

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.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 2618

INTRODUCER: Judiciary Committee and Senator Bennett

SUBJECT: Warranty Associations

DATE: April 20, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Messer	Burgess	BI	Favorable
2.	Treadwell	Maclure	JU	Fav/CS
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

A warranty is a written affirmation by a supplier of a consumer product to a buyer providing that the material or workmanship is free of defects or will be repaired or replaced free of charge if the product fails.¹ Chapter 634, F.S., which is within the Florida Insurance Code,² governs the regulation of warranty associations. That chapter is comprised of three parts to reflect the three types of warranty associations, which are: service warranty associations, home warranty associations, and motor vehicle service agreement companies. Service warranty contracts allow consumers to purchase product protection against failure and defects on consumer goods. Home warranty contracts indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer’s warranty expires.

Although 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

¹ BLACK’S LAW DICTIONARY, 1620 (8th ed. 2004).

² Section 624.01, F.S., recognizes chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the “Florida Insurance Code.”

Insurance Regulation (OIR).³ The OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

This bill reduces much of the regulatory oversight that OIR currently exercises over warranty associations. Removing OIR's regulation of warranty companies is balanced by new prohibited acts created by the bill and the addition of criminal penalties to the statutes that regulate warranty companies. Among its key provisions, the bill:

- Exempts motor vehicle service agreements sold to non-consumers from the Florida Insurance Code.
- Provides that unlicensed activity by warranty associations is a first-degree misdemeanor.
- Prohibits false, deceptive, or misleading advertising.
- Removes the requirement to submit warranty service agreements to OIR for approval; however, the bill provides that OIR may order a form not to be used if it does not meet specified criteria.
- Switches from quarterly to annual financial reports requirements.
- Makes periodic OIR examinations discretionary and provides factors to consider in choosing to conduct an examination.
- Provides that there is no violation for knowingly overcharging if a motor vehicle service agreement company refunds any excess premium within 45 days.
- Makes a failure to provide a complete sample copy of the terms and conditions of a service or warranty agreement prior to sale an unfair practice, but provides that this information may be provided online.
- Broadens the definition of home warranty service agreements.
- Allows premium increases in renewal home warranty contracts if supported by claims history or claims cost data.
- Removes OIR's ability to require additional regular or special reports from home warranty associations.
- Repeals the requirement for home warranty associations and motor vehicle service agreement companies to file rates with OIR.

This bill substantially amends the following sections of the Florida Statutes: 628.4615, 634.011, 634.031, 634.041, 634.095, 634.121, 634.1213, 634.137, 634.141 634.1815, 634.282, 634.301, 634.303, 634.308, 634.312, 634.3123, 634.314, 634.3205, 634.336, 634.344, 634.401, 634.403, 634.406, 634.414, 634.4145, 634.415, 634.416, 634.4225, and 634.436. The bill also repeals 634.313(4), 634.3126, 634.136(2) and (3), and 634.1216, Florida Statutes.

II. Present Situation:

Chapter 634, F.S., which is within the Florida Insurance Code,⁴ governs the regulation of warranty associations. This chapter is comprised of three parts to reflect the three types of warranty associations: service warranty associations, home warranty associations, and motor vehicle service agreement companies. Service warranty contracts allow consumers to purchase

³ See ss. 634.021, 634.302, and 634.402, F.S.

⁴ Section 624.01, F.S., recognizes chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., as the "Florida Insurance Code."

product protection against failure and defects on consumer goods. Home warranty contracts indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires.

Although 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).⁵ The OIR's regulatory authority includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, OIR is not required to approve rates for warranties.

Motor Vehicle Service Agreements

Florida law defines a motor vehicle service agreement as a contract that indemnifies a vehicle owner (or holder of the agreement) against loss caused by failure or defect in a motor vehicle causing the vehicle not to function as it was originally intended.⁶

To offer motor vehicle service agreements in Florida, one must be licensed and pay an annual nonrefundable license fee to OIR.⁷ All applicants for licensure must meet certain solvency requirements and, once licensed, must report to OIR certain financial and statistical information on a quarterly basis.⁸ Companies are also required to file with the office the rates, rating schedules, or rating manuals used, including all modifications of rates and premiums, to be paid by the service agreement holder.⁹

Currently, OIR can discipline motor vehicle service agreement companies for a variety of offenses including: material misstatement, misrepresentation, or fraud in obtaining licensure; willful misrepresentation of any service agreement or willful deception with regard to any agreement; demonstrated lack of fitness or trustworthiness to engage in the service agreement business; and fraudulent or dishonest practices in the conduct of business under the license.¹⁰

Section 634.1815, F.S., provides that generally, a sales representative is prohibited from rebating any portion of his commission except as follows:

- The rebate is available to all consumers in the same actuarial class;
- The rebate is in accordance with a rebating schedule filed by the sales representative with the OIR;
- The rebating schedule is uniformly applied;
- The rebate schedule is prominently displayed at the sales representative's place of business; and
- No use of one's status as a member of a protected class is used in the determination as to who receives such rebates.

⁵ Sections 634.021, 634.302, and 634.402, F.S.

⁶ Section 634.011(8), F.S.

⁷ Section 634.031, F.S.

⁸ Sections 634.041 and 634.137, F.S.

⁹ Section 634.1216, F.S.

¹⁰ Sections 634.2815 and 634.282, F.S.

Section 634.121, F.S., provides instructions for refunding premiums on cancelled service agreement contracts. If a service agreement is canceled by the service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium.¹¹ If, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company must return directly to the agreement holder not less than 90 percent of the unearned pro rata premium.¹²

Home Warranty Associations

Home warranty associations are organizations that issue home warranty contracts.¹³ Home warranty contracts can be contracts that are offered in connection with the sale of residential property, contracts that are offered as a home improvement loan, or contracts that are offered as a loan that is backed by real property. In any of these scenarios a home warranty contract indemnifies the warranty holder against the cost of repair or replacement of any appliance or structural component of a home that fails to function as intended.¹⁴

To offer home warranty contracts in Florida, one must be licensed and pay an annual nonrefundable license fee to OIR.¹⁵ All applicants for licensure must meet certain solvency requirements and, once licensed, must report to OIR certain financial and statistical information on a quarterly basis.¹⁶ Home warranty associations are also required to file with the office information pertaining to rates and premiums charged for home warranties.¹⁷

Currently, OIR may discipline home warranty associations for a variety of offenses including: misstatements, misrepresentation, or fraud in advertising; coercion of debtors; unfair claim settlement practices; discriminatory refusal to issue a contract; and other similar offenses.¹⁸

Section 634.3205, F.S., provides that generally, a sales representative is prohibited from rebating any portion of his commission except as follows:

- The rebate is available to all consumers in the same actuarial class;
- The rebate is in accordance with a rebating schedule filed by the sales representative with the OIR;
- The rebating schedule is uniformly applied;
- The rebate schedule is prominently displayed at the sales representative's place of business; and
- No use of one's status as a member of a protected class is used in the determination as to who receives such rebates.

¹¹ Section 634.121(5)(b), F.S.

¹² *Id.*

¹³ Section 634.301(4), F.S.

¹⁴ Section 634.301(3), F.S.

¹⁵ Section 634.303(1), F.S.

¹⁶ Sections 634.304, 634.305 and 634.3077, F.S.

¹⁷ Section 634.3126, F.S.

¹⁸ Sections 634.335 and 634.336, F.S.

Regarding cancellation provisions and return of unearned pro rata premium, current law states that any home warranty agreement may be canceled by the purchaser within 10 days after purchase.¹⁹ The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium is based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium.²⁰

Service Warranty Associations

Service warranty associations are entities that issue service warranties. A service warranty is a contract to repair, replace, or maintain a consumer good, or to indemnify for repair, replacement, or maintenance, for a defect in the covered consumer good.²¹

To offer service warranty contracts in Florida, one must be licensed and pay an annual nonrefundable license fee to OIR.²² All applicants for licensure must meet certain solvency requirements and, once licensed, must report to OIR certain financial and statistical information on a quarterly basis.²³ Service warranty associations are subject to periodic examinations by the OIR.²⁴ Service warranty associations are also required to file with the OIR all service warranty forms to be used in this state. All forms must be approved by the OIR before a service warranty association may use the form.²⁵ The OIR does not have authority to approve rates, but the office is required to review and approve all forms used in the state.

Currently, OIR may discipline service warranty associations for a variety of offenses including: misstatements, misrepresentation, or fraud in advertising; defamation; unfair claim settlement practices; discriminatory refusal to issue a contract; and other similar offenses.²⁶

Section 634.4225, F.S., provides that generally, a sales representative is prohibited from rebating any portion of his commission except as follows:

- The rebate is available to all consumers in the same actuarial class;
- The rebate is in accordance with a rebating schedule filed by the sales representative with the OIR;
- The rebating schedule is uniformly applied;
- The rebate schedule is prominently displayed at the sales representative's place of business; and

¹⁹ Section 634.312(8), F.S.

²⁰ *Id.*

²¹ Section 634.401(13), F.S.

²² Section 634.403, F.S.

²³ Sections 634.404, 634.405 and 634.406, F.S.

²⁴ Section 634.416(1), F.S.

²⁵ Section 634.141, F.S.

²⁶ Sections 634.435 and 634.436, F.S.

- No use of one's status as a member of a protected class is used in the determination as to who receives such rebates.

Regarding cancellation provisions and return of unearned pro rata premium, current law states that all service warranty agreements in the state must contain a cancellation provision that provides that, if a contract is cancelled by the warranty holder, a return of premium must be based upon 90 percent of unearned pro rata premium less any claims that have been paid. In the event that the contract is cancelled by the association, the refund must be based on 100 percent of the unearned pro rata premium.²⁷

III. Effect of Proposed Changes:

Section 1: Amends s. 628.4615, F.S., relating to specialty insurers, to correct a cross-reference.

Section 2: Amends the definition of "motor vehicle service agreement" in s. 634.011, F.S., to provide that the Florida Insurance Code does not regulate such agreements when they are sold to persons other than consumers.

Section 3: Amends s. 634.031, F.S., relating to licensure requirements for motor vehicle service agreement companies. This section adds a new subsection to provide that a violation of s. 643.031, F.S., is a misdemeanor of the first degree.

Section 4: Amends s. 634.041, F.S., relating to qualifications for licensing of motor vehicle service agreement companies, to correct cross-references.

Section 5: Amends s. 634.095, F.S., to expand the list of prohibited acts and representations by motor vehicle service agreement companies and their employees. Included is a false, deceptive, or misleading statement with respect to:

- The service agreement company's affiliation with a motor vehicle manufacturer;
- The service agreement company's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;
- The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or
- Any requirement that the motor vehicle owner register for a new motor vehicle service agreement with the company in order to maintain coverage under the current motor vehicle service agreement or manufacturer's original equipment warranty.

Section 6: Amends s. 634.121, F.S., relating to forms used by motor vehicle service agreement companies. This section removes the current requirement that companies file service agreement forms with the Office of Insurance Regulation (OIR) prior to selling such agreements to consumers. The bill also clarifies that, if a service agreement is cancelled, any claims paid on the agreement will be subtracted from the premium returned.

²⁷ Section 634.414(3), F.S.

Section 7: Amends s. 634.1213, F.S., relating to grounds for disapproval of forms, to authorize the office to order a service agreement company to stop using a service agreement form that does not comply with statutes and rules. This provision is needed due to the elimination of the form approval requirement in section 6.

Section 8: Amends s. 634.137, F.S., relating to financial and statistical reporting requirements for motor vehicle service agreement companies. This section replaces the current quarterly reporting requirement by companies with an annual requirement.

Section 9: Amends s. 634.141, F.S., relating to examinations of motor vehicle service agreement companies. This section removes the mandatory examination for motor vehicle service agreements by changing the statutory language from “shall” to “may.” Language is also added to provide criteria for the OIR to consider when determining whether to conduct the examinations. The criteria include:

- The amount of time that the company has been continuously licensed and operating under the same management and control;
- The company’s history of compliance with applicable law;
- The number of consumer complaints against the company; and
- The financial condition of the company, demonstrated by the financial reports submitted.

Section 10: Amends s. 634.1815, F.S., relating to rebating by motor vehicle service agreement companies. Generally, current law prohibits a salesperson from rebating any portion of a commission from a motor vehicle service agreement; however some exceptions to this rule are prescribed in s. 634.1815, F.S. One exception is when the rebate is in accordance with a rebating schedule filed by the salesperson with the service agreement company issuing the agreement to which the rebate applies. This section of the bill modifies that exception to state that the rebate must be in accordance with a schedule filed with and approved by the company, thereby giving the company more oversight and control over the salesperson’s actions.

Section 11: Amends s. 634.282, F.S., relating to the definition of unfair methods of competition and unfair or deceptive acts or practices concerning motor vehicle service agreement companies. Currently, s. 634.282, F.S., provides that knowingly collecting an improper premium or charge for a motor vehicle service agreement is an unfair or deceptive practice. This section of the bill provides that such an action does not fall under the definition of an unfair or deceptive practice if the excess premiums or charges are refunded within 45 days.

This section also amends the definition of unfair or deceptive act or practice to include the failure to provide a consumer, upon request, a complete sample copy of the terms and conditions of a motor vehicle service agreement prior to sale. However, the bill allows compliance to be based upon the actual furnishing of such copy or by directing the consumer to a website that displays the copy.

Section 12: Amends s. 634.301, F.S., as amended by section 1 of chapter 2007-235, Laws of Fla., relating to definitions concerning home warranty associations. This section removes the previously defined term “home improvement” from the definitions section in this statute.

Additionally, this section eliminates from the definition of “home warranty” the requirement that such warranties must be in connection with the sale of residential property.

Section 13: Amends s. 634.303, F.S., relating to the license required for home warranty associations. This amendment provides that it is a misdemeanor of the first degree for any unlicensed person to hold oneself out as a provider of home warranties.

Section 14: Amends s. 634.308, F.S., relating to grounds for suspension or revocation of a license for home warranty associations, by providing warranty companies with mitigating criteria, such as claims history or claims cost data, when facing license suspension or revocation.

Section 15: Amends s. 634.312, F.S., relating to forms used by home warranty associations. This section removes the current requirement that home warranty associations file warranty forms with OIR prior to selling such warranties to consumers. The bill also clarifies that, if a service agreement is cancelled, any claims paid on the agreement will be subtracted from the premium returned.

Section 16: Amends s. 634.3123, F.S., to authorize the OIR to order a home warranty association to stop using any contract form that does not comply with statutes and rules. This provision is needed due to the elimination of the form approval requirement in section 15. The bill also specifies that a contract will be noncompliant if it provides that the cost of renewal exceeds the then-current cost for new warranty contracts, unless the increase is supported by the claims history or claims cost data.

Section 17: Amends s. 634.314, F.S., relating to examination of home warranty associations. This section removes the mandatory examination for home warranty associations by changing the statutory language from “shall” to “may.” Language is also added to provide criteria for the OIR to determine whether to conduct the examinations.

The criteria include:

- The amount of time that the association has been continuously licensed and operating under the same management and control;
- The association’s history of compliance with applicable law;
- The number of consumer complaints against the association; and
- The financial condition of the association, demonstrated by the financial reports submitted.

Section 18: Amends s. 634.3205, F.S., relating to rebating by home warranty associations. Generally, current law prohibits a salesperson from rebating any portion of a commission from a home warranty association warranty; however some exceptions to this rule are prescribed in s. 634.3205, F.S. One exception is when the rebate is in accordance with a rebating schedule filed by the salesperson with the home warranty association issuing the warranty to which the rebate applies. This section of the bill modifies that exception to state that the rebate must be in accordance with a schedule filed with and approved by the company, thereby giving the company more oversight and control over the salesperson’s actions.

Section 19: Amends s. 634.336, F.S., relating to the definition of unfair methods of competition and unfair or deceptive acts or practices concerning home warranty associations. This section amends the definition of unfair or deceptive act or practice to include the failure to provide a consumer, upon request, a complete sample copy of the terms and conditions of a home warranty contract. The bill allows compliance to be based upon the actual furnishing of such copy or by directing the consumer to a website that displays the copy.

Section 20: Amends s. 634.344, F.S., relating to the prohibition of coercion of a debtor by home warranty associations. This amendment removes cross-references to portions of statute that are removed by section 12 of this bill.

Section 21: Amends s. 634.401, F.S., relating to definitions concerning service warranty associations. This section amends the definition of “indemnify” to include monetary compensation for a repair or replacement. Currently “indemnify” is defined only to include undertaking a repair or replacement of a damaged or broken consumer good.

Section 22: Amends s. 634.403, F.S., relating to the license required for service warranty associations. This amendment provides that it is a misdemeanor of the first degree for any unlicensed person to hold oneself out as a provider of service warranties.

Section 23: Amends s. 634.406, F.S., to correct a cross-reference.

Section 24: Amends s. 634.414, F.S., relating to cancellation provisions concerning service warranty associations. This section removes the requirement that service warranty forms must be approved by the OIR. This section also amends the statute pertaining to cancellation provisions in service warranty contracts. The current requirement that a refund must be based upon 90 percent of unearned pro rata premium less the cost of repairs made on behalf of the warranty holder is modified to provide “at least 90 percent.” This section also adds language that allows service warranty associations to reduce the amount of premium returned in the event of a cancellation by the association – such reduction may not exceed the amount of claims paid or the cost of repairs made on behalf of the warranty holder.

Section 25: Amends s. 634.4145, F.S., relating to noncompliant forms used by service warranty associations. This section removes OIR’s ability to disapprove service warranty forms. However, this change also allows OIR to order a service warranty association to stop using any contract form that is: (1) in violation of part III, ch. 634, F.S.; (2) misleading; (3) is reproduced so that any material provision is substantially illegible; or (4) contains provisions which are unfair or inequitable or which encourage misrepresentation.

Section 26: Amends s. 634.415, F.S., relating to tax on premiums, annual statements, and reports concerning service warranty associations. This amendment removes the requirement that service warranty associations file quarterly statements.

Section 27: Amends s. 634.416, F.S., relating to examination of service warranty associations. This section removes the mandatory examination for service warranty associations by changing the statutory language from “are” to “may be.” Language is also added to provide criteria for the OIR to consider when determining whether to conduct the examinations.

The criteria include:

- The amount of time that the association has been continuously licensed and operating under the same management and control;
- The association's history of compliance with applicable law;
- The number of consumer complaints against the association; and
- The financial condition of the association, demonstrated by the financial reports submitted.

Section 28: Amends s. 634.4225, F.S., relating to rebating by service warranty associations. Generally, current law prohibits a sales representative from rebating any portion of a commission from a service warranty association warranty; however, some exceptions to this rule are prescribed in s. 634.4225, F.S. One exception is when the rebate is in accordance with a rebating schedule filed by the salesperson with the service warranty association issuing the warranty to which the rebate applies. This section of the bill modifies that exception to state that the rebate must be in accordance with a schedule filed with and approved by the association, thereby giving the association more oversight and control over the sales representative's actions.

Section 29: Amends s. 634.436, F.S., relating to the definition of unfair methods of competition and unfair or deceptive acts or practices concerning service warranty associations. This section amends the definition of unfair or deceptive act or practice to include the failure to provide a consumer, upon request, a complete sample copy of the terms and conditions of a service warranty contract prior to sale. However, the bill allows compliance to be based upon the actual furnishing of such copy or by directing the consumer to a website that displays the copy.

Section 30: Repeals s. 634.1216, F.S., which requires each insurer and each motor vehicle service agreement to file rating schedules or rating premiums.

Section 31: Repeals subsections (2) and (3) of s. 634.136, F.S., requiring licensed motor vehicle service contract companies to keep memorandum journals.

Section 32: Repeals s. 634.3126, F.S., which requires each insurer and home warranty association to file rates.

Section 33: Repeals s. 634.313(4), F.S., authorizing OIR to require additional regular or special reports from a home warranty association.

Section 34: Provides an effective date of July 1, 2010.

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:

The industry may achieve some cost savings with the discontinuance of quarterly reporting and form filings.

C. Government Sector Impact:

The Office of Insurance Regulation (OIR) reports that the changes in the bill will be absorbed by existing resources. The OIR has indicated that this legislation will allow the OIR to focus its regulatory resources more effectively while maintaining sufficient authority to monitor and address issues in this market.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on April 19, 2010:

The committee substitute:

- Corrects a spelling error; and
- Restores the reference to the rulemaking authority of the Financial Services Commission rather than the incorrect reference to the rulemaking authority of the Office of Insurance Regulation.

²⁸ Office of Insurance Regulation, 2010 – *Bill Analysis: HB 1379*, 7 (2010) (on file with the Senate Committee on Judiciary).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
