1983

Session Law 83-322

Florida Senate & House of Representatives

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### COMMITTEE RECORDS

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### Senate/House Journals

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NOTES
HB 392, First Engrossed

A bill to be entitled

An act relating to service warranty associations; amending s. 634.401, Florida Statutes, 1982 Supplement, providing definitions; amending s. 634.402, Florida Statutes, relating to the powers of the Department of Insurance with respect to service warranty associations; amending s. 634.404, Florida Statutes, providing criteria for the department to renew service warranty association licenses; amending s. 634.405, Florida Statutes, providing for the maintenance of certain limits on deposits or bonds required of service warranty associations by the department; amending s. 634.406, Florida Statutes, providing financial requirements with respect to service warranty associations; amending s. 634.407, Florida Statutes, deleting the requirement that the department refund the annual license fee to certain applicants; amending s. 634.408, Florida Statutes, providing that service warranty association licenses expire on June 1 next following the date of issuance; amending s. 634.409, Florida Statutes, providing grounds for suspension or revocation of licenses; repealing s. 634.410, Florida Statutes, relating to the procedure to suspend or revoke a service warranty association license, amending s. 634.412, Florida Statutes, relating to the issuance, suspension, and reinstatement of licenses, amending s. 634.413, Florida Statutes, providing for administrative fines in lieu of suspension or revocation; creating s. 634.414, Florida Statutes, providing grounds for the disapproval of certain forms; amending s. 634.415, Florida Statutes, relating to a tax on premiums and certain annual statements and reports, authorizing the imposition of a fine for failure to file a required annual statement; amending s. 634.416, Florida Statutes, providing fees for the examination of associations; creating s. 634.4165, Florida Statutes, providing that service warranty associations, providing that service warranty associations shall be required to keep certain office records; amending s. 634.417, Florida Statutes, providing for service of process; repealing s. 634.418, Florida Statutes, relating to service of process; amending s. 634.419, Florida Statutes, deleting the prohibition against the advertising of service warranty contracts by certain persons; amending s. 634.420, Florida Statutes, relating to the registration of sales representatives; amending s. 634.421, Florida Statutes, providing a penalty for the illegal appropriation of funds by sales representatives; amending s. 634.422, Florida Statutes, providing grounds for the compulsory denial, suspension, revocation, or nonrenewal of the registration of a sales representative, amending s. 634.423, Florida Statutes, providing grounds for the year

CODING: Words in struck type are deletions from existing law, words underlined are additions.
634.427 Disposition of taxes and fees.--All license fees, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this part from service warranty associations and sales representatives shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

Section 30. Section 634.428, Florida Statutes, reads:

634.428 Insurance business not authorized.--Nothing in this part shall be deemed to authorize any service warranty association to transact any business other than that of service warranty as herein defined, or otherwise to engage in the business of insurance unless such association is authorized therefor as an insurer under a certificate of authority issued by the department under the Insurance Code.

Section 31. Section 634.429, Florida Statutes, is amended to read:

634.429 Fronting not permitted.--No authorized insurer or licensed service warranty association shall act as a fronting company for any unauthorized insurer or unlicensed service warranty association. A fronting company is an authorized insurer or licensed service warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed service warranty associations substantially all of the risk of loss under warranties written by it in this state.

Section 32. Section 634.430, Florida Statutes, reads:

634.430 Dissolution or liquidation.--Any dissolution or liquidation of an association subject to the provisions of this part shall be under the supervision of the department, which shall have all powers with respect thereto granted to it under the laws of the state with respect to the dissolution and liquidation of property and casualty companies pursuant to chapter 631.

Section 33. Section 634.431, Florida Statutes, reads:

634.431 Penalty for violation.--Except as otherwise provided in this part, any person who knowingly makes a false or otherwise fraudulent application for license or registration under this part, or who knowingly violates any provision hereof, in addition to being subject to any applicable denial, suspension, revocation, or refusal to renew or continue any license or registration, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each instance of violation shall be considered a separate offense.

Section 34. Section 634.432 Florida Statutes, is created to read:

634.432 Acquisition of association.--No person may merge or consolidate with or obtain control of a service warranty association unless prior thereto documentation is filed with the department demonstrating that the requirements for issuance of a license under this part will be satisfied.

Section 35. 634.433, Florida Statutes, is created to read:

634.433 Civil remedy--

(1) Any person damaged by a violation of the provisions of this part may bring a civil action against a person violating such provisions in the circuit court of the county in which the alleged violator resides, or has his principal place of business, or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or $500.
I. SUMMARY AND PURPOSE

Florida's "Regulatory Sunset Act," adopted in 1976, mandates periodic review of statutes regulating various professions, businesses, and industries. The act requires automatic repeal of each statute on a specified date, thereby forcing the Legislature to either reenact the statute or permit its expiration.

As stated in the act, in determining whether the statute should be reenacted, the Legislature considers the following criteria:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, or welfare?

(c) Is there a less restrictive method of regulation available which would adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are any facets of the regulatory process designed for the purpose of benefiting and, do they have as their primary effect the benefit of, the regulated entity?
The Sunset Act establishes October 1, 1983 as the date of automatic repeal for Chapter 634, Part III, Florida Statutes, relating to service warranty associations.

Chapter 634, Part III regulates service warranty associations. There are 87 service warranty associations licensed in Florida. A service warranty is designed to indemnify the purchaser against the cost of repair of a consumer product, such as an air conditioner, T.V., washer and dryer, etc., caused by wear and tear or inherent defect.

A section by section analysis of the proposed bill follows.

II. CURRENT LAW AND EFFECT OF CHANGES

Section 1. The bill makes the following changes to the definitions contained in s. 634.401:

Subsection (2) - The bill makes only a technical change to the definition of "service warranty" which is a written promise to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge. Specifically excluded under the current law are appliance service contracts or maintenance agreements entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners. For example a service agreement between a condominium owner and a condominium association is exempt from the requirements of this part.

Subsection (9) - The definition of "premium" is expanded to include the total consideration received, including any charge designated as fees for membership, policy, survey, inspection, service, or any other charge. A repair charge made prior to issuance of the policy would not be considered a premium unless the fee exceeded the usual and customary fee. This amendment is intended to prevent a service warranty association from avoiding the premium reserve requirements or exceeding premium writing limitations by designating part of the premium as an inspection fee or such other charge.

Subsection (13) - The definition of "net assets" is amended to exclude certain intangible assets such as goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies. Presently the definition does not specify what may be included in net assets, which is relevant to the requirement in s. 634.406 that gross written premiums not exceed a 7 to 1 ratio to net assets for warrantors or a 5 to 1 ratio for warranty sellers. (A "warrantor" receives not more than 50 percent of its gross income from the sale of service warranties and a "warranty seller" receives more than 50 percent of its gross income from the sale of service warranties.)

Subsection (14) - Technical.

Section 2. Only technical changes are made to s. 634.404 which provides the general requirements for obtaining a license, such as financial solvency and competent and trustworthy management. (Elimination of filing a letter of credit in lieu of a security deposit is addressed in the following section.)

Section 3. Section 634.405 presently requires each service warranty association to deposit a certain amount of cash or securities with the department. A distinction is made between warrantors (less than 50% of income from the sale of warranties) and warranty sellers (more than 50% of income from the sale of warranties).
warranties). For warrantors the existing law uses a graduated scale with the deposit requirement increasing with the amount of warranty business done. Warrantors are further divided between those in business in the state prior to June 14, 1978, and those commencing business after that date. Those in business before this date and which have less than $300,000 in gross premiums are required to place on deposit an amount equal to 50% of the gross premiums in force or $50,000, whichever is less. If, however, a warrantor was not in business in this state prior to June 14, 1978, an initial deposit of $50,000 is required. The bill clarifies the present deposit requirements. For all warrantors, regardless of the date of commencing business, a $75,000 deposit is required if gross written premiums are more than $300,000 but less than $750,000. Those with more than $750,000 in gross written premiums must deposit $100,000. The bill requires an additional deposit when securities drop below 95% of initial value.

The bill provides an exemption from the deposit requirement for warrantors (less than 50% of income from the sale of warranties) who have less than $50,000 in gross written premiums and who maintain an escrow account. Seventy-five percent of first year premiums and 100 percent of subsequent year premiums must be deposited. Each year's escrow account may be drawn down by one-twelfth per month.

No change is made to the amount of the required deposit for warranty sellers (more than 50% of income from the sale of warranties). Warranty sellers must deposit $100,000 with the department. (Obsolete language is deleted.)

Presently, a service warranty association may file a surety bond or an irrevocable letter of credit with the department in lieu of cash or securities. The bill eliminates the filing of letters of credit (requiring either securities or a surety bond), but would allow currently filed letters of credit to be used until their expiration date or July 1, 1984, whichever occurs first. The bill adds requirements that must be met by surety bonds, such as a requirement that 60 days advance notice be filed with the department prior to cancellation of the bond. If such notice is filed, the association is required to file a replacement bond or other securities within 30 days of the notice of termination.

Section 4. Section 634.406 establishes various financial requirements. Presently, 25 percent of gross written premiums must be maintained in a funded unearned premium reserve account. As amended, it is specified that the reserve account must consist of unencumbered assets and must be established on all contracts in force. The bill also requires the reserve account to be held as prescribed under ss. 625.301-625.340, the part of the Insurance Code that specifies eligible investments for insurers. The bill would also exempt an association from the reserve requirements if it has purchased contractual liability insurance for 100 percent of its claim exposure.

The bill does not change the present requirement for warrantors that gross written premiums not exceed a 7 to 1 ratio to net assets, or for warranty sellers that gross written premiums not exceed a 5 to 1 ratio to net assets.

Section 5. Section 634.407 lists the information that must be included in an application for a license. The only change is elimination of the refund of the $200 license fee when an application is denied. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)
Section 6. Section 634.408 requires licenses to be renewed annually by September 30 for a $200 fee. The license expiration date is changed to June 1 to be consistent with the licensing schedule for insurance companies.

Section 7. Section 634.409 lists the grounds for suspension or revocation of a license. The bill provides that violation of a rule of the department is a ground for suspension or revocation. Present law provides that refusal to pay proper claims without just cause with such frequency as to indicate a general business practice is a ground for suspension or revocation of a license. As amended, unjust refusal to pay proper claims is a ground for suspension or revocation without regard to its frequency. New paragraph (f) is current law transferred from paragraph (a).

Section 8. Section 634.412 provides for a maximum 1 year suspension of a license if the causes of the suspension have been eliminated. The bill strikes the reference to a notice and hearing because the requirements of the Administrative Procedure Act (Ch. 120) would apply. The bill eliminates the requirement that the department notify all sales representatives of an association in the event of reinstatement of a license.

Section 9. Technical changes only.

Section 10. A new section is created by the bill providing standards for the department to use in approving or disapproving forms. In summary, a form shall be disapproved if it (1) does not comply with this part, (2) is misleading, or (3) is illegible.

Section 11. Although no premium tax is currently being collected from service warranty associations, s. 634.415 presently authorizes the department to impose a premium tax up to 0.5 percent of gross written premiums if the department demonstrates that the income derived from license fees is insufficient to pay the cost of administration.

The bill changes the $100 a day fine for the late filing of an annual statement from a mandatory fine to a discretionary fine.

Section 12. The bill allows the department to waive the examination requirement for an association which files Form 10-K, as filed with the U.S. Securities and Exchange Commission. An association that files Form 10-K would be required to pay a $2000 filing fee. Other associations' examination fees may be adjusted to reflect the amount collected for the 10-K filing fee.

The bill provides an exemption from the examination requirement for an association that has less than $20,000 in gross written premiums. If the department does examine such an association, the fee may not exceed 5 percent of the association's gross written premiums.

Section 13. A new section would be created requiring associations to maintain permanent office records including accounting records, a detailed warranty register, and a centralized claims or service record. Such information is considered to be necessary to the department's examination of the books and records of the association, as required under s. 634.416.

Section 14. Section 634.417 provides procedures for service of process on associations. As amended, associations would be subject to the same terms, conditions, and fees as are applicable to insurance companies under Chapter 624.
Section 15. The bill changes from an annual to a biennial basis the reporting by associations of all sales representatives utilized. Registration fees are doubled from $20 to $40 due to this change.

Section 16. Technical changes are made to s. 634.421 which requires sales representatives to account for all funds received, and which makes it a criminal act for a sales representative to appropriate funds to his own use.

Section 17. Section 634.422 lists the grounds for the compulsory refusal, suspension, or revocation of the registration of a sales representative. The bill adds one ground, if the representative is found guilty or has pled guilty or nolo contendere to a felony which involves moral turpitude (a ground which exists for insurance agents in s. 626.611).

Section 18. Section 634.423 lists the grounds for discretionary refusal, suspension or revocation of the registration of a sales representative. The bill changes conviction of a felony to pleading guilty or nolo contendere to a felony, as provided for insurance agents in s. 626.621.

Section 19. In s. 634.424 which provides the procedure for suspension or revocation of the registration of a sales representative, specific procedural requirements are eliminated because the provisions of the Administrative Procedure Act apply.

If a sales representative's registration is suspended or revoked, the bill requires the Department of Insurance to file a recommendation with any other regulatory authority that has issued a professional service license to such person that such other license also be suspended or revoked. The other regulatory authority is required to promptly review the recommendation and take appropriate action.

Section 20. Editorial changes are made to s. 634.425 which provides for a maximum one year suspension of the registration of a sales representative.

Section 21. Section 634.426 is amended to increase the maximum fine against a sales representative in lieu of suspension or revocation from $500 to $1,000 for a willful violation of this part. The maximum $100 fine for a non-willful violation remains unchanged.

Section 22. Editorial changes are made to s. 634.427 which requires that all fees and taxes collected under this part are to be deposited in the Insurance Commissioner's Regulatory Trust Fund.

Section 23. Section 634.429 presently prohibits an authorized insurer or service warranty association from transferring to unauthorized insurers through reinsurance or otherwise substantially all of the risk of loss under its warranty contracts. As amended, transferring any part of the risk to an unauthorized insurer, rather than "substantially all" of the risk, is prohibited.

Section 24. A new section is created requiring any person who merges or consolidates with or obtains control of a service warranty association to file documentation with the department demonstrating that the requirements of this part have been satisfied.

Section 25. This section creates a civil remedy provision similar to that enacted last year with regard to insurance companies. This would authorize a person damaged by a violation
of this part to bring a civil action in circuit court against the violator. Upon adverse adjudication the defendant would be liable for actual damages or $500, whichever is greater, together with court costs and reasonable attorney's fees. Thirty days written notice must be given to the department and to the defendant prior to bringing an action, in order to allow the defendant to correct the circumstances giving rise to the violation, in which case no action shall lie.

Section 26. New section 634.434 is enacted which exempts from the Public Records Law all active investigation records of the department pursuant to this part for so long as reasonably necessary to complete the investigation.

Current law is governed by the Administrative Procedure Act which authorizes an agency, its presiding officer or a hearing officer to effect discovery for agency proceedings upon "the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure" (s. 120.58(1)(b)). Rule 1.280 of the FRCP governs methods and scope of discovery and provides that "for good cause shown" the court may issue a protective order to prevent a party "from annoyance, embarrassment, oppression or undue burden and expense."

Sections 27.-35. New sections are created listing unfair methods of competition and unfair or deceptive acts or practices that would be prohibited for service warranty associations. Currently, neither the Unfair Insurance Trade Practices Act (Part VII of chapter 626) or the Deceptive and Unfair Trade Practices Act (Part II of chapter 501) apply to service warranty associations. The new provisions are similar to those in the Unfair Insurance Trade Practices Act and address such areas as misrepresentation and false advertising, defamation, false statements, unfair claim settlement practices, failure to maintain complaint handling procedures, and refusal to issue a contract. The department would be authorized to seek an injunction in circuit court for a violation of any such acts in addition to other enforcement powers provided in this part. An individual's right under general civil and common law are not abrogated by department action.

Sections 36. and 37. Reenacts Part III of Chapter 634, as amended. Sections 634.410 and 634.418 are repealed. Section 634.410 provides the procedure for suspending or revoking a license. The bill repeals this section because the procedures of the Administrative Procedure Act (Ch. 120) apply. Section 634.418 relating to service of process is repealed as technical, due to the changes in section 14 of the bill, explained above.

Section 38. Part III of Chapter 634 is repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 39. The act shall take effect October 1, 1983, except for Section 37 (the repeal of the July 1 repealer) which takes effect July 1, 1983.

III. ECONOMIC IMPACT

A. PRIVATE SECTOR CONSIDERATIONS

There are 87 service warranty associations (84 active) licensed in Florida which had a total reported premium in 1981 of $87.9 million. Of this amount the largest premium volume by one association was $34.2 million by Sears, Roebuck and Company. Eight other associations had in excess of $1 million in premiums totaling $34.9 million. These nine associations accounted for
nearly 80 percent of total premiums in 1981. Thirty-two associations had more than 0 and less than $50,000 in premiums, averaging $18,326. The total license and filing fees paid by all associations in fiscal year 1981-82 was $17,440.

By providing an exemption from the deposit requirement for warrantors who maintain an escrow account as provided in section 3 of the bill, the bill will make it financially easier for persons to enter the service warranty business.

The bill would eliminate the filing of a letter of credit in lieu of securities. Currently 18 associations use a letter of credit for this purpose.

The bill exempts an association from the three-year examination requirement if it files Form 10-K as filed with the United States Securities and Exchange Commission. The association would not have to pay the expenses for an examination but would instead, pay a $2000 filing fee. The statute authorizes the department to adjust examination fees for other associations to reflect the revenue from 10-K filings. Therefore, smaller associations may be assessed an examination fee that is less than the actual costs incurred by the department for the examination. The bill also exempts from the examination requirement associations that have less than $20,000 in gross written premiums. If such an association is examined, its fee is limited to 5% of its gross written premiums.

B. PUBLIC SECTOR CONSIDERATIONS

The Department of Insurance collected a total of $17,440 in license and filing fees from service warranty associations in 1981. Regulation of service warranty associations is within the department's Bureau of Allied Lines. In fiscal year 1981-82, total bureau expenditures were $323,130 and total revenues were $514,782. (The premium tax on auto warranty associations accounted for $311,631 of this revenue.) The bureau is responsible for the regulation of 12 types of pre-need contracts, including legal expense insurance, but the department does not have figures allocating the cost of regulation to any one particular type of pre-need contract.

IV. COMMENTS

None.

V. LEGISLATIVE HISTORY

A. ENACTED BILL

In Special Session B, Senate Bill 23-B was not heard by any legislative committee. It was passed by the Senate on June 16, 1983, 36-1 (SJ 25) and by the House on the same date, 113-0 (HJ 38). On June 22, 1983, the bill was presented to the Governor.

The enacted bill was similar to House Bill 392 and Senate Bill 208 in the Regular Session. House Bill 392 was originally PCB 83-5 which was heard by the Subcommittee on Property and Casualty Insurance of the Commerce Committee on February 1, 1983. The bill was passed with a number of amendments. On March 1, 1983, the full Commerce Committee approved the bill with additional amendments and introduced the bill as HB 392. On April 11, 1983, HB 392 was read for the second time and amended (HJ 128). On April 12, 1983, the bill was passed as amended, 106-3 (HJ 162). On May 25, 1983, the Senate substituted the House bill for CS/SB 208 and passed the bill as amended, 33-0 (SJ 390). On May 27, 1983, the House refused to concur in the Senate
amendments and requested the Senate to recede. The bill then died in messages.

Senate Bill 208 was heard by the Senate Commerce Committee on April 6, 1983, and a committee substitute was approved. On May 25, 1983, House Bill 392 was substituted for the Senate bill which was laid on the table. On June 3, 1983, CS/SB 208 was removed from the table and was passed as amended, 35-1. The bill died in messages.

B. DISPOSITION OF COMPANION

The companion measure, House Bill 9-B was heard by the House Commerce Committee on June 15, 1983, and a committee substitute was approved which was substantially similar to enacted SB 23-B. HB 9-B died on the House Calendar.

Prepared by: Brian J. Differnaugh

Staff Director: Wyatt T. Martin
I. SUMMARY:

A. Present Situation:

Part III, chapter 634, Florida Statutes, gives the Department of Insurance authority to regulate the sale of service warranty contracts. A service contract is designed to indemnify the warranty purchaser against the cost of repair of a consumer product such as an air-conditioner, a T.V., a washer or dryer. The consumer purchases the anticipated service on a preneed basis.

Associations selling service warranty contracts must obtain a license from the department and meet certain financial and reporting requirements. A distinction is drawn between warrantors (i.e., those that earn not more than 50 percent of gross income from service warranty sales), and warranty sellers (i.e., those that earn more than 50 percent of gross income from service warranty sales), in the area of financial requirements. Associations must file or maintain a deposit with the department in the form of securities, a letter of credit or bond, keep premiums written within a maximum gross written premium to net asset ratio and maintain an unearned premium reserve equal to at least 25 percent of their gross written premiums for the current year.

The chapter provides for periodic examination of associations by the department.

Sales representatives must be registered with the department and provisions exist for the suspension or revocation of those registrations. The chapter contains penalties for violation of the act.

B. Effect of Proposed Changes:

The bill provides for readoption of part III, chapter 634, Florida Statutes, notwithstanding the provisions of the Regulatory Sunset Act. The bill provides technical changes and deletes obsolete language.

The following presents a section by section analysis of the proposed changes.

Section 1. Section 634.401, Subsection (1). Technical change to definition of service warranty.

Subsection (9). Expands the definition of "premiums". A repair charge made prior to issuance of the policy is not considered part of the premium unless the charge exceeds a
customary and reasonable repair fee. The proposed change is intended to prevent the association from avoiding the premium reserve requirements or exceeding the premium writing limitations by calling the premium by another name.

Subsection (14). Amends the definition of "Net Assets" to exclude certain intangibles such as goodwill, franchises, customer lists, patents or trademarks and receivables from or advances to officers, directors, employees, salesmen and affiliated companies. Presently, the definition does not specify what may be included as net assets: This is relevant to the requirement in s. 634.406 that gross written premiums not exceed a 7 to 1 ratio to net assets for warrantors and a 5 to 1 ratio for warranty sellers. "Total liabilities" is also specified so as not to include capital stock, paid-in capital or retained earnings.

Subsection (17) defines "Insurance Code" to mean the Florida Insurance Code as defined in chapter 624, Florida Statutes.

Section 2. Section 634.404 applies the same requirements that are necessary to obtain a license to those who seek to renew their licenses.

Section 3. Section 634.405 provides that warrantors and warranty sellers must file a deposit, a bond, or an irrevocable letter of credit with the department to help ensure future obligations will be met. The bill phases out authority for letters of credit as of July 1, 1984 and revises the bond requirements.

Currently, a warrantor (i.e., a service warranty association which derives not more than 50 percent of gross income from such sales), who transacted no service warranty business prior to June 14, 1978, must file an initial deposit of $50,000. Any warrantor with less than $300,000 of gross written premiums in force must deposit an amount equal to 50 percent of those premiums or $50,000, whichever is less.

The bill provides that warrantors licensed prior to October 1, 1983, who have transacted service warranty business prior to and continuously since June 14, 1978, and have not at any time since June 14, 1978, written more than $100,000 of gross written premiums, must place and maintain an amount equal to 50 percent of these premiums with the department. There is no minimum deposit.

The bill requires that a warrantor must, before issuance of its license and before receiving premiums, place and maintain with the department an amount of $50,000. Provides clarifying language regarding deposits for warrantors.

The bill provides that in lieu of the deposit or bond requirement, a warrantor which has less than $50,000 in gross written premiums in its most recent financial statement may establish an escrow account with a Florida depository institution but must meet certain requirements regarding both structure of the account and withdrawals from it.

Section 4. Section 634.406 establishes various financial requirements. Presently, 25 percent of gross written premiums must be maintained in an unearned premium reserve account. As amended, it is specified that the reserve account must consist of unencumbered assets and be established on all contracts in force whether written in Florida or outside the state. The bill also requires the reserve account to be held as prescribed under ss. 625.301-625.340, the part of the Insurance Code that specifies eligible investments for insurers. The bill would also exempt an association from the reserve requirements if it
has purchased contractual liability insurance for 100 percent of its claim of exposure.

Section 5. Section 634.407 eliminates the refund of the $200 license fee when an application is denied. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)

Section 6. Section 634.408 changes the expiration date to June 1 to be consistent with the licensing schedule for insurance companies.

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Provides that the department is not required to examine an association that has less than $20,000 of gross written premiums in its most recent financial statement and that if the department does examine such association, the examination fee may not exceed 5 percent of its gross written premiums.

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Section 18. Section 634.423 adds pleading nolo or being found guilty of a felony to the discretionary grounds for refusal, etc., of a registration.

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Section 20. Section 634.425 provides grounds for refusal of registration to any individual whose license has been twice revoked.

Section 21. Section 634.426 increases the maximum fine against a sales representative in lieu of suspension or revocation from $100 to $1,000 for a willful violation.

Section 22. Section 634.427 makes technical changes.

Section 23. Section 634.429 makes technical changes.

Section 24. Section 634.432 is created to require that any association who merges or consolidates with or obtains control of another service warranty association shall file documentation with the department demonstrating that the requirements of the part have been satisfied.

Section 25. Provides that any person damaged by a violation of the service warranty law may bring a civil action, specifies when punitive damages may be awarded, and requires written notice must be given to the department and the insurer. Class action suits are not authorized.

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Section 33. Section 634.441 is created to provide the department with the discretion to assess either a monetary
penalty or a license suspension or revocation, or both types of penalty, for violation of a cease and desist order.

Section 34. Section 634.442 is created to provide the department with power to seek injunctive relief for violations of s. 634.403, s. 634.420 or department rules.

Section 35. Section 634.443 is created to provide that the department must not abridge any rights or damages available in any court.

Section 36. Reenacts part III of chapter 634, as amended.

Section 37. Provides that July 1, 1983, repeal date is repealed.

Section 38. Schedules repeal of part III for October 1, 1993, and schedules review pursuant to s. 11.61, F.S.

Section 39. Provides that the act will take effect on October 1, 1983, except that the section repealing the July 1, 1983 repealer will be retroactive.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

During the past three years the department conducted 27 examinations and billed out $61,486.00 for these examinations at an average of $2,277 per examination (the highest examination fee was $4,270.00 and three examinations were below $1,000.) Present statutory language mandates that entire corporations, not the service warranty aspect alone must be examined. It may be anticipated that the 12 public companies will recognize a savings by being allowed to file a Form 10-K and paying a $2,000 fee in lieu of examination assessments.

Warrantors writing less than $300,000 in gross premiums will be required to maintain deposits on file with the department of $50,000 rather than 50 percent of their gross written premiums. Warrantors licensed after June 14, 1978, will be required to deposit $50,000 at a minimum.

Presently, 19 associations licensed after June 14, 1978, have deposits of less than $50,000.

Of the 87 service warranty associations licensed to do business in Florida, 18 have irrevocable letters of credit on file to meet the deposit requirements and 4 have a combination of letters of credit and bonds or securities. The provision to phase out letters of credit will mean that associations have to put up securities or post a bond to meet the new deposit requirement.

The new escrow account provision will allow small companies to enter the business more easily. Precise impact is unknown.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:
I. SUMMARY:

A. Present Situation:

Part III, chapter 634, Florida Statutes, gives the Department of Insurance authority to regulate the sale of service warranty contracts. A service contract is designed to indemnify the warranty purchaser against the cost of repair of a consumer product such as an air-conditioner, a T.V., a washer or dryer. The consumer purchases the anticipated service on a preneed basis.

Associations selling service warranty contracts must obtain a license from the department and meet certain financial and reporting requirements. A distinction is drawn between warrantors (i.e., those that earn not more than 50 percent of gross income from service warranty sales), and warranty sellers (i.e., those that earn more than 50 percent of gross income from service warranty sales), in the area of financial requirements. Associations must file or maintain a deposit with the department in the form of securities, a letter of credit or bond, keep premiums written within a maximum gross written premium to net asset ratio and maintain an unearned premium reserve equal to at least 25 percent of their gross written premiums for the current year.

The chapter provides for periodic examination of associations by the department.

Sales representatives must be registered with the department and provisions exist for the suspension or revocation of those registrations. The chapter contains penalties for violation of the act.

B. Effect of Proposed Changes:

The bill provides for readoption of part III, chapter 634, Florida Statutes, notwithstanding the provisions of the Regulatory Sunset Act. The bill provides technical changes and deletes obsolete language.

The following presents a section by section analysis of the proposed changes.

Section 1. Section 634.401, Subsection (1). Technical change to definition of service warranty.

Subsection (9). Expands the definition of "premiums". A repair charge made prior to issuance of the policy is not considered part of the premium unless the charge exceeds a customary and reasonable repair fee. The proposed change is
intended to prevent the association from avoiding the premium reserve requirements or exceeding the premium writing limitations by calling the premium by another name.

Subsection (14). Amends the definition of "Net Assets" to exclude certain intangibles such as goodwill, franchises, customer lists, patents or trademarks and receivables from or advances to officers, directors, employees, salesmen and affiliated companies. Presently, the definition does not specify what may be included as net assets: This is relevant to the requirement in s. 634.406 that gross written premiums not exceed a 7 to 1 ratio to net assets for warrantors and a 5 to 1 ratio for warranty sellers. "Total liabilities" is also specified so as not to include capital stock, paid-in capital or retained earnings.

Subsection (17) defines "Insurance Code" to mean the Florida Insurance Code as defined in chapter 624, Florida Statutes.

Section 2. Section 634.404 applies the same requirements that are necessary to obtain a license to those who seek to renew their licenses.

Section 3. Section 634.405 provides that warrantors and warranty sellers must file a deposit, a bond, or an irrevocable letter of credit with the department to help ensure future obligations will be met. The bill phases out authority for letters of credit as of July 1, 1984 and revises the bond requirements.

Currently, a warrantor (i.e., a service warranty association which derives not more than 50 percent of gross income from such sales), who transacted no service warranty business prior to June 14, 1978, must file an initial deposit of $50,000. Any warrantor with less than $300,000 of gross written premiums in force must deposit an amount equal to 50 percent of those premiums or $50,000, whichever is less.

The bill provides that warrantors licensed prior to October 1, 1983, who have transacted service warranty business prior to and continuously since June 14, 1978, and have not at any time since June 14, 1978, written more than $100,000 of gross written premiums, must place and maintain an amount equal to 50 percent of these premiums with the department. There is no minimum deposit.

The bill requires that a warrantor must, before issuance of its license and before receiving premiums, place and maintain with the department an amount of $50,000. Provides clarifying language regarding deposits for warrantors.

The bill provides that in lieu of the deposit or bond requirement, a warrantor which has less than $50,000 in gross written premiums in its most recent financial statement may establish an escrow account with a Florida depository institution but must meet certain requirements regarding both structure of the account and withdrawals from it.

Section 4. Section 634.406 establishes various financial requirements. Presently, 25 percent of gross written premiums must be maintained in an unearned premium reserve account. As amended, it is specified that the reserve account must consist of unencumbered assets and be established on all contracts in force whether written in Florida or outside the state. The bill also requires the reserve account to be held as prescribed under ss. 625.301-625.340, the part of the Insurance Code that specifies eligible investments for insurers. The bill would also exempt an association from the reserve requirements if it
has purchased contractual liability insurance for 100 percent of its claim of exposure.

Section 5. Section 634.407 eliminates the refund of the $200 license fee when an application is denied. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)

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The civil remedy section may result in consumers bringing suit against service warranty associations. This would impact on consumers and the associations but the precise impact is unquantifiable.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:
I. SUMMARY:

A. Present Situation:

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B. Government:

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Section 5. Section 634.407 eliminates the refund of the $200 license fee when an application is denied. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)
Section 6. Section 634.408 changes the expiration date to June 1 to be consistent with the licensing schedule for insurance companies.

Section 7. Section 634.409 provides that unjust refusal to pay claims is a ground for suspension or revocation without regard to frequency of such refusal. New paragraph (f) is current law transferred from paragraph (a).

Section 8. Section 634.412 strikes reference to notice and hearing before reinstating the license of an association because the requirements of the Administrative Procedure Act would apply. The bill eliminates the requirement that the department notify all sales representatives of an association in the event of reinstatement of a license.

Section 9. Section 634.413 strikes the reference to "notice and a hearing" because the requirements of the Administrative Procedure Act (ch. 120) would apply.

Section 10. Section 634.4145 creates a new section providing the department with standards to use in approving or disapproving forms. A form shall be disapproved if it is: (1) in violation of this part; (2) is misleading in any respect or; (3) is illegible in any part.

Section 11. Section 634.415 changes the present mandatory fine of $100 per day for late filing of an annual statement to a discretionary fine.

Section 12. Permits the department to waive the examination requirement for an association that files a form 10-K, as filed with the U.S. Securities and Exchange Commission and pays a $2,000 filing fee. If the department determines not to waive the examination, the examination must be limited to that necessary to ensure compliance with part III of chapter 634.

Section 13. Specifies required office records.

Section 14. Section 634.417 provides for service of process procedures for associations as are applied to insurance companies under the Insurance Code.

Section 15. Section 634.420 changes reporting of sales representatives requirements from once a year for a $20 filing fee to once every 2 years for a $40 filing fee.

Section 16. Section 634.421 updates the statutory citation relating to diversion of funds by sales representative.

Section 17. Section 634.422 deletes extraneous notice and hearing requirements and adds to the compulsory grounds for refusal, suspension or revocation of license if a sales representative is found guilty or has pled guilty or nolo contendere to a felony which involves moral turpitude (s. 626.611).

Section 18. Section 634.423 adds pleading nolo or being found guilty of a felony to the discretionary grounds for refusal, etc., of a registration.

Section 19. Deletes unnecessary language.

Section 20. Section 634.425 provides grounds for refusal of registration to any individual whose license has been twice revoked.
Section 21. Section 634.426 increases the maximum fine against
a sales representative in lieu of suspension or revocation from
$100 to $1,000 for a willful violation.

Section 22. Section 634.427 makes technical changes.

Section 23. Section 634.429 makes technical changes.

Section 24. Section 634.432 is created to require that any
association who merges or consolidates with or obtains control
of another service warranty association shall file
documentation with the department demonstrating that the
requirements of the part have been satisfied.

Section 25. Section 634.434 is created to provide that the
department's investigative records are confidential and not
open to public inspection under chapter 119 for as long as
reasonably necessary to complete an investigation.

Section 26. Section 634.435 is created to prohibit unfair
methods of competition and unfair trade practices.

Section 27. Section 634.436 is created to define unfair
competition and trade practices.

Section 28. Section 634.437 is created to give the department
authority to investigate suspected unfair competition and
unfair trade practices.

Section 29. Section 634.438 is created to authorize hearings,
production of documents, etc., relating to unfair competition
or unfair trade practices, and to improperly licensed persons
engaging in the service warranty business.

Section 30. Section 634.439 is created to provide that the
department may issue cease and desist and penalty orders
relating to unfair competition or unlawful transaction of
service warranty services.

Section 31. Section 634.440 is created to provide for appeals
from department orders.

Section 32. Section 634.441 is created to provide the
department with the discretion to assess either a monetary
penalty or a license suspension or revocation, or both types of
penalty, for violation of a cease and desist order.

Section 33. Section 634.442 is created to provide the
department with power to seek injunctive relief for violations
of s. 634.403, s. 634.420 or department rules.

Section 34. Section 634.443 is created to provide that the
department must not abridge any rights or damages available in
any court.

Section 35. Reenacts part III of chapter 634, as amended.

Section 36. Provides that July 1, 1983, repeal date is
repealed.

Section 37. Schedules repeal of part III for October 1, 1993,
and schedules review pursuant to s. 11.61, F.S.

Section 38. Provides that the act will take effect on October
1, 1983, except that the section repealing the July 1, 1983
repealer will be retroactive.

II. ECONOMIC IMPACT AND FISCAL NOTE:
A. Public:

During the past three years the department conducted 27 examinations and billed out $61,486.00 for these examinations at an average of $2,277 per examination (the highest examination fee was $4,270.00 and three examinations were below $1,000.) Present statutory language mandates that entire corporations, not the service warranty aspect alone must be examined. It may be anticipated that the 12 public companies will recognize a savings by being allowed to file a Form 10-K and paying a $2,000 fee in lieu of examination assessments.

Warrantors writing less than $300,000 in gross premiums will be required to maintain deposits on file with the department of $50,000 rather than 50 percent of their gross written premiums. Warrantors licensed after June 14, 1978, will be required to deposit $50,000 at a minimum.

Presently, 19 associations licensed after June 14, 1978, have deposits of less than $50,000.

Of the 87 service warranty associations licensed to do business in Florida, 18 have irrevocable letters of credit on file to meet the deposit requirements and 4 have a combination of letters of credit and bonds or securities. The provision to phase out letters of credit will mean that associations have to put up securities or post a bond to meet the new deposit requirement.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:
A bill to be entitled
An act relating to service warranty
associations; revising, reviving, and
readopting, notwithstanding the Regulatory
Sunset Act, ss. 634.401-634.409, 634.411-
634.417, and 634.419-634.431, Florida Statutes;
relating to the regulation of service warranty
associations; amending ss. 634.401(2), (9),
(14), Florida Statutes, 1982 Supplement, ss.
634.404, 634.405, 634.406, 634.407(4), 634.408,
634.409(1), (2)(a), (d), 634.412(3), (4),
634.413, 634.415(3), 634.416, 634.417, 634.420,
634.421, 634.423, 634.424, 634.425, 634.426(1),
634.427, 634.429, Florida Statutes; adding ss.
634.401(17), 634.409(2)(f), Florida Statutes;
adding s. 634.422(11), Florida Statutes;
creating ss. 634.4145, 634.4165, 634.432,
634.434-634.443, Florida Statutes; providing
definitions; providing that license issuance
requirements apply to license renewals;
deleting obsolete language; providing deposit
requirements for warrantors; phasing out
letters of credit used in place of deposits;
permitting the purchase of contractual
liability insurance instead of maintaining an
unearned premium reserve; providing that
license application fees be nonrefundable upon
denial of license; providing conforming
language; providing grounds for refusal,
suspension, or revocation of license; deleting
requirement for notification of license

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634.426 Administrative fine in lieu of suspension or revocation of registration.--

(1) If, pursuant to procedures provided for in this part, it is found that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under this act, on a first offense and except where such suspension, revocation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension, revocation, or refusal, an administrative penalty for each violation in the amount of $100, or in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine not to exceed $1,000 or $500 for each violation. The administrative penalty may be augmented by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to which the grounds for suspension, revocation, or refusal are related.

Section 20. Section 634.427, Florida Statutes, is amended to read:

634.427 Disposition of taxes and fees.--All license fees, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this part from service warranty associations and sales representatives shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

Section 21. Section 634.429, Florida Statutes, is amended to read:

634.429 Fronting not permitted.--No authorized insurer or licensed service warranty association shall act as a fronting company for any unauthorized insurer or unlicensed...
service warranty association. A fronting company is an authorized insurer or licensed service warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed service warranty associations substantially all of the risk of loss under warranties written by it in this state.

Section 22. Section 634.432, Florida Statutes, is created to read:

634.432 Acquisition of association.--No person may merge or consolidate with or obtain control of a service warranty association unless prior documentation is filed with the department demonstrating that the requirements for issuance of a license under this part will be satisfied.

Section 23. Section 634.434, Florida Statutes, is created to read:

634.434 Investigative records.--All active examination or investigation records of the department made or received pursuant to this part shall be deemed privileged and confidential and shall not be subject to public inspection under the provisions of chapter 119 for so long as reasonably necessary to complete the examination or investigation.

Section 24. Section 634.435, Florida Statutes, is created to read:

634.435 Unfair methods of competition and unfair or deceptive acts or practices prohibited.--No person shall engage in this state in any trade practice which is defined in this part as, or determined pursuant to s. 634.437 to be, an unfair method of competition or an unfair deceptive act or practice involving the business of service warranty.

Section 25. Section 634.436, Florida Statutes, is created to read:
Section 21. Subsection (1) of section 634.426, Florida Statutes, is amended to read:

634.426 Administrative fine in lieu of suspension or revocation of registration.--

(1) If, pursuant to procedures provided for in this part, it is found that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under this act, on a first offense and except where such suspension, revocation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension, revocation, or refusal, an administrative penalty for each violation in the amount of $100, or in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine not to exceed $1,000 or $500 for each violation. The administrative penalty may be augmented by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to which the grounds for suspension, revocation, or refusal are related.

Section 22. Section 634.427, Florida Statutes, is amended to read:

634.427 Disposition of taxes and fees.--All license fees, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this part from service warranty associations and sales representatives shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

Section 23. Section 634.429, Florida Statutes, is amended to read:

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634.429 Fronting not permitted.--No authorized insurer or licensed service warranty association shall act as a fronting company for any unauthorized insurer or unlicensed service warranty association. A fronting company is an authorized insurer or licensed service warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed service warranty associations substantially all of the risk of loss under warranties written by it in this state.

Section 24. Section 634.432, Florida Statutes, is created to read:

634.432 Acquisition of association.--No person may merge or consolidate with or obtain control of a service warranty association unless prior documentation is filed with the department demonstrating that the requirements for issuance of a license under this part will be satisfied.

Section 25. Section 634.434, Florida Statutes, is created to read:

634.434 Investigative records.--All active examination or investigation records of the department made or received pursuant to this part shall be deemed privileged and confidential and shall not be subject to public inspection under the provisions of chapter 119 for so long as reasonably necessary to complete the examination or investigation.

Section 26. Section 634.435, Florida Statutes, is created to read:

634.435 Unfair methods of competition and unfair or deceptive acts or practices prohibited.--No person shall engage in this state in any trade practice which is defined in this part as, or determined pursuant to s. 634.437 to be, an unfair method of competition or an unfair or deceptive act or practice.

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A bill to be entitled
An act relating to service warranty
associations; revising, reviving, and
readopting, notwithstanding the Regulatory
Sunset Act, ss. 634.401-634.417 and 634.419-
634.431, Florida Statutes; relating to the
regulation of service warranty associations;
amending ss. 634.401(2), (9), (14), Florida
Statutes, 1982 Supplement, ss. 634.404,
634.405(1)(b), 634.406, 634.407(4), 634.408,
634.409(2)(a), (d), 634.412(3), (4), 634.413,
634.415(3), 634.416, 634.417, 634.420, 634.421,
634.423, 634.425, 634.426(1), 634.427, 634.429,
Florida Statutes; adding ss. 634.401(17),
634.409(f), Florida Statutes; creating ss.
634.4145, 634.432, Florida Statutes; providing
definitions; providing that license issuance
requirements apply to license renewals;
deleting obsolete language; permitting the
purchase of contractual liability insurance
instead of maintaining an unearned premium
reserve; providing that license application
fees be nonrefundable upon denial of license;
providing conforming language; providing
grounds for suspension or revocation of
license; deleting requirement for notification
of license reinstatement; providing grounds for
disapproval of forms; providing grounds for
waiver of examination requirement; providing
for service of process; prohibiting the
reissuance of a registration revoked twice;

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634.426 Administrative fine in lieu of suspension or revocation of registration.--

(1) If, pursuant to procedures provided for in this part, it is found that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under this act, on a first offense and except where such suspension, revocation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension, revocation, or refusal, an administrative penalty for each violation in the amount of $100, or in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine not to exceed $1,000 or $500 for each violation. The administrative penalty may be augmented by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to which the grounds for suspension, revocation, or refusal are related.

Section 19. Section 634.427, Florida Statutes, is amended to read:

634.427 Disposition of taxes and fees.--All license fees, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this part from service warranty associations and sales representatives shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

Section 20. Section 634.429, Florida Statutes, is amended to read:

634.429 Fronting not permitted.--No authorized insurer or licensed service warranty association shall act as a fronting company for any unauthorized insurer or unlicensed
A fronting company is an authorized insurer or licensed service warranty association, which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed service warranty associations substantially all of the risk of loss under warranties written by it in this state.

Section 21. Section 634.432, Florida Statutes, is created to read:

634.432 Acquisition of association.--No person may merge or consolidate with or obtain control of a service warranty association unless prior documentation is filed with the department demonstrating that the requirements for issuance of a license under this part will be satisfied.

Section 22. Notwithstanding the provisions of the Regulatory Sunset Act, sections 634 through 634.409, sections 634.411 through 634.417, and sections 634.419 through 634.431, Florida Statutes, shall not stand repealed on October 1, 1983 as scheduled by such act but such sections, as amended, are hereby revived and readopted. Sections 634.410 and 634.418, Florida Statutes, shall stand repealed on October 1, 1983, as scheduled by the Regulatory Sunset Act.

Section 23. Sections 634.401 through 634.432, Florida Statutes, are repealed on October 1, 1993, and shall be reviewed pursuant to section 11.61, Florida Statutes.

Section 24. This act shall take effect October 1, 1983.

SENATE SUMMARY

Revises, revives and readopts, notwithstanding the Regulatory Sunset Act, Part III, ch. 634, F.S., relating to regulation of service warranty associations. Major CODING. Words in angle type are deletions from existing law, words underlined are additions.
SUMMARY OF HB 9-B (SERVICE WARRANTY ASSOCIATIONS)

This is a sunset bill that reenacts the chapter that regulates service warranty associations. The major difference between this bill and the house bill that passed earlier (HB 392) is a provision that was in the senate bill that creates an exception to the deposit requirement. The minimum deposit requirement of a warrantor would not have to be met if the warrantor places in escrow 75% of the first year's premium and 100% of any subsequent year's premiums. Each year's reserve may be drawn down by one-twelfth per month.

As presently written, this bill contains the house language on the deposit requirement itself, which lowers the initial deposit from $50,000 to $10,000. There is an amendment to conform to the senate bill which maintains the present law requiring an initial $50,000 deposit. This does not affect the exception created for a warrantor who establishes an escrow account, as previously described.

The bill also exempts from the examination requirements any association that has less than $20,000 in written premiums. The house bill provided this exemption for associations with less than $15,000 in premiums.

Like the house bill, this bill:

--eliminates the filing of a letter of credit in lieu of the deposit.
--prohibits certain unfair methods of competition and deceptive trade practices.
--creates a civil remedy allowing a person damaged by a violation to bring a civil action and to collect attorney's fees and $500 damages.

There is an amendment to conform the civil remedy to the civil remedy amendment that was passed in the glitch bill.
PART III

SERVICE WARRANTY ASSOCIATIONS

Section 1. Section 634.401, Florida Statutes, 1982 is amended to read:

634.401 Definitions used in this part:

(1) "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties.

(2) "Service warranty" means any warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge by the consumer; however, maintenance service contracts under the terms of which there are no provisions for such indemnification, motor vehicle service agreements, and automobile and home warranties subject to regulation under parts I and II of this chapter are expressly excluded from this definition. However, "service warranty" shall not include service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners, which contracts require the performance of repairs and maintenance of appliances or maintenance of the residential property.

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allowed, the registration of the registrant shall stand suspended or revoked or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further proceedings.

Section 32. Section 634.427, Florida Statutes, is amended to read:

634.427 Disposition of taxes and fees.--All license fees, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this part from service warranty associations and sales representatives shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

Section 33. Section 634.428, Florida Statutes, reads:

634.428 Insurance business not authorized.--Nothing in this part shall be deemed to authorize any service warranty association to transact any business other than that of service warranty as herein defined, or otherwise to engage in the business of insurance unless such association is authorized therefor as an insurer under a certificate of authority issued by the department under the Insurance Code.

Section 34. Section 634.429, Florida Statutes, is amended to read:

634.429 Fronting not permitted.--No authorized insurer or licensed service warranty association shall act as a fronting company for any unauthorized insurer or unlicensed service warranty association. A fronting company is an authorized insurer or licensed service warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed service warranty associations substantially all of the risk of loss under warranties written by it in this state.

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A bill to be entitled
An act relating to service warranty associations; amending s. 634.401, Florida Statutes, 1982 Supplement, providing definitions; amending s. 634.402, Florida Statutes, relating to the powers of the Department of Insurance with respect to service warranty associations; amending s. 634.404, Florida Statutes, providing criteria for the department to renew service warranty association licenses; amending s. 634.405, Florida Statutes, providing for the maintenance of certain limits on deposits or bonds required of service warranty associations by the department; amending s. 634.406, Florida Statutes, providing financial requirements with respect to service warranty associations; amending s. 634.407, Florida Statutes, deleting the requirement that the department refund the annual license fee to certain applicants; amending s. 634.408, Florida Statutes, providing that service warranty association licenses expire on June 1 next following the date of issuance; amending s. 634.409, Florida Statutes, providing grounds for suspension or revocation of licenses; repealing s. 634.410, Florida Statutes, relating to the procedure to suspend or revoke a service warranty association license; amending s. 634.412, Florida Statutes, relating to license suspension and reinstatement; amending s. 634.413.

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Section 29. Section 634.427, Florida Statutes, is amended to read:

634.427 Disposition of taxes and fees.--All license fees, taxes on premiums and assessments, registration fees, and administrative fines and penalties collected under this part from service warranty associations and sales representatives shall be deposited to the credit of the Insurance Commissioner's Regulatory Trust Fund.

Section 30. Section 634.428, Florida Statutes, reads:

634.428 Insurance business not authorized.--Nothing in this part shall be deemed to authorize any service warranty association to transact any business other than that of service warranty as herein defined, or otherwise to engage in the business of insurance unless such association is authorized therefor as an insurer under a certificate of authority issued by the department under the Insurance Code.

Section 31. Section 634.429, Florida Statutes, is amended to read:

634.429 Fronting not permitted.--No authorized insurer or licensed service warranty association shall act as a fronting company for any unauthorized insurer or unlicensed service warranty association. A fronting company is an authorized insurer or licensed service warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed service warranty associations substantially all of the risk of loss under warranties written by it in this state.

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An act relating to service warranty
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Florida Statutes, providing criteria for the department to renew service warranty association licenses; amending s. 634.405,
Florida Statutes, providing for the maintenance of certain limits on deposits or bonds required of service warranty associations by the department; amending s. 634.406, Florida Statutes, providing financial requirements with respect to service warranty associations; amending s. 634.407, Florida Statutes, deleting the requirement that the department refund the annual license fee to certain applicants; amending s. 634.408, Florida Statutes, providing that service warranty association licenses expire on June 1 next following the date of issuance; amending s. 634.409, Florida Statutes, providing grounds for suspension or revocation of licenses; repealing s. 634.410, Florida Statutes, relating to the procedure to suspend or revoke a service warranty association license; amending s. 634.412, Florida Statutes, relating to license suspension and reinstatement; amending s.

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Section 31. Section 634.429, Florida Statutes, is amended to read:

634.429 Fronting not permitted.--No authorized insurer or licensed service warranty association shall act as a fronting company for any unauthorized insurer or unlicensed service warranty association. A fronting company is an authorized insurer or licensed service warranty association which, by reinsurance or otherwise, generally transfers to one or more authorized insurers or unlicensed service warranty associations substantially-all-of the risk of loss under warranties written by it in this state.

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SUMMARY OF SERVICE WARRANTY ASSOCIATION BILL (HB 392)

The major changes in the service warranty bill include:

1) The bill significantly lowers the initial deposit requirement. Present law requires an initial $50,000 deposit for a newly licensed service warranty association (unless the association was in business prior to the June 14, 1978, in which case the initial deposit is 50% of gross premiums in force, or $50,000, whichever is less,) for warrantors with less than $300,000 in gross premiums. The bill requires a minimum $10,000 deposit, and permits an association to write premiums up to two times the amount of the deposit. Thus, the bill eases entry into the marketplace yet still maintains adequate limitations to protect the contract purchaser.

2) The bill eliminates the filing of a letter of credit in lieu of a deposit of cash, securities, or a bond.

3) The bill allows the department to waive the examination requirement for an association which files a Form 10-K, as filed with the U.S. Securities and Exchange Commission, and which pays a $2,000 filing fee. Other associations' examination fees may be lowered to reflect the amount collected for the 10-K filing fee.

4) A new section is created, prohibiting unfair methods of competition and deceptive trade practices such as false advertising, defamation, and unfair claims settlement practices.

5) In addition, a civil remedy statute is created authorizing a person damaged by a violation to bring a civil action in circuit court after giving thirty days notice to the violator and to the department. Minimum damages and $500 and attorney's fees would be recoverable.
Representatives

GALLACHER   BANSON

We st er

(please print)

offered the following amendment

Amendment offered on page 4-41.

strike everything after the enacting clause and insert:

FOR YOUR OWN PROTECTION, DO NOT USE PRINTED BILL OR REDUCED COPY OF BILL. GET FULL-SIZED COPY OF BILL DRAFT FROM Duplicating, 329 Capitol.

SEE INSTRUCTIONS ON BACK OF THIS FORM

Senate Action:

House Action:

House Amendment

H 29 (1981)
PART III  
SERVICE WARRANTY ASSOCIATIONS  

Section 1. Section 634.401, Florida Statutes, 1982 Supplement, is amended to read:  

634.401 Definitions.--As used in this part:  

(1) "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties.  

(2) "Service warranty" means any warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge by the consumer; however, maintenance service contracts under the terms of which there are no provisions for such indemnification, motor vehicle service agreements, and automobile and home warranties subject to regulation under parts I and II of this chapter are expressly excluded from this definition. However, "service warranty" shall not include service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners, which contracts require the performance of repairs and maintenance of appliances or maintenance of the residential property.  

(3) "Indemnify" means to undertake repair or replacement of a consumer product, in return for the payment of a segregated premium, when such consumer product suffers operational failure.
amendment

necessary to restrain such person from engaging in any such activities, until such person shall have complied with such provisions and rules.

634.443 Civil liability.--The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department shall abrogate such rights to damages or other relief in any court.

Section 5. Sections 634.402, 634.404, 634.405, 634.406, 634.407, 634.408, 634.409, 634.411, 634.412, 634.413, 634.414, 634.415, 634.416, 634.417, 634.419, 634.420, 634.421, 634.422, 634.423, 634.424, 634.425, 634.426, 634.427, 634.428, 634.429, 634.430, and 634.431, Florida Statutes, are hereby repealed.

Section 6. Part III of chapter 634, Florida Statutes, is repealed on October 1, 1993, and shall be reviewed pursuant to the Regulatory Sunset Act, s. 11.61, Florida Statutes.

Section 7. Section 3 of chapter 81-148, Florida Statutes, is hereby repealed.

Section 8. This act shall take effect October 1, 1983, except that section 6 shall take effect July 1, 1983.

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Florida House of Representatives
H. Lee Moffitt, Speaker  Steve Page, Speaker pro tempore
Committee on Commerce

Samuel P. Bell, III  
Chairman
Dexter W. Lehtinen  
Vice Chairman

STAFF SUMMARY AND ANALYSIS

HB (PCB 82-5) by Commerce
relating to Service Warranty
Associations (Sunset) Ch. 634, Part III
Other Committees of Reference:

DATE: 12/21/82
REVISED: 02/04/83
REVISED: 03/03/83
SENATE BILL: SB 208
EFFECTIVE DATE:
October 1, 1983

I. SUMMARY AND PURPOSE

Florida's "Regulatory Sunset Act," adopted in 1976, mandates periodic review of statutes regulating various professions, businesses and industries. The act requires automatic repeal of each statute on a specified date, thereby forcing the Legislature to either reenact the statute or permit its expiration.

As stated in the act, in determining whether the statute should be reenacted, the Legislature considers the following criteria:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety or welfare?

(c) Is there a less restrictive method of regulation available which would adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are any facets of the regulatory process designed for the purpose of benefiting, and do they have as their primary effect the benefit of, the regulated entity?

The Sunset Act establishes October 1, 1983 as the date of automatic repeal for Chapter 634, Part III, Florida Statutes, relating to service warranty associations.
Chapter 634, Part III regulates service warranty associations. There are 87 service warranty associations licensed in Florida. A service warranty is designed to indemnify the purchaser against the cost of repair of a consumer product, such as an air conditioner, T.V., washer and dryer, etc., caused by wear and tear or inherent defect.

A section by section analysis of the proposed bill follows.

II. CURRENT LAW AND EFFECT OF CHANGES

Section 1. The bill makes the following changes to the definitions contained in s. 634.401:

Subsection (2) - The bill makes only a technical change to the definition of "service warranty" which is a written promise to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge. Specifically excluded under the current law are appliance service contracts or maintenance agreements entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners. For example a service agreement between a condominium owner and a condominium association is exempt from the requirements of this part.

Subsection (9) - The definition of "premium" is expanded to include the total consideration received, including any charge designated as fees for membership, policy, survey, inspection, service, or any other charge. A repair charge or initial inspection made prior to issuance of the policy would not be considered a premium unless the fee exceeded the usual and customary fee. This amendment is intended to prevent a service warranty association from avoiding the premium reserve requirements or exceeding premium writing limitations by designating part of the premium as an inspection fee or such other charge.

Subsection (13) - The definition of "net assets" is amended to exclude certain intangible assets such as goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies. Presently the definition does not specify what may be included in net assets, which is relevant to the requirement in s. 634.406 that gross written premiums not exceed a 7 to 1 ratio to net assets for warrantors or a 5 to 1 ratio for warranty sellers. (A "warrantor" receives not more than 50 percent of its gross income from the sale of service warranties and a "warranty seller" receives more than 50 percent of its gross income from the sale of service warranties.)

Section 2. Technical change only to s. 634.402 authorizing the Department of Insurance to adopt rules pursuant to this chapter.

Section 3. No change is made to s. 634.403 requiring any person providing service warranties to obtain a license from the Department of Insurance and pay an annual $200 fee. Licensed property and casualty insurance companies need not obtain a separate license, but are otherwise subject to this part.

Section 4. Only technical changes are made to s. 634.404 which provides the general requirements for obtaining a license, such as financial solvency and competent and trustworthy management. (Elimination of filing a letter of credit in lieu of a security deposit is addressed in the following section.)

Section 5. Section 634.405 presently requires each service warranty association to deposit a certain amount of cash or securities with the department. A distinction is made between warrantors (less than 50% of income from the sale of warranties) and warranty sellers (more than 50% of income from the sale of warranties). For warrantors the existing law uses a graduated scale with the deposit requirement increasing with the amount of warranty business done. Warrantors are further divided between those in business in the state prior to June 14, 1978, and those commencing business
after that date. Those in business before this date and which have less than $300,000 in gross premiums are required to place on deposit an amount equal to 50% of the gross premiums in force or $50,000, whichever is less. If, however, a warrantor was not in business in this state prior to June 14, 1978, an initial deposit of $50,000 is required. Although new licensees must initially deposit $50,000, subparagraph 2. authorizes a reduction in the deposit to 50% of gross premiums in force, or $50,000, whichever is less, for warrantors with less than $300,000 in gross premiums. For all warrantors, regardless of the date of commencing business, a $75,000 deposit is required if gross written premiums are more than $300,000 but less than $750,000. Those with more than $750,000 in gross written premiums must deposit $100,000. The bill requires an additional deposit when securities drop below 95% of initial value.

The bill changes the amount of the deposit requirements for warrantors. The minimum deposit would be $10,000; warrantors would be authorized to write premiums up to 200% of the deposit. By placing additional money on deposit a service warranty association could write additional business. Once $50,000 was placed on deposit no additional deposit would be required until written premiums equaled $300,000. At that point the existing law would apply, requiring a $75,000 deposit.

No change is made to the amount of the required deposit for warranty sellers (more than 50% of income from the sale of warranties). Warranty sellers must deposit $100,000 with the department. (Obsolete language is deleted.)

Presently, a service warranty association may file a surety bond or an irrevocable letter of credit with the department in lieu of cash or securities. The bill eliminates the filing of letters of credit (requiring either securities or a surety bond), but would allow currently filed letters of credit to be used until their expiration date or July 1, 1984, whichever occurs first.

Section 6. Section 634.406 establishes various financial requirements. Presently, 25 percent of gross written premiums must be maintained in a funded unearned premium reserve account. As amended, it is specified that the reserve account must consist of unencumbered assets and must be established on all contracts in force, whether written in Florida or outside the state. The bill also requires the reserve account to be held as prescribed under ss. 625.301-625.340, the part of the Insurance Code that specifies eligible investments for insurers. The bill would also exempt an association from the reserve requirements if it has purchased contractual liability insurance for 100 percent of its claim exposure.

The bill does not change the present requirement for warrantors that gross written premiums not exceed a 7 to 1 ratio to net assets, or for warranty sellers that gross written premiums not exceed a 5 to 1 ratio to net assets.

Section 7. Section 634.407 lists the information that must be included in an application for a license. The only change is elimination of the refund of the $200 license fee when an application is denied. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)

Section 8. Section 634.408 requires licenses to be renewed annually by September 30 for a $200 fee. The license expiration date is changed to June 1 to be consistent with the licensing schedule for insurance companies.

Section 9. Section 634.409 lists the grounds for suspension or revocation of a license. The bill provides that violation of a rule of the department is a ground for suspension or revocation. Present law provides that refusal to pay proper claims without just cause with such frequency as to indicate a general business practice is a ground for suspension or revocation of a license. As amended, unjust refusal to pay proper claims
is a ground for suspension or revocation without regard to its frequency. New paragraph (f) is current law transferred from paragraph (a).

Section 10. Section 634.410 provides the procedure for suspending or revoking a license. The bill repeals this section because the procedures of the Administrative Procedure Act (Ch. 120) apply.

Section 11. The bill makes no changes to s. 634.411 which requires notice of suspension or revocation to be given to the association's sales representatives by the department.

Section 12. Section 634.412 provides for a maximum 1 year suspension of a license if the causes of the suspension have been eliminated. The bill strikes the reference to a notice and hearing because the requirements of the Administrative Procedure Act (Ch. 120) would apply. The bill eliminates the requirement that the department notify all sales representatives of an association in the event of reinstatement of a license.

Section 13. Section 634.413 presently authorizes the department to impose a fine in lieu of suspension or revocation of a license up to $1,000 for a non-willful violation and up to $10,000 for a willful violation. The bill revises the fine section to authorize a maximum fine of $500 for a non-willful violation, not to exceed $5,000 for all non-willful violations arising out of the same action. For willful violations the maximum fine would be $1,000 per violation, not to exceed $25,000 for all willful violations arising out of the same action. If restitution is due, it shall include interest at 12 percent per year. The bill also would authorize the department to impose a fine in addition to suspension or revocation of a license.

Section 14. No change is made to s. 634.414 which requires all forms to be filed with, and approved by, the department prior to use. (See Section 15.)

Section 15. A new section is created by the bill providing standards for the department to use in approving or disapproving forms. In summary, a form shall be disapproved if it (1) does not comply with this part, (2) contains inconsistent or ambiguous clauses, (3) has any heading that is misleading, (4) is illegible, or (5) fails to attain a reasonable degree of readability, simplicity, and conciseness.

Sections 16. Although no premium tax is currently being collected from service warranty associations, s. 634.415 presently authorizes the department to impose a premium tax up to 0.5 percent of gross written premiums if the department demonstrates that the income derived from license fees is insufficient to pay the cost of administration.

The bill changes the $100 a day fine for the late filing of an annual statement from a mandatory fine to a discretionary fine.

Section 17. The bill allows the department to waive the examination requirement for an association which files Form 10-K, as filed with the U.S. Securities and Exchange Commission. An association that files Form 10-K would be required to pay a $2000 filing fee. Other associations' examination fees may be adjusted to reflect the amount collected for the 10-K filing fee.

Section 18. A new section would be created requiring associations to maintain permanent office records including accounting records, a detailed warranty register, and a centralized claims or service record. Such information is considered to be necessary to the department's examination of the books and records of the association, as required under s. 634.416.

Section 19. Section 634.417 provides procedures for service of process on associations. As amended, associations would be subject to the
same terms, conditions, and fees as are applicable to insurance companies under Chapter 624.

Section 20. Section 634.418 relating to service of process is repealed. See Section 19 above.

Section 21. Section 634.419 requires any person who solicits, negotiates, advertises, or effectuates service warranty contracts in Florida to register with the department or act under the supervision of a registered sales representative. As amended, a person who only advertises service warranty contracts would not have to be registered.

Section 22. The bill changes from an annual to a biennial basis the reporting by associations of all sales representatives utilized. Registration fees are doubled from $20 to $40 due to this change.

Section 23. Technical changes are made to s. 634.421 which requires sales representatives to account for all funds received, and which makes it a criminal act for a sales representative to appropriate funds to his own use.

Section 24. Section 634.422 lists the grounds for the compulsory refusal, suspension, or revocation of the registration of a sales representative. The bill adds one ground, if the representative is found guilty or has pled guilty or nolo contendere to a felony which involves moral turpitude (a ground which exists for insurance agents in s. 626.611).

Section 25. Section 634.423 lists the grounds for discretionary refusal, suspension or revocation of the registration of a sales representative. The bill changes conviction of a felony to pleading guilty or nolo contendere to a felony, as provided for insurance agents in s. 626.621.

Section 26. In s. 634.424 which provides the procedure for suspension or revocation of the registration of a sales representative, specific procedural requirements are eliminated because the provisions of the Administrative Procedure Act apply.

Section 27. Editorial changes are made to s. 634.425 which provides for a maximum one year suspension of the registration of a sales representative.

Section 28. Section 634.426 is amended to increase the maximum fine against a sales representative in lieu of suspension or revocation from $500 to $1,000 for a willful violation of this part. The maximum $100 fine for a non-willful violation remains unchanged.

Section 29. Editorial changes are made to s. 634.427 which requires that all fees and taxes collected under this part are to be deposited in the Insurance Commissioner's Regulatory Trust Fund.

Section 30. No change is made to s. 634.428 which specifies that this part does not authorize a service warranty association to engage in the business of insurance beyond that specifically authorized, unless the association is an authorized insurer.

Section 31. Section 634.429 presently prohibits an authorized insurer or service warranty association from transferring to unauthorized insurers through reinsurance or otherwise substantially all of the risk of loss under its warranty contracts. As amended, transferring any part of the risk to an unauthorized insurer, rather than "substantially all" of the risk, is prohibited.

Section 32. No change is made to s. 634.430 which provides the department with the same supervisory powers relative to the dissolution or liquidation of an association as it has with respect to insurance companies under Chapter 631.
Section 33. No change is made to s. 634.431 which makes it a second degree misdemeanor for any person who knowingly makes a fraudulent application or who knowingly violates any provision of this part.

Section 34. A new section is created requiring any person who merges or consolidates with or obtains control of a service warranty association to file documentation with the department demonstrating that the requirements of this part have been satisfied.

Section 35. This section creates a civil remedy provision similar to that enacted last year with regard to insurance companies. This would authorize a person damaged by a violation of this part to bring a civil action in circuit court against the violator. Upon adverse adjudication the defendant would be liable for actual damages or $500, whichever is greater, together with court costs and reasonable attorney's fees. Thirty days notice must be given to the department and to the defendant prior to bringing an action, in order to allow the defendant to correct the circumstances giving rise to the violation, in which case no action shall lie.

Section 36. New section 634.434 is enacted which exempts from the Public Records Law all active investigation records of the department pursuant to this part for so long as reasonably necessary to complete the investigation.

Current law is governed by the Administrative Procedure Act which authorizes an agency, its presiding officer or a hearing officer to effect discovery for agency proceedings upon "the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure" (s. 120.58(1)(b)). Rule 1.280 of the FRCP governs methods and scope of discovery and provides that "for good cause shown" the court may issue a protective order to prevent a party "from annoyance, embarrassment, oppression or undue burden and expense."

Section 37. New sections are created listing unfair methods of competition and unfair or deceptive acts or practices that would be prohibited for service warranty associations. Currently, neither the Unfair Insurance Trade Practices Act (Part VII of chapter 626) or the Deceptive and Unfair Trade Practices Act (Part II of chapter 501) apply to service warranty associations. The new provisions are similar to those in the Unfair Insurance Trade Practices Act and address such areas as misrepresentation and false advertising, defamation, false statements, unfair claim settlement practices, failure to maintain complaint handling procedures, and refusal to issue a contract. The department would be authorized to seek an injunction in circuit court for a violation of any such acts in addition to other enforcement powers provided in this part.

An individual's right under general civil and common law are not abrogated by department action.

Section 38. Reenacts Part III of Chapter 634, as amended.

Section 39. Part III of Chapter 634 is repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 40. Repeals Section 3 of Chapter 81-148, Laws of Florida. This repealed section provides for repeal of Part III of Chapter 634 on July 1, 1983.

Section 41. The act shall take effect October 1, 1983, except for Section 42 (the repeal of the July 1 repealer) which takes effect July 1, 1983.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

There are 87 service warranty associations (84 active) licensed in Florida which had a total reported premium in 1981 of $87.9 million. Of
this amount the largest premium volume by one association was $34.2 million by Sears Roebuck and Company. Eight other associations had in excess of $1 million in premiums totaling $34.9 million. These nine associations accounted for nearly 80 percent of total premiums in 1981. Thirty-two associations had more than 0 and less than $50,000 in premiums, averaging $18,326. The total license and filing fees paid by all associations in fiscal year 1981-82 was $17,440.

Presently, service warranty associations with less than $300,000 in written premiums need only deposit with the department an amount equal to 50% of their total premiums. There is no minimum dollar deposit. Section 5 of the bill would require a minimum $10,000 deposit for all associations. There are currently six associations that have a deposit of less than $10,000, and nineteen associations licensed after June 14, 1978 that have a deposit of less than $50,000.

The bill would eliminate the filing of a letter of credit in lieu of securities. Currently 18 associations use a letter of credit for this purpose.

The bill exempts an association from the three-year examination requirement if it files Form 10-K as filed with the United States Securities and Exchange Commission. The association would not have to pay the expenses for an examination but would, instead, pay a $2000 filing fee. The statute authorizes the department to adjust examination fees for other associations to reflect the revenue from 10-K filings. Therefore, smaller associations may be assessed an examination fee that is less than the actual costs incurred by the department for the examination.

B. PUBLIC SECTOR CONSIDERATIONS

The Department of Insurance collected a total of $17,440 in license and filing fees from service warranty associations in 1981. Regulation of service warranty associations is within the department's Bureau of Allied Lines. In fiscal year 1981-82, total bureau expenditures were $323,130 and total revenues were $514,782. (The premium tax on auto warranty associations accounted for $311,631 of this revenue.) The bureau is responsible for the regulation of 12 types of pre-need contracts, including legal expense insurance, but the department does not have figures allocating the cost of regulation to any one particular type of pre-need contract.

IV. COMMENTS

V. AMENDMENTS

Prepared by: Brian Deffenbaugh

Staff Director: Wyatt T. Martin
Honorable Tom Gustafson  
Chairman, House Insurance Committee  
18 House Office Building  
Tallahassee, Florida 32301  

Dear Mr. Chairman:  

Enclosed is the Department of Insurance's sunset review recommendations relating to Part III of Chapter 63A, Florida Statutes, Service Warranty Associations.

My staff and I look forward to working with you and others in reviewing these areas in the upcoming workshop sessions. In the meantime, we will continue our review, and if we should have any additional recommended changes based on any additional information, we will forward them to you as soon as possible.

If you should have any questions, please contact me or any members of the Department's sunset team.

Sincerely,

Bill Gunter  
State Treasurer and  
Insurance Commissioner

BG/Wm  
Enclosure
PART III

SERVICE WARRANTY ASSOCIATIONS*

163.401 Definitions.— As used in this part:

(1) "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties.

(2) "Service warranty" means any warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product in return for the payment of a segregated charge by the consumer; however, maintenance service contracts under the terms of which there are no provisions for such indemnification and automatic and home warranties subject to regulation under parts I and II of this chapter are expressly excluded from this definition. However, "service warranty" shall not include service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners which contracts require the performance of repairs and maintenance of appliances or maintenance of the residential property.

*Changes are editorial in nature unless otherwise noted.
(a) "Convenience product" means a personal property primarily sold for personal, family, or household purposes.

(1) "Convenience product" means any personal property the sale of which produces, as a substantial part of the gross income to the seller, less than 50 percent of the gross income from the sale of service warranties.

(2) "Warranty seller" means any person engaged in the sale of service warranties and located in this state, and authorized to transact such business in this state.

(3) "Sales representative" means any person utilizing an individual, employee, corporation, association, broker, agent, or any other legal entity, for the purpose of selling or leasing service warranties and includes any individual possessing a certificate of competency who has had the power to ordain or authorize the least of service warranty association of whom a certificate is not to be issued in the future, in accordance with the state statute or local ordinance of the state, in which the state statute or local ordinance requires a certificate of competency to engage in a particular business, or business, in the case of service warranty association, willing to issue service warranty association, in the same manner and at the same location, shall be considered the sales representative.

(4) "Service" means the composition, repair, cleaning, or maintenance, or any other act performed on item or item received or to be received by an insurer or service warranty association for the inspection, delivery, or delivery of a service warranty.

(5) "Inspection" means the appointment of an individual, corporation, association, broker, agent, or any other legal entity, for the purpose of inspecting, or examining, or any other act performed on item or item received or to be received by an insurer or service warranty association for the inspection, delivery, or delivery of a service warranty.

(6) "Written" means the payment by which the total amount of proceeds, exclusive of commission, for which the association is liable, is paid to the association, for all items, and the total liabilities of the association, for purposes of this definition, the term "total liabilities" shall not include the capital and surplus of an association.

(7) "Total proceeds" means the amount of revenue received in connection with business-related activity.

(8) "Written" means the payment by which the total amount of proceeds, exclusive of commission, for which the association is liable, is paid to the association, for purposes of this definition, the term "total liabilities" shall not include the capital and surplus of an association.

(9) "Written" means the payment by which the total amount of proceeds, exclusive of commission, for which the association is liable, is paid to the association, for purposes of this definition, the term "total liabilities" shall not include the capital and surplus of an association.

(a) "Assessment," for any person, "Property," "Duration," or "Service," or similar fee shall be charged.

Reason: Prevents a company from designating certain charges as "fees" to circumvent reserving and premium tax requirements.

(b) Consistent with changes made in Part 1, the right to receive or receive a service warranty, by the 1982 legislature.

(c) Excluding goodwill, franchises, customer lists, patents or trademarks, and receivables, etc., or advances to officers, directors, employees, salesmen, and affiliated companies.

Reason: To strengthen the financial solvency test (ratio of gross written premiums to net assets) by eliminating nonliquid assets.
163.419. Licenses required.—

(1) No person in this state shall provide or offer to provide service under a service warranty unless authorized therefore under a subsisting license issued by the department. The service warranty association shall pay to the department a license fee of $25 for each license for each license year, or part thereof, the license is in force.

(2) The department, while authorized to issue such license or warranty application in this state, may also issue a service warranty business, without additional qualifications or authority, but shall be otherwise subject to the applicable provisions of this part.

History.—s. 1, ch. 81-188; s. 3, ch. 81-110, and scheduled for review pursuant to s. 11,61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-310, and scheduled for review pursuant to s. 11,61 in advance of that date.

163.421. Qualifications for license.—The department shall not issue a license to any service warranty association unless the association:

1. Is a solvent association.

2. Furnishes the department with evidence satisfactory to it that its management of the association is competent and trustworthy and can successfully manage the association's affairs in conformance with law.

3. Responds to you and upon request business a name, together with a trademark or emblems, if any, which is distinctive and not so similar to the name or trademark of any other person already doing business in this state as will tend to mislead or confuse the public.

4. Makes the deposit or files the bond or forfeit of credit required under s. 814.405, as hereinafter in this state.

5. Is formed under the laws of Florida or another state, district, territory, or possession of the United States, if the association is other than a natural person.

History.—s. 6, ch. 78-255; s. 1, ch. 81-188; s. 2, ch. 81-310.

Note.—Repealed effective July 1, 1983, by s. 1, ch. 81-194, and scheduled for review pursuant to s. 11,61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-310, and scheduled for review pursuant to s. 11,61 in advance of that date.

Reason: Consistent with elimination of use of letters of credit from 634.405 (see below).
Any warrant, which is licensed or transacted service warrant June 14, 1978, which has less than the gross pressure in force.

Reason: New subparagraph 1 retains the warranties who were in business prior to 1978. New subparagraph 2 retains current language.

Obsolete language: "retains the warranties who were in business prior to 1978. New subparagraph 2 retains current language."

Reason: Obsolete grandfathering language.

No substantive change.

Reason: The use of a letter of credit, or bond, is eliminated due to the unrelenting difficulty the Department has in obtaining such instruments.

End
Each association shall maintain a fund consisting of net assets of not less than $15,000, which shall be used to defray the expenses of the association and to pay claims of members, and to pay expenses of the association in the event of its liquidation. The fund shall be invested in the names of the depositors, and the deposits shall be reduced in accordance with the amount of money on deposit at the time the deposit is made.

11.60.050 Financial requirements.

(1) An association shall maintain a fund consisting of net assets of not less than $15,000, which fund shall consist of the deposits of members and shall be used to defray the expenses of the association and to pay claims of members, and to pay expenses of the association in the event of its liquidation. The fund shall be invested in the names of the depositors, and the deposits shall be reduced in accordance with the amount of money on deposit at the time the deposit is made.

11.60.060 Application for and issuance of license.

(1) Application for license as a service utility association shall be made to, and filed with, the department on forms prescribed and furnished by it.
(a) in accordance with this part.
Reason: Clarification.

Reason: The department in as the cost of investigating the applicant regardless of whether the application is denied.

Reason: To make the licensing renewal date of associations, different from their agents (who are licensed on September 30) and to make it consistent with the licensing schedule for insurance companies.

The use of any language relative to an event in which an association shall be required to act shall require that the association act in accordance with this part.
Reason: Clarification.

The use of any language relative to an event in which an association shall be required to act shall require that the association act in accordance with this part.
Reason: Clarification.
laic, any service warranty association is insolvent or impaired, or the department may refuse to renew any contract of service warranty or, in the event that it has ever been suspended, it shall be upon the association to show cause why it has been suspended and to produce such evidence as the department may require.

(2) The license of any service warranty association shall be suspended or revoked if it is determined that the association is insolvent or impaired or that the association has failed to meet the requirements of the department.

Reason: Provides for suspension or revocation for violations of rules of the Department.

Reason: See next paragraph (f).

(f) A single offense justifies administrative penalty.

Reason: A new paragraph is created to separate the business practices standard from the financial standard in (a).

Reason: Provides for suspension or revocation for violations of the association's certificate of authority in this state.

Reason: See next paragraph (g).

Note: Repealed effective July 1, 1961, by s. 1, ch. 61-108, and substituted for review periodic to s. 11.01 in advance of that date, expired effective October 1, 1961, by s. 1, ch. 61-108, and s. 11.10 in advance of that date.
614.24.11. Unfair Trade Practices. Every service warranty association and its representatives and employees shall be subject to the provisions of "Art. VII of chapter 625, Insurance Trade Practices)

Reason: These rights are provided by Chapter 120 and such language is unnecessary here.


Reason: Service warranty associations are currently exempt from Little FTC Act. New section to make the insurance unfair trade practices applicable to service warranty associations.
reason: Removes the requirement that the Department notify an
association's member when the association's license is
reinstated. This is the association's responsibility.

reason: Technical change to conform to repeal of § 634.110.

634.110. Grounds for disapproval. The Department shall
disapprove any form filed under § 634.115, or otherwise
approve an application, only if the form:
(1) Is in any respect in violation of, or fails to comply
with this part.
(2) Contains or incorporates by reference, where such
incorporation is otherwise permissible, any
inconsistent, duplicative, or misleading clauses, or exceptions and
conditions which materially affect the risk underscoring to be assumed
in the grant of coverage of the contract.
(3) Has any title, heading, or other indication of its
provisions which is misleading.
(4) Is printed or otherwise reproduced in such manner as
to render any material provision of the form substantially
unreadable.

reason: To provide specific criteria for the Department to
utilize in the review of forms. Such criteria are necessary to
avoid any potential delegation of authority problem.
631.4165 Office records required. Each licensed service warranty association, as a minimum requirement for permanent office records, shall maintain:

(1) A complete set of accounting records, including, but not limited to, a general ledger, cash receipts and disbursements journals, accounts receivable registers, and accounts payable registers.

(2) Memorandum journals showing the blank forms issued to the association's salesmen.

(3) Memorandum journals indicating the disposition of the forms to the salesmen.

(4) A detailed warranty register, in numerical order by warranty number, of warranties in force, which register shall include the following information: warranty number, date of issue, issuing salesman, name of warranty holder, location of the property, warranty period, gross premium, commission to salesman, and net premium.

(5) A detailed claims or service register which shall include the following information: warranty number, date of issue, date of claim or service, type of claim or service, amount of claim or service charge, date claim paid or service provided, and, if applicable, disposition other than payment or performance of service and reason therefor.

Reason: To provide uniformity between associations and enable the Department to examine an association when required. Similar provisions are contained in the motor vehicle service companies and home warranty statutes.
163-222. Sales representatives to be registered. Each service warranty association or member shall, on forms prescribed by the department, file with the department a statement of the names and business address of each sales representative utilized by it in Florida and shall, within 90 days after termination of the contract, notify the department of such termination. All sales representatives shall be registered in accordance with the provisions of section 163-221. Failure to file a statement of the names and business address of each sales representative shall be an offense, to be prosecuted under the provisions of chapter 255, Florida Statutes, and a fine of $500 shall be paid by the service warranty association or member to the department. Any sales representative utilized subsequent to the October 1 filling date shall be registered within 90 days after such utilization. No employee of a sales representative of a service warranty association or member shall directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed therefor under the insurance code. History.—s. 2, ch. 81-148, effective March 10, 1981, by s. 2, ch. 81-148, and scheduled for review pursuant to s. 11,11 in advance of that date.

(1) All funds, belonging to insurers, service warranty associations, or others received by a sales representative in transactions under his registration shall be trust funds to be received by such agent in a fiduciary capacity, and the agent is the applicable remittance laws of another shall not be used for any other purpose for which they are collected.
(2) Any sales representative, who, not being entitled thereto, converts or appropriates such funds or any portion thereof to his own use is guilty of larceny, punishable as provided in s. 812.024.

Reason: Technical change to conform to changes made in the criminal laws.
16.22 (22) Grounds for compulsory revocation, suspension or restriction of the registration of any sales representative if it is found that, as to the representative, any one or more of the following applicable grounds exist:

(1) Material misrepresentation, misrepresentation, or fraud in registration.

(2) The registration is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part.

(3) Willful misrepresentation or failure to provide or willful deception with regard to any such contract, notice either in person or by any form of communication of information or advertisement.

(4) In the adjustment of claims under an insurance policy or warranty, is materially misrepresented to a service agreement or the adjustment of a contract with the owner and for the purpose of defrauding or fraudulently effecting settlement of claim or terms than those provided for and contemplated by the contract.

(5) Insufficient length of time or trustworthiness to engage in the business of service agreement or warranty.

(6) Performance of service agreement or warranty.

(7) Fraudulent or dishonest practices in the conduct of business under the registration.

(8) Misappropriation, conversion, or unlawful withholding of money belonging to a service agreement or warranty, or its holder, or to others and received in the conduct of business under the registration.

(9) Bidah, or attempt to rebate, or unlawfully divide, or offer to divide, or commission with another.

(10) Willful failure to comply with, or willful violation of, any notice order or rule of the Department, or willful violation of any provision of this part.


Note.--Sealed effective July 1, 1911, by S. 1, ch. 103, and scheduled for review pursuant to S. 31, in advance of the date, sealed effective October 1, 1911, by S. 2, ch. 31, pt. 1, pt. 1, and scheduled for review pursuant to S. 31, in advance of that date.

(11) Has been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

Reason: To conform to the Insurance Code and prevent known criminals from engaging in this business.
If such person has been found guilty of, or has pleaded guilty or nolo contendere to, a felony in this state or any other state, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such crime.

Reason: To conform to the Insurance Code and permit the Department to prevent certain known criminals from engaging in this business.

Reason: These rights are governed by Chapter 126.
The department shall, in its order suspending a registration, specify the period during which the suspension is to be in effect, but such period shall not exceed 1 year. The registration shall remain suspended during the period so specified, subject to any revocation or modification of the order by the department prior to expiration of the suspension period. A registration which has been suspended shall not be reinstated except upon request for such reinstatement, but the department shall not grant such reinstatement if it finds that the circumstances or circumstances for which the registration was suspended still exist or are likely to exist.

(1) No person whose registration has been revoked by the department shall have the right to apply for another registration within 2 years from the effective date of such revocation or, if judicial review of such revocation is pending, within 2 years from the date of final court order on such appeal. The department, however, shall not grant a new registration if it finds that the circumstances or circumstances for which the previous registration was revoked still exist or are likely to exist.

(1) A registration suspensions on the same reason have been received at two separate times, the department shall not thereafter grant or renew any registration of to such person.

(1) Unless the period of suspension, or after revocation of the registration, the former registrant shall not engage in or attempt to engage in any transaction or business for which a registration is required under this part.

History—s. 5, ch. 70-755; s. 3, ch. 81-140; s. 7, ch. 81-330.

Note.—Suspended effective July 1, 1961, by s. 1, ch. 81-947, and scheduled for review pursuant to s. 116,1 in advance of that date. Resumed effective October 1, 1964, by s. 7, ch. 81-338, and scheduled for review pursuant to s. 118.1 in advance of that date.

**$1,000**

Reason: Increases the fine for willful misconduct and willful violations to a meaningful level.
...Reason: Inconsistent with recommended definition of premium...

...Reason: To avoid circumvention of fronting prohibition.
... at the date. Approved effective October 1, 1984, by s. 2, ch. 83-118, and scheduled for review pursuant to s. 11.11 in advance of that date.

634.321 Acquisition of controlling stock. An association or entity may merge, consolidate with another association, or acquire more than 5 percent of another association unless it has filed the appropriate documentation with the department demonstrating that the requirements for issuance of a license under this part have been met.

Reason: Provides the Department with the ability to review the qualifications of prospective buyers prior to the sale of the certificate of authority.
Bill Analysis

Florida House of Representatives
H. Lee Moffitt, Speaker Steve Pajcic, Speaker pro tempore
Committee on Commerce
Samuel P. Bell, III Chairman
Dexter W. Lehtinen Vice Chairman

FINAL STAFF SUMMARY

SB 23-B by Thomas (as enacted by the Legislature)
relating to service warranty associations (Sunset)
Committee Consideration:
None
Identical*/Similar Bills:
HB 9-B
Date: July 7, 1983
Became Law: July 7, 1983
Committee on Commerce

I. SUMMARY AND PURPOSE

Florida's "Regulatory Sunset Act," adopted in 1976, mandates periodic review of statutes regulating various professions, businesses and industries. The act requires automatic repeal of each statute on a specified date, thereby forcing the Legislature to either reenact the statute or permit its expiration.

As stated in the act, in determining whether the statute should be reenacted, the Legislature considers the following criteria:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety or welfare?

(c) Is there a less restrictive method of regulation available which would adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are any facets of the regulatory process designed for the purpose of benefiting, and do they have as their primary effect the benefit of, the regulated entity?

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amendments and requested the Senate to recede. The bill then died in messages.

Senate Bill 208 was heard by the Senate Commerce Committee on April 6, 1983, and a committee substitute was approved. On May 25, 1983, House Bill 392 was substituted for the Senate bill which was laid on the table. On June 3, 1983, CS/SB 208 was removed from the table and was passed as amended, 35-1. The bill died in messages.

B. DISPOSITION OF COMPANION

The companion measure, House Bill 9-B was heard by the House Commerce Committee on June 15, 1983, and a committee substitute was approved which was substantially similar to enacted SB 23-B. HB 9-B died on the House Calendar.

Prepared by: Brian Jr. Deffenbaugh

Staff Director: Wyatt T. Martin