

CHAPTER 2014-111

House Bill No. 291

An act relating to warranty associations; amending ss. 634.121 and 634.312, F.S.; authorizing electronic transmission of service agreements and home warranties; providing requirements for electronic transmission; providing notice requirements; amending s. 634.406, F.S.; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; amending s. 634.414, F.S.; providing requirements for the delivery of service warranty contracts; providing notice requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 634.121, Florida Statutes, is amended to read:

634.121 Forms, required procedures, provisions.—

(6) Each service agreement, which includes a copy of the application form, ~~must be mailed, or delivered, or electronically transmitted~~ to the agreement holder within 45 days after the date of purchase. Electronic transmission of a service agreement constitutes delivery to the agreement holder. The electronic transmission must notify the agreement holder of his or her right to receive the service agreement via United States mail rather than electronic transmission. If the agreement holder communicates to the service agreement company electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the service agreement shall be provided to the agreement holder.

Section 2. Subsection (2) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(2) Subject to the insurer's or home warranty association's requirement as to payment of premium, every home warranty ~~must shall~~ be mailed, ~~or delivered, or electronically transmitted~~ to the warranty holder ~~within not later than~~ 45 days after the effectuation of coverage, and the application is part of the warranty contract document. Electronic transmission of a home warranty constitutes delivery to the warranty holder. The electronic transmission must notify the warranty holder of his or her right to receive the home warranty via United States mail rather than electronic transmission. If the warranty holder communicates to the home warranty association electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the home warranty shall be provided to the warranty holder.

Section 3. Subsections (6) and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(6) An association ~~that~~ which holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums ~~for service warranties written under this part~~ to exceed the ratio to net assets limitations of this section if the association meets all of the following:

(a) Maintains net assets of at least \$750,000.

(b) ~~Uses~~ Utilizes a contractual liability insurance policy approved by the office ~~that~~:

1. which Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least \$100 million; or

2. Complies with subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least \$200 million.

(c) The insurer issuing the contractual liability insurance policy:

~~1. Maintains a policyholder surplus of at least \$100 million.~~

1.2. Is rated “A” or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

~~3. Is in no way affiliated with the warranty association.~~

2.4. In conjunction with the warranty association’s filing of the quarterly and annual reports, provides, on a form prescribed by the commission, a statement certifying the gross written premiums in force reported by the warranty association and a statement that all of the warranty association’s gross written premium in force is covered under the contractual liability policy, regardless of whether or not it has been reported.

~~(7) A contractual liability policy must insure 100 percent of an association’s claims exposure under all of the association’s service warranty contracts, wherever written, unless all of the following are satisfied:~~

~~(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;~~

~~(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;~~

~~(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5 years, and:~~

~~1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over the counter securities market; is required to file either of Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over the counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;~~

~~2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~3. Has and maintains at all times a minimum net worth of not less than \$10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office annually; and~~

~~4. Is authorized to do business in this state; and~~

~~(d) The insurer issuing the contractual liability policy:~~

~~1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least \$100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office;~~

~~2. Holds a certificate of authority to do business in this state and is approved to write this type of coverage; and~~

~~3. Acknowledges to the office quarterly that it insures all of the association's claims exposure under contracts delivered in this state.~~

~~If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.~~

Section 4. Subsection (4) is added to section 634.414, Florida Statutes, to read:

634.414 Forms; required provisions.—

(4) Each service warranty contract must be mailed, delivered, or electronically transmitted to the warranty holder within 45 days after the date of purchase. Electronic transmission of a service warranty contract constitutes delivery to the warranty holder. The electronic transmission must notify the warranty holder of his or her right to receive the contract via United States mail rather than electronic transmission. If the warranty holder communicates to the service warranty company electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the contract shall be provided to the warranty holder.

Section 5. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.