

**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 Commerce and Tourism

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BILL: CS/SB 1690

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Warranty Associations

DATE: April 5, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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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 several changes to the regulation of home and service warranty associations. Specifically, the bill:

- Amends current law to require home warranty associations to maintain separate, auditable unearned premium reserve accounts funded at a level equal to at least 25 percent of their gross written premiums received from policies *in effect in Florida*, rather than all issued policies.
- Clarifies that service warranty associations must maintain separate, auditable unearned premium reserve accounts funded at a level equal to at least 25 percent of their gross written premiums received from all policies *in force which are written in Florida*;
- Makes conforming changes to reserve accounts held by home and service warranty associations;
- Requires home warranty and service warranty associations that operate in Florida and that write policies that will have effect in other states to comply with the financial requirement laws of those states;
- Prohibits the exclusion of coverage due to the presence of rust or corrosion if it was not a contributing cause of the mechanical breakdown or failure of the covered appliance, unit, or system; and
- Requires home warranty companies that cover HVAC parts replacements, but that do not cover manufacturer-recommended compatibility or efficiency requirements to:
  - 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 consumer purchases additional coverage. The contract must also state the website or phone number where a consumer may purchase 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.

## II. Present Situation:

### Warranty Associations

Florida warranty associations, including those that sell home and service warranties, 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, the OIR regulates warranty associations and companies in a manner similar to its regulation of insurers.<sup>4</sup> Home and service warranty associations must be licensed by the OIR<sup>5</sup> and must maintain certain minimum financial standards in order to do business in Florida.<sup>6</sup>

The following chart reflects the number of licensed home and service warranty associations in Florida as of March 29, 2019:<sup>7</sup>

Type of Association/Company	Number of Licensees
Home Warranty Association	30
Service Warranty Association	88
<b>Total</b>	<b>118</b>

### Licensing and Financial Requirements for Warranty Associations

#### *Home Warranty Associations*

Florida law requires any person in Florida who provides or offers home warranties for sale, whether or not the warranties will have effect in Florida, to be licensed by the OIR.<sup>8</sup> Thus, even if a home warranty association is located in Florida but only sells home warranties to consumers

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

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

<sup>3</sup> Section 634.302, F.S. See also, Florida Department of Financial Services, *Home Warranty Overview*, <https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/HomeWarrantyOverview.htm> (last visited April 5, 2019).

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

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

<sup>6</sup> Sections 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 April 5, 2019).

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

outside of Florida, it must still obtain a home warranty association license from the OIR.<sup>9</sup> Home warranties are often purchased over the internet and may be purchased by a seller and transferred at the closing on the sale of a home to the buyer.

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 or offering to provide service warranties to residents of this state unless authorized therefor under a subsisting license issued by the OIR.<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**

The OIR specifies the contents of the home warranty contract and certain procedures that home warranty 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.

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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, *Unearned Premium*, <http://www.businessdictionary.com/definition/unearned-premium.html> (last visited April 5, 2019).

<sup>11</sup> An unencumbered asset is one that is free from debt and can be easily sold or mortgaged. Business Dictionary, *Unencumbered*, <http://www.businessdictionary.com/definition/unencumbered.html> (last visited April 5, 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* International Risk Management Institute, *Gross Written Premium*, <https://www.irmi.com/term/insurance-definitions/gross-written-premium> (last visited April 5, 2019).

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

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

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

<sup>16</sup> Section 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 April 5, 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 April 5, 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 the repair or replacement of HVAC systems do not always cover the replacement and update of otherwise functioning HVAC system components that may be required to meet a manufacturer’s compatibility and efficiency requirements or the Florida Building Code’s standards. However, home warranty associations are not currently required to bring a consumer’s attention to coverage limitations in the home warranty contract. A consumer may opt to pay extra for a home warranty rider, often called “compatibility coverage,” which covers repairs or replacement of parts required to meet building code requirements and to maintain manufacturers’ compatibility and efficiency requirements.

The chart below<sup>22</sup> reflects a random survey of home warranty plans, coverage inclusions, especially pertaining to HVAC compatibility coverage, and estimated costs:

<b>Company Name</b>	<b>Compatibility Coverage</b>	<b>Lowest Price for Basic Plan with HVAC Coverage<sup>23</sup></b>
Homesure of America, Inc.	Yes*  <i>*Added \$2,000 (\$1,000 per claim) of coverage with additional purchase of \$120/year. “Non-covered claims” plan.</i>	\$540* for 12 months with a \$125 service call fee  No HVAC repair cap  <i>(*Includes optional \$120 “non-covered claims” coverage)</i>
American Home Shield of Florida	Yes	\$455.88 for 12 months with a \$75 service call fee  No HVAC repair cap
Globe Home Warranty Co.	Yes*  <i>*Added \$1,500 of coverage with additional purchase of \$40/year. “Regulatory risk” plan.</i>	\$345* for 12 months with a \$75 service call fee  \$5,000 HVAC repair cap

<sup>19</sup>See, e.g., International Code Council, *Florida Building Code–Energy Conservation*, (6<sup>th</sup> ed. 2017), <https://codes.iccsafe.org/content/FBC2017> (last visited April 5, 2019).

<sup>20</sup>International Code Council, *Florida Building Code–Energy Conservation*, (6<sup>th</sup> ed. 2017), S. R 501.7, <https://codes.iccsafe.org/content/FEC2017/chapter-5-re-existing-buildings> (last visited April 5, 2019).

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

<sup>22</sup> Data collected by phone calls made by Committee on Banking and Insurance staff (2019).

<sup>23</sup> The pricing differences may be due to the differences in coverage offered by each company within their basic warranty plan that included HVAC coverage.

		(*Includes optional \$40 "regulatory risk" plan)
Home Warranty of America	No*  *SEER/R-410A modification coverage only covers additional cost when required to upgrade a broken unit.	\$770* for 13 months with a \$75 service call fee  \$5,000 HVAC repair cap  (*Includes optional \$75 SEER/R-410A coverage)
First American Home Warranty Corp	Yes	\$408 for 12 months with a \$75 service call fee  No HVAC repair cap
Home Warranty Administrator of Florida	No	\$400* for 12 months with a \$60 service call fee  No HVAC repair cap  (*Includes \$100 coupon offer at time of call)
Select Home Warranty LLC	No	\$329.99* for 14 months with a \$45 service call fee  \$2,000 HVAC repair cap  (*Includes \$200 coupon offer at time of call)

**III. Effect of Proposed Changes:**

**Section 1** amends s. 634.3077, F.S., to require that home warranty associations maintain an account that contains a minimum of 25 percent of the gross written premiums received from warranty contracts in force *in Florida*.

This section changes the calculation of net assets that a home warranty association must maintain. The bill allows a home warranty association to maintain less than one-sixth of its total premiums if it, in addition to other requirements, reserves at least 40 percent of its total premiums received from all of its warranty contracts in force *in Florida* in its unearned premium reserve account.

All assets held to satisfy these reserve account requirements must be maintained in a separate, auditable account for contracts in force in Florida.

Additionally, this section requires a Florida-based home warranty association that issues home warranty contracts in other states to comply with the laws of those states.

**Section 2** creates s. 634.346, F.S., to provide 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.

This section further 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
- 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 provisions included in section 2 take effect on January 1, 2020.

**Section 3** amends s. 634.406, F.S., to require that service warranty associations maintain an account that contains a minimum of 25 percent of the gross written premiums received from warranty contracts in force which are written *in Florida*.

Similarly, this section changes the calculation of the reserve deposit that a service warranty association must maintain to reflect 10 percent of the gross written premium received on only those warranty contracts *in force in this state*.

This section also clarifies that a service warranty association must maintain its gross written premiums in force *for contracts written in Florida* at no more than a 7-to-1 ratio to net assets.

All assets held to satisfy these reserve account requirements must be maintained in a separate, auditable account for contracts in force in Florida.

Additionally, this section requires a Florida-based service warranty association that issues service warranty contracts in other states to comply with the laws of those states.

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

#### **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:**

Depending on a home warranty association's contracts in effect outside of Florida, the home warranty association's unearned premium reserves may not be sufficient to meet its claim exposure, which could result in the home warranty association's inability to perform on its contracts.

Section 3 requires a service warranty association to base its unearned premium reserve account on premiums received from warranty contracts *in force which are written in this state*, but then requires the unearned premium reserve account to be for contracts *in force in this state*. This inconsistent use of terminology may result in confusion.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 634.3077, 634.346, and 634.406 of the Florida Statutes.

**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 to comply with the financial requirements of the other states.

- B. **Amendments:**

None.