

**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 Rules

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**BILL:** CS/CS/CS/SB 966

**INTRODUCER:** Rules Committee; Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Burgess

**SUBJECT:** Home Warranty Transfers

**DATE:** February 28, 2024

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Moody</u>	<u>Twogood</u>	<u>RC</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 966 requires a builder to warrant a newly constructed home for defects of equipment, material, or workmanship furnished by the builder or any subcontractor or supplier resulting in noncompliance with standards of quality measured by acceptable trade practices for one year from the date of the original conveyance or full completion of each of any items completed after conveyance of title. The builder must comply with the warranty requirements for the entire year even if the newly constructed home is sold or transferred. The builder must remedy, at the builder's expense, any such defects and store any work damaged in fulfilling the warranty. A builder may purchase a warranty from a home warranty association to cover the warranties required in the bill.

The bill specifies that a builder's warranty is not required to cover normal wear and tear, normal house settling, substantial modifications by a purchaser, or damage to the newly constructed home caused by specified persons or an act of God. A builder may provide a warranty that is broader in scope or that is longer than the required warranty if the warranty explicitly states certain information. The bill limits enforcement to a private civil cause of action by a purchaser against a builder for failing to comply with the statutory requirement.

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

## II. Present Situation:

### Background

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 Regulation (OIR)<sup>1</sup> and must maintain certain minimum financial standards to do business.<sup>2</sup>

### *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.<sup>3</sup> This protection extends to issues caused by normal wear and tear or defects in these components or appliances.<sup>4</sup> 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.<sup>5</sup> A warranty means that a manufacturer or seller will replace or repair the product under certain instances.<sup>6</sup>

Home warranty contracts or agreements can be drafted by a home warranty association<sup>7</sup> licensed under s. 634.303, F.S., or by an authorized insurance company permitted to offer coverage in this category.<sup>8</sup>

### *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.<sup>9</sup>

Despite these similarities, there are distinctions in their coverage.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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<sup>1</sup> Section 634.302, F.S.

<sup>2</sup> Section 634.305, F.S.

<sup>3</sup> Section 634.301(2), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 634.312(1), F.S.

<sup>6</sup> 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

<sup>7</sup> Section 634.301(3), F.S., defines “home warranty association” as any corporation or any other organization, other than an authorized insurer, issuing home warranties.

<sup>8</sup> Section 634.303, F.S.

<sup>9</sup> Section 634.301(2), F.S.

<sup>10</sup> Quality Builders Warranty, *What is a Structural Warranty?*, available at: <https://qbwc.com/blog-news/what-is-a-structural-warranty/> (last visited Feb. 5, 2024).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

## HUD warranties

The United States Department of Housing and Urban Development (“HUD”) includes the Federal Housing Administration and is the federal regulatory agency responsible for the oversight of housing in the United States.<sup>13</sup> HUD requires a builder to provide a warranty for a dwelling designed for not more than a four-family residence which is approved for mortgage insurance by HUD.<sup>14</sup> The builder must warrant for one year from the date of the original conveyance of title or initial occupancy of the dwelling, whichever occurs first, that the dwelling is constructed in substantial conformity with the plans and specification.<sup>15</sup>

## Manufactured Homes Regulation

Federal law regulates the construction and safety standards of manufactured homes.<sup>16</sup> Manufacturers of manufactured homes must certify that such home conforms to all applicable Federal construction and safety standards.<sup>17</sup> A manufacturer must notify the first purchaser, registered owner, and retailer of a defect that relates to construction or safety standards, or which constitutes an imminent safety hazard to the purchaser, within a reasonable time after discovering such defect.<sup>18</sup> If the Secretary of HUD or a court of appropriate jurisdiction finds, prior to the sale by a distributor or retailer to a purchaser, that a manufactured home does not conform with the construction or safety standards or contains a defect which constitutes an imminent safety hazard, the manufacturer is required to: (a) repurchase the manufactured home and reimburse certain costs, (b) at the manufacturer’s expense, immediately furnish the distributor or retailer with the required conforming part or parts or equipment for installation, or (c) reimburse the distributor or retailer for the installation.<sup>19</sup> If a manufacturer fails to comply with these requirements, a distributor or retailer may bring an action seeking a court injunction compelling compliance.<sup>20</sup>

## Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act (MMWA)<sup>21</sup> is a federal law that governs consumer product warranties. Passed in 1975, the MMWA 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.<sup>22</sup>

The MMWA defines three kinds of consumers:

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<sup>13</sup> The HUD, *Office of Housing*, available at: [Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](https://www.hud.gov/) (last visited Feb. 26, 2024).

<sup>14</sup> 12 U.S.C. §1701j-1(a).

<sup>15</sup> *Id.*

<sup>16</sup> 42 U.S.C. §5403.

<sup>17</sup> 42 U.S.C. §5415.

<sup>18</sup> 42 U.S.C. §5414.

<sup>19</sup> 42 U.S.C. §5412(a).

<sup>20</sup> 42 U.S.C. §5412(b).

<sup>21</sup> 15 U.S.C. §§ 2301-2312 (1975).

<sup>22</sup> 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, available at: [https://thebusinessprofessor.com/en\\_US/consumer-law/magnuson-moss-warranty-act](https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act) (last visited Feb. 5, 2024).

- 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.<sup>23</sup>

### Home and Builder Warranties

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.<sup>24</sup>

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 OIR.<sup>25</sup> 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.<sup>26</sup>

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.<sup>27</sup> Home and service warranty associations must be licensed by OIR<sup>28</sup> and must maintain certain minimum financial standards in order to do warranty business in Florida.<sup>29</sup>

The following chart reflects the number of licensed warranty associations in Florida as of January 23, 2024:<sup>30</sup>

<sup>23</sup> 15 U.S.C. § 2301(3) of MMWA; *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...”

<sup>24</sup> Section 634.301(2), F.S.

<sup>25</sup> *See* ch. 634, F.S.

<sup>26</sup> Florida Office of Insurance Regulation, *Organization and Operation*, available at: <https://florir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative> (last visited Feb. 5, 2024). *See also* s. 624.308, F.S., and R. 69O, et seq., F.A.C.

<sup>27</sup> *See* ch. 634, F.S.

<sup>28</sup> Sections 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. Section 634.325, F.S.

<sup>29</sup> Sections 634.3077 and 634.406, F.S.

<sup>30</sup> Data retrieved from OIR Active Company Search application, available at: <https://florir.com/CompanySearch/index.aspx> (last visited Jan. 23, 2024).

<b>Type of Association/Company</b>	<b>Number of Licensees</b>
Home Warranty Association	46
Service Warranty Association	102
Motor Vehicle Warranty Company	119
<b>Total</b>	<b>267</b>

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.<sup>31</sup> Furthermore, all home warranty contracts are transferable.<sup>32</sup> 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.<sup>33</sup> The home warranty may be assigned, as well from a home builder, who initially purchased the warranty, to subsequent home purchasers.<sup>34</sup>

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:<sup>35</sup>

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

<sup>31</sup> Section 634.312(2), F.S.

<sup>32</sup> Section 634.312(1), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> *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. Sections 634.301(2) and 634.327, F.S.

<sup>35</sup> America’s Preferred Structural Warranty, *Coverage*, available at: <https://www.apsw.com/> (last visited Feb. 5, 2024). 2-10 HBW, *Structural Warranties*, available at: <https://www.2-10.com/builders-warranty/structural-warranties/> (last visited Feb. 5, 2024). Residential Warranty Company, *Structural Warranties vs Extended Warranties – What’s the Difference?*, available at: <https://www.rwcwarranty.com/homeowners-2/structural-warranties-vs-extended-warranties/> (last visited Feb. 5, 2024).

Residential Warranty Company	<ul style="list-style-type: none"> <li>• 1-year coverage for workmanship</li> <li>• 7-year coverage for qualifying structural defects</li> <li>• 10-year coverage for qualifying structural defects</li> </ul>
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**III. Effect of Proposed Changes:**

**Section 1** creates s. 553.837, F.S., to require a builder to warrant a newly constructed home for all construction flaws caused by defects of equipment, material, or workmanship furnished by the builder or any subcontractor or supplier resulting in the noncompliance with standards of quality as measured by acceptable trade practices for a period of one year from the date of original conveyance of title to the initial purchaser or from the date of full completion of each of any items completed after conveyance of title. The builder must comply with the warranty requirements for the duration of the warranty even if the newly constructed home is sold or transferred and is no longer owned by the initial purchaser. The builder must remedy, at the builder’s expense, any such defects and must restore any work damaged in fulfilling the terms and conditions of the warranty. A builder may purchase a warranty from a home warranty association provided for under ch. 634, F.S., to cover the warranties required under the bill.

The bill specifies that the required warranty need not provide coverage for:

- Normal wear and tear;
- Normal house settling within generally acceptable trade practices;
- Any object or part of the newly constructed home that has been substantially modified by the initial or a subsequent purchaser; or
- Damage caused by the initial purchaser, a subsequent purchaser, a third party, or an act of God over which the builder has no control, such as a natural disaster or fire caused by lightning.

A builder may provide a warranty that is broader in scope or that is longer than the one year required under the bill if the warranty explicitly states:

- The builder is providing a warranty that is longer than required and the length of time for which the warranty is granted; and
- Whether the warranty is transferrable for the duration of the warranty and specify any terms under which the warranty may be transferred.

Enforcement is limited to a private civil cause of action by a purchaser against any builder that fails to comply with the statutory requirements of the bill.

The bill defines the following terms:

- “Builder” means “the primary contactor of a home who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he or she is connected and who has the responsibility to supervise, direct, manage, and control the construction work on a job for which he or she has obtained a building permit. Construction work includes, but is not limited to, construction of structural components.”<sup>36</sup>

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<sup>36</sup> Section 553.993, F.S.

- “Newly constructed home” means “any residential real property, or manufactured or modular home, which is a single-family dwelling, duplex, triplex, or quadruplex that has not been previously occupied.”

**Section 2** of the bill provides an effective date as of July 1, 2024.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Purchasers of new homes and subsequent purchasers should benefit financially as they will not bear out-of-pocket costs to remedy defects covered by the builder’s warranty for their residential real property.

Builders may experience an increase in costs due to the required workmanship warranty to the extent the bill’s requirements result in the builder providing a warranty when it did not previously, or if the bill increases the scope and duration of the warranty the builder provides for certain projects.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following section of the Florida Statutes: 553.837.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Rules on February 26, 2024:**

- Requires a builder to warrant a newly constructed home for defects of equipment, material, or workmanship for a specified time;
- Requires the builder to comply with the warranty requirements for the duration of the warranty even if the home is sold or transferred;
- Requires a builder to remedy, at the builder’s expense, such defects and restore any work damaged in fulfilling the terms and conditions of the warranty;
- Authorizes a builder to purchase a warranty from a home warranty association to cover the required warranties;
- Specifies the warranty need not cover normal wear and tear, normal house settling, substantial modifications of newly constructed homes by purchasers, and certain damage of such homes;
- Authorizes a builder to provide a warranty that is broader in scope or longer than the statutory warranty required in the bill if specified information is contained in the warranty;
- Restricts enforcement to a private civil cause of action by a purchaser against any builder; and
- Defines terms.

**CS/CS by Commerce and Tourism on February 6, 2024:**

The committee substitute modifies the definition of a “structural component” to:

- Include electrical and plumbing systems;
- Specify that the term includes any item covered in the terms of a home warranty; and
- Remove a provision that “exterior walls” includes, but is not limited to, any siding, stucco, or paint on the exterior walls.

**CS by Banking and Insurance on January 29, 2024:**

- Removes the amendments to s. 634.312(1), F.S., relating to home warranties;



- Removes the provision that adds failing to continue to perform obligations under the terms of an assigned home warranty contract as a ground for unfair and deceptive acts or practices;
- Provides that the provisions on the assignment of home warranties apply except as provided in s. 634.602, F.S., created in the bill relating to the automatic transfer of certain warranties;
- Amends the provisions on coverage of property for sale to modify the time within payment must be made for the purchase of warranty when a property is listed for sale, and provides that the requirements in s. 634.602, F.S., created in the bill relating to the automatic transfer of certain warranties, apply to a home warranty that is transferred to the home purchaser;
- Provides that a builder's express written warranty or a warranty that a builder purchases from a home warranty association automatically transfers to a subsequent purchaser in certain circumstances;
- Provides when maintenance contracts automatically transfer to a subsequent purchaser;
- Requires a subsequent homeowner who accepts assignment of a maintenance contract to be bound by the terms of the contract;
- Requires a builder or home warranty association to provide notice of any amounts due under the maintenance contract by specified method;
- Requires a subsequent purchaser who receives the benefit of an automatic transfer of a warranty to notify the builder or home warranty association of the new warrantee;
- Prohibits a builder from charging a fee for a transfer of a warranty which occurs automatically;
- Provides for construction of the provisions, including that the section does not:
  - Modify or extend the commencement date or the duration or scope of the warranty's terms;
  - Require a builder or home warranty association to be obligated under a warranty that has become null and void;
  - Require a builder to obtain a license under the Florida Insurance Code;
  - Permit the provision of indemnification against consequential damages arising from the failure of any structural component; and
  - Require any subsequent purchaser to be bound by the terms of a home maintenance contract unless he or she agrees to the maintenance contract being assigned to him or her;
- Renames ch. 634 to "Warranties and Warranty Associations"; and
- Defines terms.

**B. Amendments:**

None.