

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 925 Warranty Associations
SPONSOR(S): Insurance & Banking Subcommittee; Webb and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Fortenberry	Luczynski
2) Government Operations & Technology Appropriations Subcommittee	12 Y, 0 N	Helpling	Topp
3) Commerce Committee	23 Y, 0 N	Fortenberry	Hamon

SUMMARY ANALYSIS

Warranty associations in Florida, including those selling home and service warranties, are regulated by the Office of Insurance Regulation (OIR), must be licensed by OIR, and must maintain certain minimum financial standards in order to do warranty business in Florida.

Financial Requirements

- Home and service warranty associations must maintain an unearned premium reserve based on all warranty contracts in force, wherever written.
- Home and service warranty associations must meet certain net assets to written premium ratios based on all warranty contracts in force, wherever written.
- Service warranty associations must maintain a reserve deposit with the Department of Financial Services based on warranty contracts in force, wherever written.

Home Warranties Coverage Requirements

- Not all home warranty contracts clearly disclose certain exclusions related to rust or corrosion or the matching of HVAC system components related to compatibility and efficiency limitations.

The bill revises the financial requirements for home and service warranty unearned premium reserves, home and service warranty net assets to written premium ratios, and service warranty reserve deposits to be based only on warranty contracts in force in Florida. The unearned premium reserve must be maintained in a separate auditable account for contracts in force in Florida. The bill also provides that a home and service warranty association that is located in Florida, but sells warranties to consumers outside Florida, must comply with all financial requirement laws in those states.

The bill provides that home warranties sold in Florida may not exclude coverage because of rust or corrosion to an otherwise covered appliance, unit, or system, unless the rust or corrosion was a contributing cause of the mechanical breakdown or failure.

The bill establishes that, if a home warranty covers the replacement of components of an HVAC system due to wear and tear, but does not cover functional components of the systems necessary to maintain the compatibility or efficiency requirements of the manufacturer, the contract must:

- Provide the consumer with the option, at an additional cost, to purchase replacement coverage necessary to maintain the compatibility and efficiency requirements of the manufacturer; and
- Meet disclosure requirements related to the coverage limitations and additional coverage options.

The bill does not impact state or local government revenues or expenditures. It has an indeterminate direct economic impact on the private sector. The bill has an effective date of July 1, 2019, except as otherwise provided therein.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0925e.COM

DATE: 4/10/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Warranty Associations

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the Office of Insurance Regulation (OIR).¹ A service warranty is a contract that generally covers the repair, replacement, or maintenance of a consumer product.² A home warranty is a contract that either indemnifies the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement of a structural component of, or an appliance in, a home.³

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.⁴ Home and service warranty associations must be licensed by OIR⁵ and must maintain certain minimum financial standards in order to do warranty business in Florida.⁶

The following chart reflects the number of licensed warranty associations in Florida as of March 11, 2019.⁷

Type of Association/Company	Number of Licensees
Home Warranty Association	30
Service Warranty Association	91
Motor Vehicle Warranty Company	99
Total	220

Licensing and Financial Requirements for Warranty Associations

Home Warranty Associations

Florida law prohibits any person from providing, offering to provide, or holding oneself out as providing or offering to provide home warranties in Florida or from Florida without holding a license issued by OIR.⁸ Thus, even if a home warranty association wished to locate in Florida but only sell home warranties to consumers outside of Florida, it would still need a home warranty association license issued by OIR.⁹ Home warranties are often purchased over the internet and may be purchased by a seller and transferred to the buyer at the closing on the sale of a home.

¹ See ch. 634, F.S.

² S. 634.402, F.S.

³ S. 634.302, F.S.

⁴ See ch. 634, F.S.

⁵ Ss. 634.303 and 634.403, F.S.

⁶ Ss. 634.3077 and 634.406, F.S.

⁷ Data retrieved from OIR Active Company Search application, <https://floir.com/CompanySearch/index.aspx> (last visited Mar. 11, 2019).

⁸ S. 634.303, F.S.

⁹ See *id.*

Florida law requires that all home warranty associations maintain a funded, unearned premium¹⁰ reserve account, consisting of unencumbered assets,¹¹ equal to a minimum of 25 percent of the gross written premiums¹² received by it from all warranty contracts it has in force, regardless of whether those contracts are written to consumers in Florida or in another state.¹³ Home warranty associations have a net assets to written premiums ratio requirement that is based on warranties in force, wherever written.¹⁴

Effect of the Bill

The bill revises the requirement that all home warranty associations maintain a funded, unearned premium reserve account equal to a minimum of 25 percent of the gross written premiums received from all warranty contracts in force to require only that they maintain an account containing a minimum of 25 percent of the gross written premiums received from all warranty contracts in force in Florida. All assets held to satisfy this requirement must be maintained in a separate auditable account that is maintained for the benefit of Florida contract holders.

The bill establishes that home warranty associations must meet the net assets to written premium ratio requirements only for all warranty contracts in force in Florida. The funds maintained to meet this requirement must also be in a separate auditable account that is maintained for the benefit of Florida contract holders.

The bill provides that any home warranty association operating in Florida that issues home warranty or service contracts in other states must comply with all financial requirements laws in those states.

Service Warranty Associations

Florida law requires that all service warranty associations maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts it has in force regardless of whether those contracts are written to consumers in Florida or in another state.¹⁵ Florida law also requires that a service warranty association utilizing an unearned premium reserve place on deposit with the Department of Financial Services (DFS), a reserve deposit equal to 10 percent of the gross written premium received on all warranty contracts in force, wherever written.¹⁶ Furthermore, no service warranty seller may allow its ratio of gross written premiums in force to net assets to exceed 7-to-1.¹⁷

Effect of the Bill

The bill revises the requirement that all service warranty associations maintain a funded, unearned premium reserve account equal to a minimum of 25 percent of the gross written premiums received from all warranty contracts in force to require only that they maintain an account containing a minimum of 25 percent of the gross written premiums received from all warranty contracts in force in Florida. All assets held to satisfy this requirement must be maintained in a separate auditable account that is maintained for the benefit of Florida contract holders.

¹⁰ An unearned premium is a premium that a customer pays in advance, but that the warranty association has not yet earned. If a contract is canceled, the customer is generally entitled to a full refund of the unearned amount. Business Dictionary, <http://www.businessdictionary.com/definition/unearned-premium.html> (last visited Mar. 8, 2019).

¹¹ An unencumbered asset is one that is free from debt and can be easily sold or mortgaged. Business Dictionary, <http://www.businessdictionary.com/definition/unencumbered.html> (last visited Mar. 8, 2019).

¹² Gross written premium is the amount of premium written by a warranty association before deductions for commissions and other expenses. See IRMI, <https://www.irmi.com/term/insurance-definitions/gross-written-premium> (last visited Mar. 8, 2019).

¹³ S. 634.3077(1), F.S.

¹⁴ See s. 634.3077(2), F.S.

¹⁵ S. 634.406(1), F.S.

¹⁶ S. 634.406(2), F.S.

¹⁷ S. 634.406(5), F.S.

The bill requires that the reserve deposit that service warranty associations deposit with DFS be held for the benefit of contracts in force in Florida. The bill changes the requirement that a service warranty seller's ratio of gross written premiums in force to net assets not exceed 7-to-1 so that it only applies to gross written premiums in force for contracts written in Florida. The bill further requires that any service warranty association operating in Florida that issues service warranty or service contracts in other states must comply with all financial requirement laws in those states.

Coverage and Form Requirements for Home Warranty Associations

OIR's authority to regulate home warranty associations allows it to specify the contents of the forms that the associations provide to home warranty consumers and certain procedures that associations must follow when issuing warranties.¹⁸ Currently, home warranties issued in Florida vary with regard to coverage exclusions due to rust or corrosion to otherwise covered appliances, units, or systems. Some warranties exclude coverage due to the presence of rust or corrosion regardless of whether the rust or corrosion causes a mechanical breakdown of the appliance, unit, or system.¹⁹ Other home warranties provide coverage even if a system has malfunctioned due to rust or corrosion.²⁰ The lack of consistency in the wording of the home warranty contracts may lead consumers to be confused about the coverage that is actually provided for their appliances, units, or systems. Additionally, home warranties with broad coverage exclusions for the presence of any rust or corrosion, eliminate coverage where the rust or corrosion is cosmetic only and in no way affects the functionality of the appliance, unit, or system.

The Florida building code specifies rules and standards for constructed structures, including that of HVAC systems in those structures.²¹ Under the Florida Building Code, certain energy efficiency requirements must be met when an HVAC system is installed, repaired, or replaced.²² Meeting the energy efficiency requirements when an HVAC system is repaired may require the replacement of various components to maintain a "matched system."²³ In keeping with these requirements, manufacturers of air conditioning units have certain compatibility and efficiency requirements that must be met.

Home warranties that provide coverage for repair or replacement of HVAC systems do not always provide coverage that extends to the matching of HVAC system components so that compatibility and efficiency requirements will be met. Under existing home warranty contracts, consumers may not be made aware of this coverage limitation when they purchase home warranties. Furthermore, upon completion of repairs covered by home warranties, consumers may be left with mismatched systems that do not meet building code requirements and may have to pay for additional repairs in order to maintain manufacturers' compatibility and efficiency requirements and to meet building code requirements.

Effect of the Bill

The bill provides that home warranties sold in Florida may not exclude coverage because of rust or corrosion to an otherwise covered appliance, unit, or system, unless the rust or corrosion was a contributing cause of the mechanical breakdown or failure of that appliance, unit, or system.

¹⁸ S. 634.312, F.S.

¹⁹ See, e.g., Select Home Warranty, *Terms and Conditions/Service Contract Agreement*, <https://selecthomewarranty.com/termsconditions> (last visited Mar. 8, 2019).

²⁰ See, e.g., First American Home Warranty, *Sample Contract & Coverage Overview*, <https://homewarranty.firstam.com/media/contracts/8J.B.pdf> (last visited Mar. 8, 2019).

²¹ See, e.g., International Code Council, 2017–Florida Building Code–Energy Conservation, Sixth Edition, <https://codes.iccsafe.org/content/FBC2017> (last visited Mar. 8, 2019).

²² International Code Council, 2017–Florida Building Code–Energy Conservation, Sixth Edition, S. R 501.7, <https://codes.iccsafe.org/content/FEC2017/chapter-5-re-existing-buildings> (last visited Mar. 8, 2019).

²³ *Id.*

The bill establishes that, if a home warranty covers the replacement of components of an HVAC system due to wear and tear, but does not cover functional components of the systems necessary to maintain the compatibility or efficiency requirements of the manufacturer, the contract must:

- Provide the consumer with the option, at an additional cost, to purchase replacement coverage for the functional components of an HVAC system necessary to maintain the compatibility and efficiency requirements of the manufacturer; and
- State in conspicuous boldface type that the contract does not provide replacement coverage for functional components of an HVAC system necessary to maintain the compatibility or efficiency requirements of the manufacturer unless the warranty holder purchases the additional coverage. The contract must also state the website or phone number for the purchase of the additional coverage.

B. SECTION DIRECTORY:

Section 1. Amends s. 634.3077, F.S., relating to financial requirements.

Section 2. Creates s. 634.346, F.S., relating to home warranty coverage requirements.

Section 3. Amends s. 634.406, F.S., relating to financial requirements.

Section 4. Provides an effective date of July 1, 2019, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.²⁴

2. Expenditures:

None.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Section 2 of the bill, which either requires or excludes coverage under a home warranty in certain circumstances, may have a positive or negative direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

²⁴ Email from Derek Silver, Deputy Director of Government Affairs, Florida Office of Insurance Regulation, HB 925 (Mar. 19, 2019).

²⁵ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2019, the Insurance & Banking Subcommittee considered the bill, adopted one strike all amendment, and reported the bill favorably as a committee substitute. The committee substitute made the following changes to the bill:

- Removed section 1 of the bill regarding licensure requirements for home warranty associations selling home warranties in or from Florida, thereby leaving the existing licensure requirements intact.
- Clarified that the required unearned premium for all home warranty contracts in force that the bill changes to be required only on home warranty contracts in force in this state and maintained in a separate auditable account are to be maintained in a separate auditable account for Florida contracts.
- Revised the requirement that the reserve account on gross written premiums on all home warranty contracts in force will be required only on such contracts in force in this state and shall be maintained in a separate auditable account for Florida contracts.
- Established that home and service warranty associations that issue home warranty or service contracts in other states must comply with all financial requirement laws in those states.
- Moved the bill provisions created regarding rust and corrosion, and HVAC systems from s. 634.312, F.S., to a newly created section, s. 634.346, F.S., and adds an effective date of January 1, 2020, for that section to give home warranty associations time to implement the new requirements.
- Clarified that the required unearned premium for all service warranty contracts in force that the bill changes to be required only on service warranty contracts in force in this state are to be maintained in a "separate auditable account for Florida contracts."
- Revised the requirement that service warranty associations must deposit with the Department of Financial Services, a deposit of 10 percent of the gross written premium received on all service warranties in force to instead require such deposit for Florida contracts of 10 percent of the gross written premium received on service warranties in force in Florida.
- Revised the requirement regarding the ratio of gross written premiums to net assets for service warranties so that no service warranty association may allow its ratio of gross written premiums in force to exceed 7-to-1 to instead require that the ratio only applies to contracts written in Florida.
- Made various formatting and technical changes.

The staff analysis has been updated to reflect the committee substitute.