

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 623 Home Warranty Transfers

SPONSOR(S): Commerce Committee, Insurance & Banking Subcommittee, Steele

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Herrera	Lloyd
2) Commerce Committee	20 Y, 0 N, As CS	Herrera	Hamon

SUMMARY ANALYSIS

A warranty agreement is a contract that may be given by a builder or purchased by a builder from a home warranty association. In Florida, home warranty associations are regulated by the Office of Insurance Regulations (OIR) and must maintain certain minimum financial standards to do business. The home warranty agreement often covers home systems and common appliances, whereas a builder warranty covers structural components of a home. A home warranty agreement is tied to the owner selling the home and does not transfer to the person buying the home unless the home seller transfers it to the new owner.

The bill makes warranties covering structural components of a home automatically transfer with the property when it is sold, rather than transferring it only if a separate assignment is made within 15 days of the sale of the residence.

The bill also:

- Defines structural components to include things such as the roof, plumbing system, electrical system, foundation, basement, exterior/interior walls, ceilings, floors, stucco, or spray foam.
- Applies the automatic transfer requirement to all express written warranties issued by the home builder or purchased by the builder from a home warranty association.
- Provides that the transfer of a warranty does not modify or extend the warranty's commencement date or its duration, nor is the scope of coverage expanded due to the transfer.
- Specifies that the builder is not transacting insurance when providing a compliant warranty to a home buyer.
- Prohibits the provision of indemnification against consequential damages resulting from the failure of any structural component except through insurance.

Also, the bill establishes that it is an unfair method of competition and an unfair or deceptive acts or practice for a builder to fail to continue to perform obligations under a transferred home warranty agreement.

This bill provides an effective date as of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A warranty is an assurance that a manufacturer or seller makes about the condition of its product.¹ A warranty means that a manufacturer or seller will replace or repair the product under certain instances. A warranty can be either express or implied.²

An express warranty is a verbal or written assurance for the product.³ On the other hand, an implied warranty is an unstated assurance that the product is made for its intended purpose.⁴ An implied warranty is in addition to an express warranty. However, an implied warranty may be negated or limited by an express warranty. There is no implied warranty if a seller states that the product is “as is”, “with all faults”, or similar language.⁵

Home Warranties

A home warranty is a contract or agreement between the homeowner and the issuing company, safeguarding the homeowner from expenses related to the repair or replacement of structural components or appliances in the home.⁶ This protection extends to issues caused by normal wear and tear or defects in these components or appliances.⁷

Home warranty contracts or agreements can be drafted by a Home Warranty Association licensed under s. 634.303, F.S., or by an authorized insurance company permitted to offer coverage in this category.⁸

Builder Warranties

A builder warranty, like a home warranty, is a contractual agreement between the builder and the homeowner, shielding the homeowner from expenses related to the repair or replacement of structural components in the home.⁹

Despite these similarities, there are distinctions in their coverage.¹⁰ While a home warranty typically covers household appliances and systems, such as refrigerators and heating/cooling systems, and is commonly associated with residential real estate transactions, a builder warranty—also referred to as a structural warranty—is specifically provided by a builder to a homebuyer.¹¹ The purpose of the builder warranty is to safeguard the homebuyer against significant structural defects in workmanship and materials used during the construction of the new home by the builder.¹²

Magnuson-Moss Warranty Act

¹ S. 681.102(22), F.S.

² 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

³ “An express warranty is created by an affirmation of fact or promise made by the seller to the buyer that relates to the goods, by any description of the goods that is made part of the basis of the bargain, or by any sample or model that is made part of the basis of the bargain.” S. 672.313, F.S.

⁴ S. 672.314, F.S.

⁵ S. 672.316, F.S.

⁶ S. 634.301(2), F.S.

⁷ *Id.*

⁸ S. 634.303, F.S.

⁹ S. 634.301(2), F.S.

¹⁰ Quality Builders Warranty, *What is a Structural Warranty?*, <https://qbwc.com/blog-news/what-is-a-structural-warranty/> (last visited Dec. 18, 2023).

¹¹ *Id.*

¹² *Id.*

The Magnuson-Moss Warranty Act (MMWA)¹³ is a federal law that governs consumer product warranties. Passed in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.¹⁴

The MMWA defines three kinds of consumers:

- a buyer of any consumer product;
- any person to whom such product is transferred during the duration of an implied or express warranty applicable to the product; and
- any other person who is entitled by the terms of such warranty or under applicable State law to enforce the obligations of the warranty.¹⁵

Home and Builder Warranties – Current Situation

The elective market in Florida allows a builder, seller, buyer, or owner of a home to choose whether they would like to purchase a home warranty to cover against the cost of repair or replacement, or furnishes repair or replacement, of any structural component or appliance of a home, caused by wear and tear or a defect of a structural component or appliance.¹⁶

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).¹⁷ OIR regulates the insurance industry in Florida. OIR is responsible for the regulation of all activities in the state concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision.¹⁸

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.¹⁹ Home and service warranty associations must be licensed by OIR²⁰ and must maintain certain minimum financial standards in order to do warranty business in Florida.²¹

The following chart reflects the number of licensed warranty associations in Florida as of December 6, 2023:²²

Type of Association/Company	Number of Licensees
Home Warranty Association	46
Service Warranty Association	101
Motor Vehicle Warranty Company	119
Total	266

¹³ 15 U.S.C. §§ 2301-2312 (1975).

¹⁴ MMWA does not apply if a seller or manufacturer does not provide a warranty on their product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited Dec 4, 2023).

¹⁵ *O'Connor v. BMW of N. Am., LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); see also, § 2310(d) of MMWA provides that, “a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages...”

¹⁶ S. 634.301(2), F.S.

¹⁷ See ch. 634, F.S.

¹⁸ Florida Office of Insurance Regulation, *Organization and Operation*, <https://fior.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative> (last visited Dec. 7, 2023). See also s. 624.308, F.S., and R. 690, et seq., F.A.C.]

¹⁹ See ch. 634, F.S.

²⁰ Ss. 634.303 and 634.403, F.S. Neither the Florida Insurance Code nor this section grants permission for any home warranty association to conduct insurance business beyond what is specifically defined as home warranty or to participate in any other form of insurance. Any engagement in alternative insurance types requires explicit authorization through a certificate of authority issued by the office under the provisions of the Florida Insurance Code. S. 634.325, F.S.

²¹ Ss. 634.3077 and 634.406, F.S.

²² Data retrieved from OIR Active Company Search application, <https://fior.com/CompanySearch/index.aspx> (last visited Dec. 6, 2023).

Home warranty providers must ensure that every home warranty is sent or delivered to the warranty holder within 45 days after the commencement of coverage, subject to the insurer's or home warranty association's premium payment requirements.²³ Furthermore, all home warranty contracts are transferable.²⁴ The contract should explicitly inform the purchaser of their right to assign it within 15 days of selling or transferring the home. The home warranty company may charge an assignment fee not exceeding \$40.²⁵ The home warranty may be assigned, as well from a home builder, who initially purchased the warranty, to subsequent home purchasers.²⁶

Currently, several companies offer warranties covering structural components of a home in Florida; however, Florida law does not regulate these warranties. Below are companies that provide builder warranties:²⁷

Manufacturer	Coverage Offered
America's Preferred Structural Warranty	<ul style="list-style-type: none"> • 1-year coverage on workmanship • 1 or 2-year coverage on home systems • 10-year coverage on structural defects
2-10 HBW	<ul style="list-style-type: none"> • 1-year coverage for workmanship • 2-year coverage for distribution systems • 10-year coverage for qualifying structural defects on newly built homes
Residential Warranty Company	<ul style="list-style-type: none"> • 1-year coverage for workmanship • 7-year coverage for qualifying structural defects • 10-year coverage for qualifying structural defects

Effect of the Bill

The bill makes warranties covering structural components of a home automatically transfer with the property when it is sold, rather than transferring it only if a separate assignment is made within 15 days of the sale of the residence.

The bill also:

- Defines structural components to include things such as the roof, plumbing system, electrical system, foundation, basement, exterior/interior walls, ceilings, floors, stucco, or spray foam.
- Applies the automatic transfer requirement to all express written warranties issued by the home builder or purchased by the builder from a home warranty association.
- Provides that the transfer of a warranty does not modify or extend the warranty's commencement date or its duration, nor is the scope of coverage expanded due to the transfer.

²³ S. 634.312(2), F.S.

²⁴ S. 634.312(1), F.S.

²⁵ *Id.*

²⁶ *Id.* Certain exemptions in the home warranty association statute cover cases where builders or appliance sellers offer standard guarantees without extra charges, exclude service contracts with non-profits handling repairs, and accept contracts aligning with Florida's Insurance Code for systems and appliances, excluding structural components. Individuals affiliated with a domestic insurer are exempt if they avoid offering home warranties to Florida residents, but compliance requires the insurer to directly issue warranties or provide a specific policy. Non-compliance, as determined by the Office of Insurance Regulation, subjects the person to home warranty association regulations. Additionally, the regulations do not apply to programs offering warranties on new homes if supported by an insurance policy from a licensed Florida insurer, contingent on approval by the Office. S. 634.301(2), F.S.

²⁷ America's Preferred Structural Warranty, Coverage, <https://www.apsw.com/>. 2-10 HBW, Structural Warranties, <https://www.2-10.com/builders-warranty/structural-warranties/>. Residential Warranty Company, Structural Warranties vs Extended Warranties – What's the Difference?, <https://www.rwcwarranty.com/homeowners-2/structural-warranties-vs-extended-warranties/>.

- Specifies that the builder is not transacting insurance when providing a compliant warranty to a home buyer.
- Prohibits the provision of indemnification against consequential damages resulting from the failure of any structural component except through insurance.

Finally, the bill establishes that it is an unfair method of competition and an unfair or deceptive acts or practice for a builder to fail to continue to perform obligations under a transferred home warranty agreement.

This bill provides an effective date as of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 634.312, F.S., relating to forms; required provisions and procedures.

Section 2: Amends s. 634.331, F.S., relating to coverage of property for sale.

Section 3: Creates Part IV of Ch. 634, F.S., relating to miscellaneous provisions.

Section 4: Renames Ch. 634 from “Warranty Associations” to “Warranties and Warranty Associations.”

Section 5: Provides an effective date of July 1, 2024.

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:

There may be a positive economic impact for property owners and subsequent owners as they can benefit from the remaining home warranty coverage for their residential real property without needing additional paperwork due to the currently required separate assignment agreement. The home purchaser could bear lower out of pocket costs if there is covered damage or wear and tear.

Home warranty associations and insurers may experience nominal increased costs due to the bill’s prohibition on assignment fees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect counties or municipalities governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 3 of the bill was amended to fix a technical redundancy in the statute, which restates a definition of a term already defined in s. 634.301(8), F.S., i.e., the term "listing period" already includes the date the sale is closed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 13, 2023, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Clarified that, if a home warranty covers structural components, it must automatically transfer to the new homeowner upon the sale of the home.
 - Structural components include things such as the roof, plumbing system, electrical system, foundation, basement, exterior/interior walls, ceilings, floors, stucco, or spray foam.
- Applied the automatic transfer requirement to express written warranties issued by the home builder or purchased by the builder from home warranty association.
- Provided that the transfer of a warranty does not modify or extend the warranty's commencement date or its duration, nor is the scope of coverage expanded due to the transfer.
- Specified that the builder is not transacting insurance when providing a compliant warranty to a home buyer.
- Prohibited the provision of indemnification against consequential damages resulting from the failure of any structural component except through insurance.

On January 23, 2024, the Commerce Committee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment clarified the application of the unfair competition and trade practices portion of the bill to avoid a possible conflict with existing law applicable to home warranty associations.

The analysis is drafted to the committee substitute as passed by the Commerce Committee.