

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 291 Warranty Associations  
**SPONSOR(S):** Santiago  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 0 N	Cooper	Cooper
2) Civil Justice Subcommittee	11 Y, 0 N	Aziz	Bond
3) Regulatory Affairs Committee	17 Y, 0 N	Cooper	Hamon

### SUMMARY ANALYSIS

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Current law requires every motor vehicle service agreement and home warranty to be mailed or delivered to the purchaser within 45 days after the purchase of the agreement. The bill allows both these contracts to be transmitted electronically, subject to the warranty holder requesting mail delivery instead. The bill also adds the same delivery requirement for service warranties that is contained in current law for motor vehicle service agreements and home warranties and allows electronic delivery of service agreements to the warranty holder under the same parameters required for electronic delivery of motor vehicle service agreements and home warranties.

The bill also changes the financial requirements of service warranty associations. Current law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the association's obligations under service warranties sold in Florida. In addition, service warranty associations are required to maintain a specified writing ratio of gross written premiums to net assets. Currently, an association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer. The bill expands the exception to the minimum writing ratio for service warranty associations and for insurers providing first dollar coverage to those associations and it repeals one of the three requirements for those insurers so associations purchasing insurance can be exempt from the required writing ratio.

The bill has no fiscal impact on state or local government. Regarding the electronic transmission provisions of the bill, the fiscal impact on the warranty associations and consumers is indeterminate because it is unknown how many associations will opt to email or how many policyholders will agree to participate.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the OIR. The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

##### **Electronic Delivery of Service Agreements and Warranties**

Section 634.121(6), F.S., requires every motor vehicle service agreement to be mailed or delivered to the purchaser within 45 days after the purchase of the agreement. Section 634.312(2), F.S., requires every home warranty to be mailed or delivered to the purchaser within 45 days after the purchase of the warranty. The delivery required by current law is typically hand delivery and not electronic delivery.

The bill allows motor vehicle service agreement companies to deliver motor vehicle service agreements by electronic transmission. Similarly, the bill allows electronic transmission of home warranties by insurers or home warranty associations. The bill further specifies electronic transmission of a motor vehicle service agreement constitutes delivery of the agreement to the purchaser and specifies the same for electronic transmission of home warranties. If a motor vehicle service agreement is transmitted to the purchaser electronically, then the transmission must include a notice to the purchaser indicating the purchaser has a right to receive the agreement by mail instead of electronic transmission. If the purchaser notifies the company that he or she does not agree to electronic transmission of the motor vehicle service agreement, a paper copy of the agreement must be provided to the purchaser. The bill contains the same provisions relating to notice and provision of a paper copy of the warranty for home warranties.

The bill adds a delivery requirement for service warranties. Unlike motor vehicle service agreements and home warranties, current law does not require service warranties to be delivered to the purchaser. The bill adds the same delivery requirement for service warranties that is contained in current law for motor vehicle service agreements and home warranties and allows electronic delivery of service agreements to the warranty holder under the same parameters required for electronic delivery of motor vehicle service agreements and home warranties. Thus, under the bill, the parameters for electronic delivery of motor vehicle service agreements, home warranties, and service warranties are consistent and the same.

##### **Applicability of Federal and State Law Relating to Electronic Transactions**

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.<sup>1</sup> E-SIGN provides contracts formed using electronic

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<sup>1</sup> Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, § 101,114 Stat. 464 (2000). Many of the provisions of E-SIGN took effect on October 1, 2000.

signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications.

E-SIGN allows state law to preempt the E-SIGN law in certain circumstances. State law addressing electronic transmission can preempt E-SIGN if the state law is an enactment of the Uniform Electronic Transactions Act (UETA) as adopted by the National Conference of Commissioners on Uniform State Laws. Alternatively, a state law that is not an enactment of UETA but is not inconsistent with E-SIGN and does not give greater legal status or effect to a specific form of technology or signature can preempt E-SIGN.<sup>2</sup> Florida adopted the substantive provisions of UETA in 2000 and has not substantively changed the provisions since they were adopted.<sup>3</sup> Thus, the Florida adoption of UETA should preempt E-SIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (FUETA), is Florida's adoption of UETA. FUETA applies to electronic records and electronic signatures relating to a transaction and has limited exceptions.<sup>4</sup>

Although UETA and E-SIGN overlap in some areas, they differ on some consumer protection issues. E-SIGN focuses on regulating the manner of consent to deal electronically, while UETA focuses on how the parties are to comply with state consumer protection laws.<sup>5</sup> By adopting the official version of UETA, states can modify, limit, or supersede some E-SIGN provisions, including its consumer protection issues, which includes E-SIGN's requirement of consumer disclosure and affirmative consent for electronic records.<sup>6</sup>

FUETA should apply to the electronic transmission of motor vehicle service agreements, home warranties, and service warranties allowed under the bill. One provision of FUETA provides if parties have agreed to conduct a transaction by electronic means and a provision of law requires a person to deliver information in writing to another person, that delivery requirement is satisfied if the information is delivered in an electronic record capable of retention by the recipient.<sup>7</sup> Furthermore, whether parties have agreed to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.<sup>8</sup>

Emailing a service agreement or warranty to the agreement or warranty holder could fall under this provision of FUETA, in part, because in order to email the agreement or warranty, the agreement or warranty holder must provide an email address to the insurer or warranty association which could be construed to mean the parties have agreed to conduct a transaction by electronic means. If this is the case, then current law requiring delivery of a motor vehicle service agreement or home warranty by mail or other delivery may be satisfied by emailing the agreement or warranty. The consent of the agreement or warranty holder to receive the agreement or warranty by email would not be required in this case because under FUETA, consent is not required when the parties agree to conduct a transaction electronically. Additionally, the bill requires the insurer or warranty association to notify the

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<sup>2</sup> 15 U.S.C. § 7002.

<sup>3</sup> [http://www.uniformlaws.org/Act.aspx?title=Electronic Transactions Act](http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act) (last viewed January 28, 2014); <http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx> (last viewed January 28, 2014) and Fla. S. Comm. on Utils. & Comms., CS/CS/SB 1334 (2000) Staff Analysis (final July 27, 2000) available at [http://archive.flsenate.gov/session/index.cfm?BI\\_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&bi\\_lnum=1334](http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&bi_lnum=1334) (last viewed January 28, 2014) indicating on page 10 that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements." Although Florida's adoption of the UETA has been amended five times since adoption in 2000, none of the amendments were substantive.

<sup>4</sup> Section 668.50(3), F.S.

<sup>5</sup> Patricia Brumfield Fry, *A Preliminary Analysis of Federal and State Electronic Commerce Laws*, available at <http://uniformlaws.org/Narrative.aspx?title=UETA%20and%20Preemption%20Article> (last viewed January 3, 2014).

<sup>6</sup> <http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx> (last viewed January 3, 2014).

<sup>7</sup> Section 668.50(8)(a), F.S.

<sup>8</sup> Section 668.50(5)(b), F.S.

agreement or warranty holder when the agreement or warranty is emailed that the holder can elect to receive the agreement or warranty by mail in lieu of email. Once this notice is given, an agreement or warranty holder's action to not elect to receive the agreement or warranty by mail may be construed to mean the parties have agreed to conduct a transaction by electronic means and thus, under FUETA, consent is not required for electronic delivery of the agreement or warranty to the holder.

Although service warranties do not have a delivery requirement in current law, one is provided in the bill. Thus, providing service warranties electronically without consent of the warranty holder could be possible under FUETA using the same analysis that applies to motor vehicle service agreements and home warranties.

In addition, another provision of FUETA provides if a Florida law other than FUETA requires a record to be sent or transmitted by a certain method, the record must be sent or transmitted by the method provided in the other law.<sup>9</sup> This provision may allow a motor vehicle service agreement or home warranty to be emailed to the agreement or warranty holder if the current law requiring delivery of the agreement or warranty to the holder is amended to allow electronic delivery, as the bill proposes, because the amended law allowing electronic delivery of the agreement or warranty may control over FUETA. This same analysis could apply to service warranties under the bill because the bill requires delivery of these warranties and allows for electronic delivery of them.

### **Financial Requirements for Service Warranty Associations**

The bill changes one of the financial requirements service warranty associations must have in order to keep its license. Current Florida law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the service warranty association's obligations under service warranties sold in Florida. There are two kinds of insurance policies that are permitted: (1) an insurance policy that pays only when the service warranty association fails to pay its obligations under the service warranties; and (2) a policy that pays claims under the association's service warranties from the first dollar. In addition, Florida law requires service warranty associations to maintain a writing ratio of gross written premiums to net assets of seven-to-one, meaning for every one dollar of net assets held by the association, the association can write seven dollars of premium. Under current Florida law a service warranty association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer that maintains a minimum capital surplus of \$100 million, maintains an "A" or higher rating, and is not affiliated with the service warranty association it insures.<sup>10</sup>

The bill expands the exception to the minimum writing ratio for service warranty associations. Under the bill, associations utilizing an insurance policy that pays only when the service warranty association fails to pay its obligations can avoid the writing ratio as long as the insurer issuing the policy to the association maintains a minimum capital surplus of \$200 million and an "A" or higher rating. The surplus requirement for insurers issuing both kinds of insurance policies for service warranty associations helps ensure there should be more than adequate capital in the insurance companies to honor all obligations of the insured association under service warranties sold in Florida.

For insurers providing first dollar coverage to service warranty associations, the bill repeals one of the three requirements for these insurers so the service warranty association purchasing insurance from the insurer can be exempt from the writing ratio required by law. The requirement that the insurer providing the first dollar coverage not be affiliated with the service warranty association it insures is repealed. These insurers must still maintain a minimum surplus of \$100 million and maintain an "A" or higher rating.

### **B. SECTION DIRECTORY:**

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<sup>9</sup> Section 668.50(8)(b)(2), F.S.

<sup>10</sup> The rating is from A.M. Best Company. However, an equivalent rating by another national rating service acceptable to the OIR is also allowed by statute.

**Section 1.** Amends s. 634.121, F.S., relating to forms, required procedures, and provisions for motor vehicle service agreement companies.

**Section 2.** Amends s. 634.312, F.S., relating to forms, required provisions, and procedures for home warranty associations.

**Section 3.** Amends s.634.406, F.S., relating to financial requirements for service warranty associations.

**Section 4.** Amends s. 634.414, F.S., relating to forms and required provisions for service warranty associations.

**Section 5.** Provides an effective date of July 1, 2014.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Warranty associations emailing service warranties will save costs associated with printing and mailing the warranties to warranty holders. The exact amount of savings cannot be calculated as it is unknown how many warranty associations will opt to deliver their warranties by email and how many warranty purchasers will choose to obtain their warranty by email rather than by mail. However, any savings realized by warranty associations should be passed through to the warranty purchasers.

If warranty associations incur computer reprogramming costs connected with emailing warranties or service agreements, any increased costs may be passed through to the warranty purchasers.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.