.; authorizing service warranty associations to effectuate refunds through the issuing sales representative; authorizing a service warranty association to issue refunds by cash, check, store credit, gift card, or other similar means; amending s. 634.416, F.S.; authorizing rather than requiring the office to examine service warranty associations; limiting the examination period to the most recent 5 years; limiting the costs of certain examinations; removing the requirement that the commission establish rules for conducting examinations; removing the criteria for determining whether an examination is warranted; removing provisions relating to the rates charged a to service warranty association

for examinations; creating s. 634.4385, F.S.; authorizing a governmental entity, public agency, institution, person, firm, or legal entity to provide money to the department to pursue unauthorized entities operating as service warranty associations; providing that funds remaining at the end of any fiscal year shall be available for carrying out duties and responsibilities of the department or the office; providing an effective date.

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

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

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

(b) For payment of vehicle protection expenses.

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

b. “Vehicle protection product” means a product or system installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.

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

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

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

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

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

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

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

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

634.121 Forms, required procedures, provisions.—

(3)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Subsection (1) of section 634.141, Florida Statutes, is amended to read:

634.141 Examination of companies.—

(1) Motor vehicle service agreement companies 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 as ~~apply~~ applies 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 agreement company at its discretion. An examination conducted pursuant to this section may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.3161(3) may not exceed 10 percent of the companies' reported net income for the prior year. The commission may by rule establish provisions whereby a company may be exempted from examination.

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

634.2855 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 5. Subsection (5) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

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

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

634.314 Examination of associations.—

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

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

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

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

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

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

Section 7. Section 634.3385, Florida Statutes, is created 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 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 may cover a period of only the most recent 5 years. The costs of examinations conducted pursuant to ss. 624.316(2)(e) and 624.316(3) may not exceed 10 percent of the companies' reported net income for the prior year.

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

- ~~1. The amount of time that the association has been continuously licensed and operating under the same management and control.~~
- ~~2. The association's history of compliance with applicable law.~~
- ~~3. The number of consumer complaints against the association.~~
- ~~4. The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.~~

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

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

~~(3)(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 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 11. This act shall take effect July 1, 2012.

Approved by the Governor April 6, 2012.

Filed in Office Secretary of State April 6, 2012.