

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 496

INTRODUCER: Senator Simpson

SUBJECT: Warranty Associations

DATE: January 27, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	_____	_____	<u>CM</u>	_____

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**I. Summary:**

SB 496 allows for the electronic delivery of warranty association contracts as defined in Chapter 634, Florida Statutes. The bill allows warranty associations an additional exemption with regards to writing ratio requirements. The bill eliminates a current prohibition that bans affiliations between contractual liability insurers and warranty associations. The bill deletes an exemption for writing ratio requirements that applies to nationally traded companies that sell warranties in other states besides Florida.

**II. Present Situation:**

Chapter 634, F.S., governs the regulation of warranty associations. Warranty associations include motor vehicle service agreement companies<sup>1</sup>, home warranty associations<sup>2</sup>, and service warranty associations<sup>3</sup>. 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 Regulations (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. The OIR is not, however, required to approve rates for such warranties.

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<sup>1</sup> s. 634.011, F.S.

<sup>2</sup> s. 634.301, F.S.

<sup>3</sup> s. 634.401, F.S.

## **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 sent via US mail or hand delivered. Service warranties currently do not have any delivery requirements in law.

## **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>4</sup> E-SIGN provides that a contract formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. E-SIGN requires consumer disclosure and consent to electronic records in certain instances, however, 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>5</sup> Florida adopted the substantive provisions of UETA in 2000 and has not substantively changed the provisions since they were adopted.<sup>6</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>7</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

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<sup>4</sup> Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.

<sup>5</sup> 15 USC 7002.

<sup>6</sup> [http://www.uniformlaws.org/Act.aspx?title=Electronic Transactions Act](http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act) (last viewed January 27, 2014), <http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx> (last viewed January 27, 2014), and Final Staff Analysis for CS/CS/SB 1334 prepared by the House of Representatives Committee on Utilities & Communications, available at [http://archive.flsenate.gov/session/index.cfm?BI\\_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334](http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334) (last viewed January 27, 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>7</sup> s. 668.50(3), F.S.

focuses on how the parties are to comply with state consumer protections laws.<sup>8</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>9</sup>

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

Section 634.406, F.S., establishes the financial requirements, ratios, and limitations on service warranty associations. The law requires a 7-to-1 gross written premium to net assets ratio be maintained by warrantors and warranty sellers whom make up an association. Warrantor means any person engaged in the sale of service warranties and deriving not more than 50 percent of its gross income from the sale of service warranties.<sup>10</sup> Warranty seller means any person engaged in the sale of service warranties and deriving more than 50 percent of its gross income from the sale of service warranties.<sup>11</sup>

A warrantor who is also licensed under part I (Motor Vehicle Service Agreement) of ch. 634, F.S., can exceed the required ratio of gross written premium to net assets limitation only if they meet all of the following:

- Maintains net assets of at least \$2,500,000.
- Utilizes a contractual liability insurance policy approved by the office which:
  - Reimburses the service warranty association for 100 percent of its claims liability.
- The insurer issuing the contractual liability insurance policy must:
  - Maintain a policyholder surplus of at least \$100 million.
  - Be rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Not be affiliated with the warranty association.

Section 634.406(5), F.S., states no warranty seller may allow its gross written premiums in force to exceed a 7-to-1 ratio to net assets. However, s. 634.406(5), F.S., allows any warranty association not licensed under any other part of ch. 634, F.S., can exceed the required ratio of gross written premium to net assets limitation only if the association meets all of the following:

- Maintains net assets of at least \$750,000.
- Utilizes a contractual liability insurance policy approved by the OIR which:
  - Reimburses the service warranty association for 100 percent of its claims liability.
- The insurer issuing the contractual liability insurance policy must:
  - Maintain a policyholder surplus of at least \$100 million.
  - Be rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the OIR.
  - Not be affiliated with the warranty association.

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<sup>8</sup> Fry, Patricia Bumfield, *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 27, 2014).

<sup>9</sup> <http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx> (last viewed January 27, 2014).

<sup>10</sup> s. 634.401(15), F.S.

<sup>11</sup> s. 634.401(16), F.S.

- Provide a statement certifying the gross written premiums are covered under the contractual liability policy, whether or not it has been reported.

### **III. Effect of Proposed Changes:**

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

The bill allows the electronic delivery of motor vehicle service agreements and home warranties. The bill adds delivery requirements to service warranty agreements that are the same requirements, including US mail, for motor vehicle service agreements and home warranties. Current law does not require any method of delivery for a service warranty agreement. Under the bill, the parameters for delivery of motor vehicle service agreements, home warranties, and service warranties are consistent and the same. The bill specifies electronic transmission of motor vehicle service agreements, home warranty agreements, and service warranty agreements constitutes delivery of the agreement to the purchaser. All electronic transmissions of agreements must include a notice to the purchaser indicating the purchaser's right to receive a paper copy of the agreement. If the purchaser notifies the company that he or she does not agree to an electronic transmission of the agreement, a paper copy must be sent via US mail to the purchaser. Although service warranties do not have a delivery requirement in current law, one is provided in the bill. Providing service warranties electronically without consent of the purchaser could be permitted under FUETA using the same analysis that applies to motor vehicle service agreements and home warranties.

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

The bill allows service warranty associations an additional exemption from the required 7-to-1 ratio of gross written premium to net assets. Under the bill, a service warranty association licensed in any other part of ch. 634, F.S., can be exempt for the 7-to-1 premium to assets ratio for the service warranty premium written under part III, if the association has an insurance policy covering all claims after the point of the association's insolvency under s. 634.406(3), F.S. The insurer issuing the policy must maintain a minimum capital surplus of \$200 million and an "A" or higher A.M. Best rating. The bill eliminates a current prohibition in s. 634.406(6)(c)3., F.S., that bans affiliations between contractual liability insurers and warranty associations. Additionally, the bill removes s. 634.406(7), F.S., which provides an exemption for writing ratio requirements that applies to nationally traded companies issuing in other states besides Florida. The OIR indicates a majority of these national companies choose to receive their exemption though s. 634.406(6), F.S., and those effected by the change in the bill will be able to do the same.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Warranty associations will save on printing and mailing costs for each service warranty that is delivered electronically. Insurers issuing contractual liability insurance policies will be allowed to hold affiliations with the warranty associations they insure.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 634.121, 634.312, 634.406, and 634.414.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.