

**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: CS/SB 1690

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Warranty Associations

DATE: March 25, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	<b>Fav/CS</b>
2.			CM	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1690 makes changes to home and service warranty associations. The bill:

- Requires a separate and auditable reserve account equal to a minimum of 25 percent of the gross written premiums received for home and service warranty contracts that are issued in Florida. Current law requires such reserve amounts be set aside for all policies written by the company, whether in Florida or other states.
- Requires home warranty and service warranty associations operating in Florida and writing in other states must comply with all financial requirement laws of the other states.
- Prohibits the exclusion of coverage due to the presence of rust if such rust or corrosion was not a contributing cause of the mechanical breakdown or failure of the covered appliance, unit, or system.
- Home warranty companies that cover the replacement of components of an HVAC system but do not cover compatibility or efficiency requirements recommended by the manufacturer must:
  - State in conspicuous boldface type that the contract does not provide replacement coverage for components necessary to maintain the compatibility and efficiency requirements recommended by 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; and

- Provide the consumer with the option, at an additional cost, to purchase replacement coverage for components necessary to maintain the compatibility and efficiency requirements.

The effective date of the bill is July 1, 2019.

## II. Present Situation:

### 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).<sup>1</sup> A service warranty is a contract that generally covers the repair, replacement, or maintenance of a consumer product.<sup>2</sup> 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.<sup>3</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>4</sup> Home and service warranty associations must be licensed by OIR<sup>5</sup> and must maintain certain minimum financial standards in order to do warranty business in Florida.<sup>6</sup>

The following chart reflects the number of licensed home and service warranty associations in Florida as of March 15, 2019:<sup>7</sup>

Type of Association/Company	Number of Licensees
Home Warranty Association	30
Service Warranty Association	91
<b>Total</b>	<b>121</b>

### Licensing and Financial Requirements for Warranty Associations

#### *Home Warranty Association*

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.<sup>8</sup> 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

<sup>1</sup> See ch. 634, F.S.

<sup>2</sup> S. 634.402, F.S.

<sup>3</sup> S. 634.302, F.S.

<sup>4</sup> See ch. 634, F.S.

<sup>5</sup> Ss. 634.303 and 634.403, F.S.

<sup>6</sup> Ss. 634.3077 and 634.406, F.S.

<sup>7</sup> Data retrieved from OIR Active Company Search application, <https://floir.com/CompanySearch/index.aspx> (last visited March 15, 2019).

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

association license issued by OIR.<sup>9</sup> 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.

Florida law requires that all home warranty associations maintain a funded, unearned premium<sup>10</sup> account, consisting of unencumbered assets,<sup>11</sup> equal to a minimum of 25 percent of the gross written premiums<sup>12</sup> 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.<sup>13</sup>

### *Service Warranty Associations*

Florida law prohibits any person from providing, offering to provide service warranties to residents of this state unless authorized therefor under a subsisting license issued by the office.<sup>14</sup> Florida law requires that all service warranty associations maintain a funded, unearned premium 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.<sup>15</sup>

### **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.<sup>16</sup> 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.<sup>17</sup> Other home warranties provide coverage even if a system has malfunctioned due to rust or corrosion.<sup>18</sup> 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.

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<sup>9</sup> *See id.*

<sup>10</sup> 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 March 15, 2019).

<sup>11</sup> 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 March 15, 2019).

<sup>12</sup> 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 March 15, 2019).

<sup>13</sup> S. 634.3077(1), F.S.

<sup>14</sup> S. 634.403(1), F.S.

<sup>15</sup> S. 634.406, F.S.

<sup>16</sup> S. 634.312, F.S.

<sup>17</sup> *See, e.g.,* Select Home Warranty, *Terms and Conditions/Service Contract Agreement*, <https://selecthomewarranty.com/termsconditions> (last visited March 15, 2019).

<sup>18</sup> *See, e.g.,* First American Home Warranty, *Sample Contract & Coverage Overview*, <https://homewarranty.firstam.com/media/contracts/8J.B.pdf> (last visited March 15, 2019).

### *The Florida Building Code*

The Florida Building Code specifies rules and standards for constructed structures, including the HVAC systems in those structures.<sup>19</sup> Under the Florida Building Code, certain energy efficiency requirements must be met when an HVAC system is installed, repaired, or replaced.<sup>20</sup> Meeting the energy efficiency requirements when an HVAC system is repaired may require the replacement of various components to maintain a “matched system.”<sup>21</sup> 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.

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

The bill revises the requirement that all home warranty and 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. Instead, the bill requires that they maintain an account containing a minimum of 25 percent only 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. The bill requires home warranty and service warranty associations that write in Florida and in other states must comply with all financial requirement laws of the other states in which they write contracts.

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.

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:

- 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; and

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<sup>19</sup>See, e.g., International Code Council, 2017–Florida Building Code–Energy Conservation, Sixth Edition, <https://codes.iccsafe.org/content/FBC2017> (last visited March 15, 2019).

<sup>20</sup>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 March 15, 2019).

<sup>21</sup> *Id.*

- 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.

The effective date of the bill is July 1, 2019.

**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.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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: 634.3077, 634.346, and 634.406.

**IX. Additional Information:**

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

**CS by Banking and Insurance on March 25, 2019:**

The CS requires home and service warranty associations operating in Florida and writing in other states must comply with the financial requirements of the other states.

- B. **Amendments:**

None.