Session Law 83-323

Florida Senate & House of Representatives

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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 II, Florida Statutes, relating to home warranty associations.

Chapter 634, Part II, Florida Statutes, regulates corporations selling home warranties. Home warranties are offered in connection with the sale of residential property. They are designed to indemnify the homeowner for repair costs to structural components or appliances caused by wear and tear or inherent defect. Recognizing that home warranty associations collect premiums and incur future obligations, the provisions regulating the associations are directed at assuring that the future obligations will be satisfied. There are currently seven licensed home warranty companies in Florida. Collectively they reported $7,017,501 in premiums for 1981.

A section by section analysis of the proposed bill follows.

II. Current Law and Effect of Changes

Section 1. The bill makes the following substantive changes to the definitions contained in s. 634.301:

Subsection (3) - The definition of "home warranty" is changed to allow the sale of warranties in connection with a loan of $5,000 secured by residential property which is the subject of the warranty. Previously, warranties could be offered only in connection with the sale of residential property.

Subsection (6) - The definition of "premium" is expanded to include the total consideration received, including any charge designated as fees for membership, policy, survey, inspection, or service. This change is intended to prevent a home warranty association from avoiding the premium reserve requirements, or exceeding written premium limitations, by designating part of the "premium" as an inspection fee or other such charge.

Subsection (11) - The definition of "net assets" is added. The definition provides that net assets means the amount by which total assets exceeds total liabilities.

Subsections (12)-(16) - Definitions are added for "state capital," "surplus," "earned surplus," "capital surplus," and "Insurance Code," the terms used by the department in determining adherence to the financial requirements of the chapter. The additions provide precise definitions for review of warranty associations' financial condition. (These definitions are similar to those added to Part I of Chapter 634, relating to automobile inspection and warranty associations, reviewed under sunset in 1982.)

Section 2. Technical change to s. 634.304 which makes the qualifications for renewal of a license the same as for issuance of a new license.

Section 3. s. 634.3045 provides the minimum financial requirements that must be met by a home warranty association in order to obtain and maintain a license to do business. The financial requirements listed here were drawn from various sections of the existing statutes. In addition to substantive changes, the intent of this new section is to organize the various requirements under one section, and clarify where necessary.

Subsection (1) - A home warranty association must maintain an unearned premium reserve equal to 25% of gross written premiums.
Subsection (2) - This section mandates companies to maintain minimum net assets of 1/6 of premiums written. However, net assets may be less than 1/6 of premiums written if the company has net assets greater than $500,000 and maintains an unearned premium reserve account of at least 40% of the gross written premium.

Subsection (3) - The definition of "net assets" is amended to exclude certain intangible assets such as goodwill, franchises, customer lists, patents of 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. This has resulted in a situation where companies may include certain types of "assets" on their balance sheet which would be of little value in the event of financial trouble.

Subsection (4) - New language exempts a home warranty from the reserve requirements if the association purchases contractual liability insurance for 100% of its claim exposure. The subsection provides the specifications required of the contractual liability insurance, if the home warranty association is to be exempt from the reserve requirements.

Subsection (5) - Requires all home warranty associations to maintain claim statistics.

Section 4. s. 634.305 requires associations to deposit $100,000 in cash or securities with the department. New language is added requiring additional securities when the market value of the securities used as a deposit drops below the required amount.

Presently, a home warranty association may file a surety bond or an irrevocable letter of credit with the department in lieu of cash or securities to meet the deposit requirement. The bill eliminates the letter of credit, as a substitute for securities in meeting the deposit requirement. The use of a bond is changed. The bill now requires $25,000 cash or securities, and a $75,000 surety bond in order to meet the deposit requirement. A bond without the $25,000 securities is no longer acceptable. The time period required for notice to the department of cancellation of the bond is increased from 30 to 60 days. The bill also requires that within 30 days of issuing the notice of cancellation of the bond, the home warranty association must replace the bond or have its license suspended.

Section 5. s. 634.306 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 applicant is denied a license. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)

Section 6. s. 634.307 requires company 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. s. 634.308(1) lists the grounds for discretionary suspension or revocation of a license. The bill provides that violation of a rule of the department is a ground for suspension or revocation.

Subsection (2) provides the grounds for mandatory suspension of a company's license. These grounds are extended to cover renewal of a license.
Section 8. The bill makes no substantive change to s. 634.310 which requires notice of suspension or revocation to be given by the department to an association's sales representatives.

Section 9. s. 634.311 provides for a maximum one-year suspension of a license if the causes of the suspension have been corrected. The bill eliminates the requirement that the department notify all sales representatives of an association in the event of reinstatement of a license.

Section 10. s. 634.3112 is a new section providing for a fine in lieu of suspension or revocation of a license. The new section authorizes a maximum fine of $500 for a nonwillful violation of the provisions of the chapter, with a maximum fine of $5,000 for all nonwillful violations arising out of the same action. For willful violations the maximum fine would be $2,500 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% per year.

Section 11. s. 634.3125 is created 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 a heading which is misleading, (4) is illegible, or (5) is subject to renewal.

Section 12. s. 634.3126 is created providing that home warranty associations file for informational purposes the rates charged for their warranty contracts.

Section 13. s. 634.313 is amended. The information required to be included in each annual statement is detailed. The annual statement must be completed using generally accepted accounting principles.

Section 14. s. 634.3135 is created requiring associations to maintain permanent office records, including accounting records, a detailed warranty register, and a centralized claims record. Such information is considered necessary for the department's examination of the warranty association as required under s. 634.416.

Section 15. s. 634.315 provides procedures for service of process on home warranty associations. Associations are subject to the same terms, conditions, and fees as are applicable to insurance companies under chapter 624.

Section 16. Is amended to clarify what persons need to be registered. The section provides that all persons who solicit, negotiate, or effectuate home warranties for remuneration shall be registered, except when warranties are sold thru real estate sales offices. In that case only one broker per sales office would be required to register. That broker would be responsible for all warranty contracts issued or sold thru his office.

Section 17. s. 634.318 deals with the term of registration and the filing fee. The new provisions change the registration requirements from annual to biennial. The registration fee is increased from $20 to $40 to reflect the new two-year term.

Section 18. s. 634.319 details how funds received for warranties are to be handled by sales representatives. No substantive changes are made.
Section 19. s. 634.320 lists the grounds for the mandatory refusal, suspension, or revocation of the registration of a sales representative. The bill adds one ground, not in the existing law, which states that if the sales representative is found guilty or pleads guilty or nolo contendere to a felony involving moral turpitude, it is grounds for suspension or revocation. This ground exists for insurance agents in s. 626.611.

Section 20. s. 634.321 lists the grounds for discretionary refusal, suspension or revocation of the registration of a sales representative. The bill adds conviction of a felony, or pleading guilty or nolo contendere to a felony as grounds for suspension or revocation. This is similar to that provided for insurance agents in s. 626.621.

Section 21. s. 634.322 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 22. s. 634.3225 is a new section providing for a maximum one-year suspension of the registration of a sales representative. It also provides a two-year period before a person has the right to apply for registration.

Section 23. s. 634.323 is amended to increase the maximum fine against a sales representative in lieu of suspension or revocation from $100 to $500 for a nonwillful violation, and from $500 to $1,000 for willful misconduct.

Section 24. Editorial changes are made to s. 634.324 which requires that all fees and taxes collected under this part are to be deposited in the Insurance Commissioner's Regulatory Trust Fund.

Section 25. s. 634.326 presently prohibits an authorized insurer or home warranty association from transferring to unauthorized insurers through reinsurance or otherwise substantially all of the risk of loss under its warranty contract. As amended, transferring any part of the risk to an unauthorized insurer, rather than "substantially all" of the risk is prohibited.

Section 26. New section 634.3275 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 27. s. 634.3284 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 to
correct the circumstances giving rise to the violation, in which case no action would lie.

Section 28. s. 634.3285 provides that no entity may merge, consolidate or obtain control of a home warranty association without approval of the department.

Section 29. New sections are created listing unfair methods of competition and unfair or deceptive acts or practices that would be prohibited for home 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 home 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 30. s. 634.393 is created to prohibit lenders from requiring the purchase of warranties as a condition precedent or subsequent to the making of a loan.

Section 31. s. 634.395 is created to allow cancellation of warranties sold in connection with a loan within 10 days of purchase without penalty to the buyer.

Section 32. Reenacts Part II of Chapter 634, as amended.

Section 33. Part II of Chapter 634 is repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 34. Repeals section 3 of Chapter 81-14B, Laws of Florida, which provides for a July 1, 1983, repeal of this part.

Section 35. The act shall take effect October 1, 1983, except for Section 43 (the repeal of the July 1 repealer) which takes effect July 1, 1983.

III. ECONOMIC IMPACT

A. PRIVATE SECTOR CONSIDERATIONS

There are currently seven home warranty associations licensed by the Department of Insurance under the provisions of this part. Collectively in 1981 they reported $7,017,501 in earned premiums. Of that amount, $6,381,305 was attributable to one company. The premium tax generated $46,440 in revenue. The three largest companies reported a combined loss ratio for Florida business of 50%.

Registration of a sales representative requires a biennial fee of $40 which affects companies doing business in the state, and the cost of the product they sell.

Eliminating the use of the letter of credit to meet the deposit requirement will affect entry into the marketplace. However, no home warranty associations use letter of credit at this time, so the impact of the change is unknown. For large organizations doing business in a number of states, the requirement of cash or securities for deposit in each state may prove burdensome.
The creation of the administrative fine section (in lieu of suspension or revocation of certificates) could affect those persons found in violation of the requirements of this chapter.

**B. PUBLIC SECTOR CONSIDERATIONS**

Revenues to the Department of Insurance realized from home warranty business were $1,400 in association license fees and $46,440 in premium taxes. No changes are proposed in the tax, or license fees.

Regulation of home 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 $309,531 of the revenue.) The bureau is responsible for the regulation of 12 types of preneed contracts, including home warranty associations, but the department does not have figures allocating the cost of regulation to any one particular type of preneed contract.

**IV. COMMENTS**

The Department of Insurance reports that it has issued a cease and desist order against one company for failure to meet the financial responsibility requirements of the chapter. The department has received 34 complaints regarding home warranty associations during 1981. None of the complaints required any administrative action.

**V. LEGISLATIVE HISTORY**

**A. ENACTED BILL**

In Special Session B, Senate Bill 24-B was not heard in committee. On June 16, 1983, the Senate passed SB 24-B, 35-1, with technical amendments (SJ 26). On the same day, the House passed the bill 113-0 (HJ 39).

SB 24-B was similar to SB 207 and HB 1087 in the Regular Session. Senate Bill 207 was originally PCB 9 which was first considered by the Senate Commerce Committee on February 1, 1983. The proposed bill was approved by the committee and introduced as SB 207.

On April 6, 1983, the Commerce Committee considered the filed bill, SB 207. The bill was voted out favorably with amendments. The amendments were incorporated into the bill as a committee substitute. While a majority of the amendments were technical in nature, a few were substantive. The substantive amendments provided that: (1) When home warranties are sold through a real estate office, only one real estate broker per office is required to register. (2) A home warranty may be offered in connection with a loan of $5,000 or more on the residential property insured. (3) The deposit requirement was amended to permit filing of $25,000 in securities and a $75,000 bond as an alternative to $100,000 in securities. (4) No person may be required to purchase a home warranty as a condition for obtaining the loan. (5) An Unfair Trade Practices section was added.

On April 19, 1983, the Senate passed CS/SB 207 with amendments, 38-0 (SJ 127).

On May 20, 1983, the House substituted CS/SB 207 for HB 1087, read the bill for the second time, and adopted amendments. The amendments inserted the provisions of the House bill. On May 24, 1983, CS/SB 207 was passed as amended, 112-0 (HJ 545).
On June 3, 1983, the Senate amended the House amendments to CS/SB 207 and requested the House to concur, 32-0. The bill died in House Messages.

House Bill 1087 was originally PCB 83-4, and was approved with amendments by the Subcommittee on Property and Casualty Insurance of the Commerce Committee on March 29, 1983. On April 5, 1983, the full Commerce Committee approved the bill with additional amendments which was introduced as HB 1087. On May 20, 1983, the House substituted CS/SB 207 for the House bill, as detailed above.

B. DISPOSITION OF COMPANION

HB 10-B was referred to the House Commerce Committee on June 15, 1983. The Commerce Committee acted favorably on the bill on June 16, 1983. On June 24, 1983 the bill died on the Calendar.

Prepared by: W. Kevin Russell

Staff Director: Wyatt T. Martin
I. SUMMARY:

A. Present Situation:

Part II, chapter 634, Florida Statutes, provides the Department of Insurance administrative and enforcement authority over home warranty associations. Pursuant to the Regulatory Sunset Act, the statutory authority will be repealed on October 1, 1983, unless reenacted by the Legislature prior to that date.

Home warranties are designed to indemnify the warranty holder against the cost of repair or replacement caused by wear and tear or inherent defects of structural components or appliances in the home. Home warrantors collect premiums for the future obligations they incur; the provisions of part II, chapter 634, Florida Statutes, were created to assure that those future obligations will be satisfied. The warranty association must obtain a license from the department and meet certain financial and reporting requirements. The association must file a deposit with the department in the form of securities, a security bond, or a letter of credit; maintain a minimum net worth of 1/6 of written premiums and maintain an unearned premium reserve account equal to a minimum of 25 percent of the premiums received. In order to meet the requirements of part II, associations must also comply with reporting requirements that seek to insure managerial competence. The warranty association is subject to license fees and license taxes and a premium tax on an amount equal to 2 percent of the amount of premiums written. Domestic associations are exempt from the premium tax.

B. Effect of Proposed Changes:

The bill reenacts part II of chapter 634, Florida Statutes, notwithstanding the provisions of the Regulatory Sunset Act.

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

Section 1. Section 634.301.

Subsection (3). Amends definition of home warranty to provide that a home warranty may be offered in connection with a loan of $5,000 or more which is secured by residential property which is the subject of the warranty, but not in connection with the sale of such property.

Subsection (6). The definition of premium would be expanded to include total consideration received by the association in connection with issuance of a contract.
Subsection (11). Would add a definition of net assets for purposes of calculating premium reserve and premium - net worth ratio.

Subsections (12)-(15) amend financial definitions.

Section 2. Section 634.304, would apply the same requirements necessary to obtain a license to those who would renew that license.

Section 3. Section 634.3045 would provide the minimum financial requirements that must be met by a warrantor in order to maintain its license. The requirements here listed were contained in various sections of part II, chapter 634. A new provision permits an association to have net assets of less than 1/6 of premiums written if the association has net assets of not less than $500,000 and a funded unearned premium reserve of unencumbered assets equal to 40 percent of gross written premiums on all warranty contracts in force.

The net asset requirement definition is amended to exclude goodwill, franchises, customer lists, patents or trademarks, receivables from or advances to officers, directors, employees, salesmen or affiliated companies and assets deposited outside the United States. Purchase of contractual liability insurance is authorized as an alternative to an unearned premium reserve.

Section 4. Section 634.305 permits $100,000 of eligible securities, a surety bond or a letter of credit as acceptable forms of deposit for associations to ensure that future obligations will be met. The bill eliminates letters of credit. It requires deposit of $100,000 in securities or $25,000 in securities and a $75,000 bond. Revises requirements relating to cancellation of bonds and requires 60 days rather than 30 days notice of cancellation. Requires replacement of a cancelled bond with another bond or with securities. It requires that if the value of deposited securities drops below 95 percent, an additional deposit must be made.

Section 5. Section 634.306 is amended to delete language authorizing refund of the $200 license fee if an applicant is refused a license.

Section 6. Section 634.307 is amended to provide for license renewal on June 1 rather than September 30.

Section 7. Section 634.308 is amended to reflect changes elsewhere in the bill relating to revocation of an association's license.

Section 8. Technical - name change of agents.


Section 10. Creates s. 634.3112 to provide for administrative fine in lieu of suspension or revocation of license.

Section 11. Section 634.3125 is created to provide grounds for disapproval of forms.

Section 12. Section 634.3126 is created to provide that rates must be filed for informational purposes.

Section 13. Section 634.313(1)(2) provides what must be included in an annual statement.
Section 14. Section 634.3135 is created to specify what must
be included in office records. Provides that computer records
are permitted.

Section 15. Section 634.315 provides for service of process
procedures that conform with those in the Insurance Code.

Section 16. Section 634.317 requires registration of sales
representatives who solicit or effectuate home warranty
contracts for remuneration. Requires certain real estate
brokers to be registered.

Section 17. Provides for biennial registration of sales
representatives who solicit or effectuate home warranty
contracts for remuneration and increases fees accordingly.

Section 18. Section 634.319 corrects penalty reference for
agents who divert funds.

Section 19. Section 634.320 provides the standards for
compulsory suspension or revocation of a sales representative's
registration. A new subsection is added to include being found
guilty or pleading nolo contendere to a felony charge involving
moral turpitude.

Section 20. Section 634.321 provides the standards for
discretionary suspension or revocation of a sales
representative's registration. A new subsection is added to
include being found guilty or pleading nolo contendere to a
felony charge.

Section 21. Makes various technical changes.

Section 22. Section 634.3225 is created to provide for the
duration of suspension or revocation of registration.

Section 23. Section 634.323(1) is amended to increase fines in
lieu of suspension or revocation of registration from $100 to
$500 and from $500 to $1,000 for each willful violation.

Section 24. Technical changes.

Section 25. Section 634.326 would prevent an insurer or home
warranty association from transferring any instead of
"substantially all" of the risk of loss under its warranty
contracts to unauthorized insurers.

Section 26. Provides that department investigative records are
confidential until completion of investigations.

Section 27. Provides that any person damaged by a violation of
the home 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. The provision
does not authorize class action suits.

Section 28. Section 634.3285 is created to require department
approval prior to merger or consolidation of associations.

Section 29. Prohibits unfair trade and competition, provides
definitions of such, provides remedies.

Section 30. Prohibits coercion of debtors.

Section 31. Requires buyer to have 10 days to cancel a home
warranty purchased in connection with certain loans.

Section 32. Reenacts part III of ch. 634 as amended.
Section 33. Part II, chapter 634, would be repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 34. Repeals the former Sunset repeal date of July 1, 1983.

Section 35. The act would take effect on October 1, 1983, except that section 34 is retroactive.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The last available information indicates that there were six home warranty associations licensed in Florida. In 1981 a total of $7,017,501 was earned in premiums. Of this amount, $6,381,305 was generated by one company.

Eliminating the letter of credit to meet the deposit requirement may affect entry into the marketplace. However, no home warranty associations are using letters of credit at this time.

The increase in administrative fines may impact on the industry but the extent of this is unknown. It is not anticipated that the bill will impact significantly upon the industry.

The civil remedy section may result in consumers bringing suits against home warranty associations. This would impact on consumers and the industry but the precise effect is unquantifiable.

B. Government:

None.

III. COMMENTS:

Only one cease and desist order has been issued by the department for failure to meet the requirements of chapter 634. None of the 34 complaints received by the department regarding home warranty associations has required any administrative action.

IV. AMENDMENTS:
Journals

of the

Florida

House of Representatives

Sessions commencing on

November 16, 1982 Organization

March 1, 1983 "A"

April 5, 1983 Regular

June 15, 1983 "B"

July 12, 1983 "C"

[Special Sessions are lettered from Organization Session for two-year term of House of Representatives.]
Representative Simon offered the following title amendment

Amendment 2—On page 1, line 1, strike the entire title and insert A bill to be entitled An act relating to mortgage guaranty insurance; amending ss 635 011 and 635 031, Florida Statutes, providing editorial changes in provisions relating to definitions and restrictions upon mortgage guaranty insurers, creating s 635 038, Florida Statutes, requiring such insurers to maintain a policyholders reserve and specifying schedules for determining the amount thereof, amending s 635 041, Florida Statutes, changing restrictions upon the payment of losses from the insurers contingency reserve, tying the amount of the contingency reserve to the policyholders reserve, creating s 635 045, Florida Statutes, requiring the maintenance of such reserves by such insurers and the insurer whenever the mortgage guaranty insurer obtains reinsurance, amending s 635 051, Florida Statutes, exempting insurance agents from examination if the insurer guarantees certain claims, amending s 635 071, Florida Statutes, specifying that rates are filed with the department for informational purposes, amending s 635 081, Florida Statutes, providing editorial changes in provisions relating to department rules, creating s 635 082, Florida Statutes, requiring insurance policies to contain provisions requiring certain determination of property by the insured, creating s 635 091, Florida Statutes, providing for the applicability of certain provisions of the Insurance Code, saving chapter 635, Florida Statutes, from sunset repeal scheduled October 1, 1983, providing for future review and repeal, requiring prospective applicability of certain provisions of the act, providing an effective date

Rep Simon moved the adoption of the amendment, which was adopted without objection.

Under Rule 8 19, the bill was referred to the Engrossing Clerk

HB 1087 was taken up On motion by Rep Simon, CS/SB 207, a similar or companion measure, was substituted for HB 1087 and—

CS for SB 207—A bill to be entitled An act relating to home warranty associations; revising, reviving, and readopting, notwithstanding the Regulatory Sunset Act, ss 634 301-634 329, Florida Statutes, relating to the regulation of home warranty associations, amending ss 634 301 (3), (6)(7), Florida Statutes, and adding sub-sections (13)(16) to said section, amending ss 634 304, 634 305, 634 306 (4), 634 307, 634 308, 634 310 (1), 634 311 (4), 634 313 (1), (2), 634 315, 634 317, 634 318, 634 319, 634 321, 634 322, 634 323 (1), 634 324, 634 326, Florida Statutes, adding s 634 320 (11), Florida Statutes, creating ss 634 3045, 634 3112, 634 3125, 634 3126, 634 3135, 634 3225, 634 3275, 634 3285, 634 335-634 345, Florida Statutes, providing definitions, requiring renewal of license, requiring an unearned premium reserve fund, specifying minimum required net assets, providing for contractual liability insurance in lieu of an unearned premium reserve, eliminating letters of credit, prohibiting refund of license fee upon denial of license, providing for administrative fines in lieu of suspension or revocation of license; providing for disapproval of forms; providing for rates to be filed for informational purposes, specifying contents of annual statements; providing minimum requirements for office records and permitting computer records; revising requirements for service of process; requiring registration of certain real estate brokers, providing for biennial registration of sales representatives, providing grounds and procedures for suspension or revocation of registration, specifying duration of suspension or revocation, increasing administrative fines imposed in lieu of suspension or revocation of registration, providing fees, providing for confidentiality of investigative records, requiring departmental approval of mergers or consolidations of associations, prohibiting unfair methods of competition and unfair trade practices, defining unfair trade practices, providing the department powers, providing remedies for violations, prohibiting coercion of debtors, requiring buyer's right to cancel, allowing to stand repealed pursuant to the Regulatory Sunset Act, ss 634 316, Florida Statutes, relating to service of process, providing for legislative review, providing retroactivity, providing an effective date

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(3) The department shall charge and collect the same applicable license taxes and fees for mortgage guaranty insurance agents even connection with such application and license as apply to general lines agents in s 624 501 The department shall deposit such li- cense taxes and fees in such funds for such use as is provided in s 624 523 for by laws applicable to like license taxes and like fees for in the case of general lines agents

Section 8. Section 635 061, Florida Statutes, reads

635 061. Premium cost.—The premium cost of mortgage guaran­ tancy insurance shall not be deemed for any purpose to constitute a part of the cost of or interest upon any mortgage loan

Section 9. Section 635 071, Florida Statutes, is amended to read

635 071. Filing, approval of forms, rate filings —

(1) No policy form or related form shall be issued or used in this state unless it has been filed with and approved by the department as provided by laws applicable to casualty or surety insurance

(2) In addition, each insurer shall file with the department for informational purposes the rate to be charged and the premium including all modifications of rates and premiums to be paid by the policyholder

Section 10. Section 635 081, Florida Statutes, is amended to read

635 081. Administration and enforcement.—The department may adopt rules necessary to effect any of the department's statutory duties pursuant to this chapter and shall have the same powers of administration and enforcement of the provisions of this chapter act, and to make rules and regulations for the effectuation of any provisions of this act, as it has with respect to casualty or surety insurers in general under the Florida Insurance Code laws of this state.

Section 11. Section 635 082, Florida Statutes, is created to read

635 082. Restoration of property.—Mortgage guaranty insurance policies issued for delivery in this state shall contain a condition precedent to payment, in the event of default, providing that the insured must restore the property to its condition at the time of issuance of the policy, except for reasonable wear and tear.

Section 12. Section 635 091, Florida Statutes, is created to read

635 091. Provisions of Insurance Code applicable to mortgage guaranty insurance.—The following provisions of the Insurance Code shall apply to mortgage guaranty insurers. chapter 624, chapter 625, parts I, II, VI, and VII of chapter 626, chapter 628, s 627 915, and chapter 631

Section 13. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s 11 61, Florida Statutes, chapter 635, Florida Statutes, shall not stand repealed on October 1, 1983, and shall continue in full force and effect as amended herein.

Section 14. Chapter 635, Florida Statutes, is repealed on October 1, 1983, and shall be reviewed by the Legislature pursuant to s 11 61, Florida Statutes, the Regulatory Sunset Act.

Section 15. Sections 635 039, Florida Statutes, as created, and 635 041, Florida Statutes, as amended by this act, shall apply only to mortgage guaranty insurance policies issued or renewed on or after October 1, 1983 Policies issued or renewed prior to said date are subject to the provisions of s 635 041, Florida Statutes, as it existed prior to said date

Section 16. This act shall take effect October 1, 1983

Rep Simon moved the adoption of the amendment, which was adopted without objection.
Representative Simon offered the following amendment

Amendment 1—On page 2, line 26, strike everything after the enacting clause, and insert

CHAPTER 634, PART II
HOME WARRANTY ASSOCIATIONS

Section 1 Section 634.301, Florida Statutes, is amended to read

634 301 Definitions—As used in this part

(1) "Home warranty association" or "association" means any corporation on any other organization, other than an insurer, issuing home warranties as herein defined

(2) "Insurer" means any property or casualty insurer duly authorized to transact such business in this state

(3) "Home warranty" or "warranty" means any contract or agreement
(a) Offered in connection with the sale of residential property, or
(b) Offered in connection with a loan of $5,000 or more which is secured by residential property which is the subject of the warranty, but not in connection with the sale of such property

whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. However, nothing in this part shall prohibit the giving of usual performance guarantees by either the builder of a home or the manufacturer or seller of an appliance, as long as no identifiable charge is made for such guarantee. Nothing in this part shall be construed as permitting the provision of indemnification against consequential damages arising from the failure of any structural component or appliance of a home, which practice shall constitute the transaction of insurance subject to all requirements of the Insurance Code. This part shall not apply to service contracts entered into between consumers and nonprofit organizations or cooperatives whose members consist of condominium associations and condominium owners who perform repairs and maintenance for appliances or maintenance of the residential property.

(4) "Structural component" means the roof, plumbing system, electrical system, foundation, basement, walls, ceilings, or floors of a home.

(5) "Sales representative" or "contracting sales agent" means any person with whom an insurer or home inspection warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term shall include all employees of any insurer or association engaged directly in the sale or issuance of home warranties.

(6) "Premium" means the total consideration received, or to be received, by an insurer or home warranty association for or related to the issuance and delivery of any binder or warranty, including any charges designated as assessments or fees for membership, policy, survey, inspection, service, or any other charges.

(7) "Department" means the Florida Department of Insurance

(8) "Person" shall include an individual, company, corporation, association, insurer, agent, and every other legal entity.

(9) "Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its business.

(10) "Impaired" means having liabilities in excess of assets.

(11) (a) "Stated capital" means, at any particular time, the sum of

1. The par value of all shares of the association having a par value that have been issued and have not been canceled,
2. The amount of consideration received by the association for all shares of the association without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and
3. Such amounts, not included in subparagraphs 1 and 2, as have been transferred to stated capital of the association, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(b) Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign association shall be determined on the same basis and in the same manner as the stated capital of a domestic association, for the purpose of computing taxes on qualification and other charges imposed by this part.

(12) "Surplus" means the excess of the net assets of an association over its stated capital.

(13) "Earned surplus" means the portion of the surplus of an association that is equal to the balance of its net profits, income, gains, and losses from the date of incorporation or existence, or from the latest date on which a deficit in earned surplus was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent that such distributions and transfers are made out of earned surplus. "Earned surplus" shall also include any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares of the property and assets of another corporation, domestic or foreign.

(14) "Capital surplus" means the entire surplus of an association other than its earned surplus.

(15) "Insurance Code" means the Florida Insurance Code as defined in s 624.01

Section 2 Section 634.302, Florida Statutes, is amended to read

634 302 Powers of department; rules—The department shall administer this part, and, to that end, it may adopt promulgate, and enforce rules necessary and proper to effectuate any provisions of this part.

Section 3 Section 634.303, Florida Statutes, is amended to read

634 303 License required—

(1) No person in this state shall provide or offer to provide home warranties unless authorized therefor under a subsisting license issued by the department. The home warranty association shall pay to the department a license fee of $200 for such license for each license year, or part thereof, the license is in force.

(2) An insurer, while authorized to transact property or casualty insurance in this state, may also transact a home warranty business without additional qualifications or authority, but shall be otherwise subject to the applicable provisions of this part.

Section 4 Section 634.304, Florida Statutes, is amended to read

634 304 Qualifications for license—The department shall not issue or renew a license to any home warranty association unless the association is qualified therefor, as follows:
(1) Is a solvent corporation formed under the laws of Florida or of another state, district, territory, or possession of the United States.

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

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other association, corporation, or organization already doing business in this state as will tend to mislead or confuse the public.

(4) Meets Makes the deposit requirements or files the bond or letter of credit required under § 634.305.

(5) Is otherwise in compliance with this part.

Section 5. Section 634.3045, Florida Statutes, is created to read 634.3045 Financial requirements—

(1) In order to obtain or renew a license, an association shall have and maintain minimum net assets of one-sixth of written premiums on all warranty contracts in force wherever written. Goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies, and assets deposited outside the United States shall be deducted from the net assets of the association in computing the net asset requirement.

(2) An association shall establish and maintain a funded unearned premium reserve, consisting of unencumbered assets, equal to a minimum of 40 percent of the gross written premiums on all warranty contracts in force, wherever written. Such assets shall be held as prescribed under §§ 625.301-625.340.

(3) An association shall not be required to set up an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the department that 100 percent of its claim exposure is covered by such insurance. Such contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state or from an insurer approved by the department as financially capable of meeting the obligations incurred pursuant to the policy. For purposes of this subsection, the contractual liability policy shall contain the following provisions:

(a) In the event that the home warranty association is unable to fulfill its obligation under its contracts issued in this state, for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to persons making claims under such contracts.

(b) The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

(c) The policy shall not be canceled or nonrenewed by either the insurer or the association unless 60 days written notice thereof has been given to the department by the insurer prior to the date of such cancellation or nonrenewal.

(4) An association that purchases contractual liability insurance on the warranties that it issues shall provide the department with claim statistics required to be filed by associations not purchasing such insurance.

Section 6. Section 634.305, Florida Statutes, is amended to read 634.305 Required deposit, bond, or letter of credit—

(1) To assure the faithful performance of its obligations to its members or subscribers in the event of insolvency, every home warranty association shall, prior to the issuance of its license by the department, deposit with the department securities of the type eligible for deposit by insurers under § 625.52, which securities shall have at all times a market value of not less than $100,000 $50,000, $50,000 during the 2 calendar years immediately preceding October 1, 1977, not less than $75,000 during the next succeeding 3 calendar years, and not less than $100,000 thereafter.

(2) In lieu of any deposit of securities required under subsection (1), the home warranty association may:

(a) Deposit with the department securities of the type eligible for deposit by insurers under § 625.52, which securities shall have at all times a market value of not less than $25,000, and the association may file with the department a surety bond in lieu thereof. The bond shall be one issued by an authorized surety insurer, shall be for the same purpose as the deposit or lieu of which it is filed, and shall be subject to the department's approval. No such bond shall be canceled or be subject to cancellation unless at least 30 days' advance notice thereof is filed with the department.

(b) File with the department a surety bond in the amount of $75,000. The bond shall be one issued by an authorized surety company, and shall be for the same purpose as the deposit in lieu of which it is filed. The bond shall guarantee that the home warranty association shall faithfully and truly perform all the conditions of any home warranty contract. The bond used shall be subject to the department's approval. No such bond shall be canceled or be subject to cancellation unless at least 60 days' advance notice thereof is filed with the department.

In the event that notice of termination of the bond is filed with the department, the home warranty association insured thereunder shall, within 30 days of the filing of notice of termination, provide the department with a replacement bond meeting the requirements of this part, or deposit additional securities as required under subsection (1).

(3) Cancellation of a bond shall not relieve the obligation of the insurer of the bond for claims arising out of contracts issued prior to cancellation of the bond unless the replacement bond is filed pursuant to subsection (2) In no event shall the insurer's liability under the bond exceed the face amount of the bond. If within 30 days of filing the notice of termination, no replacement bond or additional security is provided, the department shall suspend the association's license until the deposit requirements are satisfied. The association may file with the department an irrevocable letter of credit in lieu of the bond required under this subsection. The association shall be subject to the department's approval of the irrevocable letter of credit. The association shall be subject to the department's approval of the irrevocable letter of credit.

(4) The state shall be responsible for the safekeeping of all securities deposited with the department under this part. Such securities shall not, on account of being in the custody of the department, be subject to taxation, but shall be held exclusively and solely to guarantee the association's faithful performance of its obligations to its members or subscribers.

(5) The state shall be responsible for the safekeeping of all securities deposited with the department under this part. Such securities shall not, on account of being in the custody of the department, be subject to taxation, but shall be held exclusively and solely to guarantee the association's faithful performance of its obligations to its members or subscribers.

(6) The depositing association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities so on deposit, to receive the interest and other income accruing to such securities, and to inspect the deposit at all reasonable times.

(7) Such deposit or bond or letter of credit shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes the department proof satisfactory to the department that it has discharged or otherwise adequately provided
for all its obligations to its members or subscribers in this state, the department shall release the deposited securities to the parties entitled thereto, on presentation of the department's receipts for such securities, or shall release any bond or letter of credit filed with it pursuant to this section in lieu of such deposit.

Section 7 Section 634306, Florida Statutes, is amended to read
634306 Application for and issuance of license—

(1) Application for license as a home warranty association shall be made to and filed with the department on printed forms prescribed and furnished by it.

(2) In addition to information relative to its qualifications as required under s. 634.304, the application shall show:

(a) The location of applicant's home office
(b) The name and residence address of each director or officer of applicant
(c) Such other pertinent information as may be required by the department

(3) The application when filed shall be accompanied by

(a) A copy of the applicant's articles of incorporation, certified by the public official having custody of the original, and a copy of the applicant's bylaws, certified by the applicant's secretary
(b) A copy of the most recent financial statement of the applicant, verified under oath of at least two of its principal officers
(c) A license fee in the amount of $200, as required under s. 634303

(4) Upon completion of the application for license, the department shall examine the same and make such further investigation of the applicant as it deems advisable. If it finds that the applicant is qualified in accordance with this part therefore, the department shall issue to the applicant a license as a home warranty association. If the department does not so find, it shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor. Any such notice of refusal shall be accompanied by refund of the annual license fee tendered in connection with the application. The department shall not upon any such application within a reasonable period of time after its completion.

Section 8 Section 634307, Florida Statutes, is amended to read
634307 License expiration, renewal—Each license as a home warranty association issued under this part shall expire on June 1, September 30, December 31, or March 31 next following the date of issuance. If the association is then qualified therefor under the provisions of this part, its license may be renewed annually, upon its request and payment to the department of the license fee, as in the amount of $200, in advance, for each such license year.

Section 9 Section 634308, Florida Statutes, is amended to read
634308 Grounds for suspension or revocation of license—

(1) The license of any home warranty association may be revoked or suspended, or the department may refuse to renew any such license, if it is determined that the association

(a) has violated any lawful rule or order of the department or any provision of this part

(b) The association has not maintained a funded unearned premium reserve account equal to one-twentieth of the premiums received by it from all warranty contracts in force

(c) The association has not maintained, as a minimum, a net worth equal to one-twelfth of the written premiums it receives for the issuance and delivery of any warranty contracts

(2) The license of any home warranty association shall be suspended or revoked if it is determined that such association

(b) (i) is in an unsound financial condition or is in such condition or using such methods and practices in the conduct of its business as to render its further transaction of warranties in this state hazardous or injurious to its warranty holders or to the public

(c) (b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the department

(d) (e) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final

(2) (2) Has, with such frequency as to indicate its general business practice in this state, and without just cause, refused to pay proper claims arising under its warranties or, without just cause, compels warranty holders to accept less than the amount due them or to employ attorneys or to bring suit against the association to secure full payment or settlement of such claims

(f) (e) Is affiliated with, and under the same general management, interlocking directorate, or ownership as, another home warranty association which transacts direct warranties in this state without having a license therefor

(g) (f) Has issued warranty contracts which provide for renewal thereof

(h) Is using methods or practices in the conduct of its business that render further transaction of warranty business in this state hazardous or injurious to its warranty holders or to the public

(i) (2) The department may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the license of any home warranty association if it finds that one or more of the following circumstances exist

(a) The association is insolvent or impaired

(b) The unearned premium or net assets required by this part are paragraph (f) or the ratio of net worth to premiums written required by paragraph (g) is not maintained

(c) Proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings regarding the association have been commenced in any state

(d) The financial condition or business practices of the association otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state

(3) (4) Violation of this part by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state

Section 10. Section 634309, Florida Statutes, is hereby repealed
634309 Procedure to suspend or revoke license—Except when a hearing is expressly required under s. 634308 or s. 120.60, no order suspending or revoking a home warranty association's license shall be effective unless made after notice and hearing pursuant to chapter 120

Section 11 Section 634310, Florida Statutes, is amended to read
634310 Order, notice of suspension or revocation of license, effect, publication—

(1) Suspension or revocation of a home warranty association's license shall be by order mailed to the association by registered or certified mail. The department shall promptly also give notice of such suspension or revocation to the association's sales representatives contacting sales agents in this state, of record in the department's office. The association shall not solicit or write any new warranties in this state during the period of any such suspension or revocation
part, the department may, in lieu of such revocation or suspension, under this section, upon notice and hearing, that the causes of the suspension have not been removed or that the association is otherwise not in compliance with the requirements of this part.

(3) Upon expiration of the suspension period, if within such period the license has not otherwise terminated, the association’s license shall automatically be reinstated, unless it is determined, upon notice and hearing, that the causes of the suspension have not been removed or that the association is otherwise not in compliance with the requirements of this part.

(4) Upon reinstatement of the association’s license, or reinstatement of the certificate of authority of an insurer, following suspension, the authority of the association’s sales representatives contracting with or employed by such association, or the insurer, shall likewise be reinstated. The department shall promptly notify the association and its contracting sales agents in the state, of record in its office, of such reinstatement.

Section 13. Section 634.312, Florida Statutes, is amended to read:

634.312 Administrative fine in lieu of suspension or revocation of license.—

(1) If it is found that one or more grounds exist for the suspension, revocation or refusal to renew any license issued under this part, the department may, in lieu of such revocation or suspension, impose a fine upon the association.

(2) With respect to any nonwillful violaton, such fine shall not exceed $500 per violation. In no event shall such fine exceed an aggregate amount of $5,000 for all nonwillful violations arising out of the same action. When an association discovers a nonwillful violation, the association shall correct the violation within 10 days after the date of notification by the department. The association shall promptly notify the association and its contracting sales agents in the state, of record in its office, of such reinstatement.

Section 14. Section 634.312, Florida Statutes, is amended to read:

634.312 Filing, approval of forms.—

(1) No warranty form or related form shall be issued or used in this state unless it has been filed with and approved by the department.

(2) Every such filing shall be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the department.

Section 15. Section 634.3125, Florida Statutes, is created to read:

634.3125 Grounds for disapproval of forms.—The department shall disapprove any form filed under s 634.312 or withdraw any previous approval if the form:

(1) Is in violation of or does not comply with this part.

(2) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions or conditions which deceptively affect the risk purported to be assumed in the general 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 a manner as to render any material provision of the form illegible.

(5) Fails to attain a reasonable degree of readability, simplicity, and conciseness.

(6) Is subject to renewal.

Section 16. Section 634.3126, Florida Statutes, is created to read:

634.3126 Rate filings.—Each insurer and home warranty association shall file with the department for informational purposes the rate to be charged for each warranty and the premium, including all modifications of rates and premiums. Every filing shall state the proposed effective date.

Section 17. Section 634.313, Florida Statutes, is amended to read:

634.313 Tax on premiums and assessments, annual statement, reports.—

(1) In addition to paying the license fee taxes provided for in this part for home warranty associations and license taxes provided in the Insurance Code as to insurers, each such association and each such insurer shall, annually on or before March 1, file with the department its annual statement, in the form prescribed by the department, showing all premiums or assessments received by it in connection with the issuance of warranties in this state during the preceding calendar year and using accounting principles which will enable the department to ascertain whether the reserve required by subsection (5) has been maintained. Further, each association shall pay to the State Treasurer a tax in an amount equal to 2 percent of the amount of such premiums or assessments so received, however, the same exemptions and credits as set forth in ss 624.512 and 624.514 of the Insurance Code allowed to insurers shall apply to insurers and home warranty associations under this part.

(2) Premiums and assessments received by insurers and taxed under this section shall not be subject to any premium tax provided for in the Insurance Code.

(3) Each annual statement shall contain, but not be limited to, a balance sheet listing all assets and liabilities, a schedule used to compute net assets and earned surplus including all expense, premium income, and other income items, and a schedule used to report all claims statistics. The annual statement shall be completed using generally accepted accounting principles except where otherwise provided in this part.
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(4)(b) Any association or insurer neglecting to file the annual statement in the form and within the time provided by this section shall forfeit up to $100 for each day during which such neglect continues, and, upon notice by the department to that effect, its authority to do business in this state shall cease while such default continues. The department shall deposit all sums collected by it under this section to the credit of the Insurance Commissioner’s Regulatory Trust Fund.

(5)(c) In addition to an annual statement, the department may require of licensees, under oath and in the form prescribed by it, such additional regular or special reports as it may deem necessary to the proper supervision of licensees under this part.

Section 18 Section 634.3135, Florida Statutes, is created to read

634.3135 Office records required.—Each licensed home warranty association, as a minimum requirement for permanent office records, shall maintain:

1. A complete set of accounting records, including a general ledger, cash receipts and disbursements journals, accounts receivable registers, and accounts payable registers.

2. A detailed warranty register, in numerical order by warranty number, of warranties in force. The register shall include the warranty number, date of issue, issuing sales representatives, name of warranty holder, location of the property, warranty period, gross premium, commission to sales representatives, and net premium.

3. A detailed claims register which shall include the warranty number, date of issue, date of claim, issuing sales representative, amount of claim, date claim paid, and, if applicable, disposition other than payment and reason therefor.

4. Nothing in this section shall prohibit an association from maintaining office records by computer.

Section 19 Section 634.314, Florida Statutes, reads

634.314 Examination of associations.—Home warranty associations licensed under this part shall be subject to periodic examinations by the department, in the same manner and subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the Insurance Code.

Section 20 Section 634.315, Florida Statutes, is amended to read

634.315 Service of process, appointment of insurance commissioners as process agent.—Home warranty associations shall be subject to service of process in the same manner and subject to the same terms, conditions, and fees as are applicable to insurers under chapter 624.

(1) Each association, whether domestic or foreign, applying for authority to transact business in this state shall file with the department, on a form furnished by the department, its appointment of the Insurance Commissioner and Treasurer, and its successors in office, as its attorney, to receive service of all legal process issued against it in any civil action or proceeding in this state, and agree that process so served shall be valid and binding upon the association. The appointment shall be irrevocable, shall bind the association and any successor in interest as to the assets and liabilities of the association, and shall remain in effect as long as there are outstanding in this state any obligations or liabilities of the association resulting from its warranty transactions.

(2) At the time of appointment of the Insurance Commissioner and Treasurer, as its process agent, the association shall file with the department a designation of the name and address of the person to whom process against it shall be served upon the Insurance Commissioner and Treasurer, to be forwarded. The association may change the designation at any time by a new filing.

Section 21 Section 634.316, Florida Statutes, is hereby repealed

634.316 Service of process.—

(1) Service of process upon the Insurance Commissioner and Treasurer as process agent of the home warranty association shall be made by serving copies on the Insurance Commissioner and Treasurer, or upon his assistant, deputy, or other person in charge of his office. Upon receiving such service, the Insurance Commissioner and Treasurer shall file one copy with the department, return one copy with his admission of service, and promptly forward one copy of the process so registered or certified, on or to the person last designated by the association to receive the name, as provided under § 634.315.

(2) Process served upon the Insurance Commissioner and Treasurer, and any copies thereof, forwarded as provided in this section, shall for all purposes constitute valid and binding service upon the association.

Section 22 Section 634.317, Florida Statutes, is amended to read

634.317 Registration required.—No person shall solicit, negotiate, advertise, or effectuate home warranty contracts for remuneration in this state unless such person is registered as a sales representative contracting sales agents or utilized by a contracting sales agent. If a real estate office sells or issues home warranties, only one sales representative contracting sales agent per office licensed under chapter 624 is required to be registered as a sales representative under this part. The broker acting as sales representative shall be responsible for the warranties sold or issued through the office.

Section 23 Section 634.318, Florida Statutes, is amended to read

634.318 Sales representatives.—Contracting sales agents to be registered.—Every home warranty association or insurer shall, on forms prescribed by the department, register, on or before October 1 of each year, the name and business address of each sales representative contracting sales agent utilized by it in Florida and shall, within 30 days after termination of the contract, notify the department of such termination. The amounts of claim, date claim paid, and, if applicable, disposition other than payment and reason therefor.

Section 24 Section 634.319, Florida Statutes, is amended to read

634.319 Reporting and accounting for funds.—

(1) All funds belonging to insurers, home warranty associations, or others, received by a sales representative contracting sales agent in transactions under his registration shall be trust funds so received by such sales representative agent in a fiduciary capacity, and the sales representative agent, in the applicable regular course of business, shall account for and pay the same to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any sales representative contracting sales agent who, not being entitled thereto, diverts or appropriates such funds or any portion thereof to his own use shall upon conviction be guilty of theft-Jun'ry, punishable as provided in § 812.014, Florida Statutes.

Section 25 Section 634.320, Florida Statutes, is amended to read

634.320 Grounds for compulsory refusal, suspension, or revocation of registration of sales representatives contracting sales agents.
The department shall deny, suspend, revoke, or refuse to renew or continue the registration of any sales representative contracting sales agents if it is found that, as to the sales representative agent, any one or more of the following applicable grounds exist:

1. Material misstatement, 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 of any warranty contract or willful deception with regard to any such contract, done either in person or by any form of dissemination of information or advertising.

4. In the adjustment of claims arising out of warranties, he has materially misrepresented to a warranty holder or other interested party the terms and coverage of a contract, with the intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract.

5. For demonstrated lack of fitness or trustworthiness to engage in the business of warranty.

6. For demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration.

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

8. Misappropriation, conversion, or unlawful withholding of moneys belonging to an association, insurer, or warranty holder, or to others, and received in the conduct of business under the registration.

9. For rebating, or attempting to rebate, or for unlawfully dividing, or offering to divide, his commission with another.

10. Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this part.

11. The sales representative has been found guilty of, or has pled guilty or nolo contendere to a felony, in this state or any other state, which involves moral turpitude, without regard to whether judgment of conviction has been entered by the court.

Section 27 Section 634.322, Florida Statutes, is amended to read

634.322 Procedure for refusal, suspension, or revocation of registration of sales representatives contracting sales agents.

1. If any sales representative contracting sales agent is convicted by a court of a violation of any provision of this part, the registration of such individual shall thereby be deemed to be immediately revoked without any further procedure relative thereto by the department.

2. As to a registration denied, suspended, or revoked by the department, the person aggrieved thereby shall have the right to hearing thereon pursuant to chapter 120.

3. If, after an investigation or upon other evidence, the department has reason to believe that there may exist any one or more grounds for the suspension or revocation of, or refusal to renew or continue, the registration of any contracting sales agent, as such grounds are specified in ss. 634.320 and 634.321, the department may proceed to suspend, revoke, or refuse to renew or continue the registration, as the case may be.

4. Whenever it appears that any licensed insurance agent has violated the provisions of this part, the department may take such action relative thereto as is authorized by the Insurance Code as for a violation of the Insurance Code by such agent.

Section 28 Section 634.3225, Florida Statutes, is created to read

634.3225 Duration of suspension or revocation of registration.

1. The department shall, in its order suspending a registration, specify the time period during which the suspension is to be effective. Such period shall not exceed 1 year. The registration shall remain suspended during the period specified, subject to any rescission or modification by the department. A registration which has been suspended may be reinstated, but the department shall not grant such reinstatement if it determines that the circumstances for which the registration was suspended still exist or are likely to recur.

2. 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 revocation, or, if judicial review of the revocation is sought, within 2 years from the date of the final court order or decree affirming the revocation. The department shall not grant a new registration if it determines that the circumstances for which the previous registration was revoked still exist or are likely to recur.

3. The department shall not grant or issue any registration to any individual whose registration has been twice revoked.

4. During 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.

Section 29 Section 634.323, Florida Statutes, is amended to read

634.323 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 or revocation of, or refusal to renew or continue, any registration issued under this part, on a first offense, and except when 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 $500 $1000 or, in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine of $1,000 $600. The administrative penalty may be augmented in amount 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 related.

(2) The order may allow the registrant a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the department at its office in Tallahassee within the period so 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 30 Section 634 324, Florida Statutes, is amended to read

634 324 Disposition of taxes and fees — All license fees, taxes, and assessments, registration fees, and administrative fines and penalties collected under this part from home warranty associations and sales representatives contracting sales agents shall be deposited to the credit of the Insurance Commissioner’s Regulatory Trust Fund.

Section 31 Section 634 325, Florida Statutes, reads

634 325 Insurance business not authorized — Nothing in this part shall be deemed to authorize any home warranty association to transact any business other than that of home 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 of this state.

Section 32. Section 634 326, Florida Statutes, is amended to read

634 326 Fronting not permitted — No authorized insurer or licensed home warranty association shall act as a fronting company for any unauthorized insurer or unlicensed home warranty association. A “fronting company” is an authorized insurer or licensed home warranty association which, by reinsurance or otherwise, generally transfers to one or more unauthorized insurers or unlicensed home warranty associations substantially all of the risk of loss under warranties written by it in this state.

Section 33. Section 634 327, Florida Statutes, reads

634 327 Applicability to warranty on new home — This part shall not apply to any program offering a warranty on a new home which is underwritten by an insurer licensed to do business in the state when the insurance policy underwriting such program has been filed with and approved by the Department of Insurance as required by law.

Section 34. Section 634 3275, Florida Statutes, is created to read

634 3275 Investigatory records — All active investigation records of the department made or received pursuant to this part, and any active examination records necessary to complete an active investigation, shall be confidential and shall not be subject to public inspection under the provisions of chapter 119 for so long as reasonably necessary to complete the investigation.

Section 35. Section 634 328, Florida Statutes, reads

634 328 Penalty for violation — Any individual who knowingly makes a false or otherwise fraudulent application for license or registration under this part, or who knowingly violates any provision hereof, shall, in addition to any applicable denial, suspension, or revocation of, or refusal to renew or continue, any license or registration, be 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 36. Section 634 3284, Florida Statutes, is created to read

634 3284 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, whichever is greater, together with court costs and reasonable attorney’s fees incurred by the plaintiff.

(2) No punitive damages shall be awarded under this section unless the acts giving rise to the violation occur with such frequency as to indicate a general business practice and these acts are.

(a) Willful, wanton, and malicious, or

(b) In reckless disregard for the rights of any insured.

Any person who pursues a claim under this subsection shall post in advance the costs of discovery. Such costs shall be awarded to the insurer if no punitive damages are awarded to the plaintiff.

(3) As a condition precedent to bringing an action under this section, the department and the insurer shall be given notice of the violation. The notice shall state with specificity the facts which allegedly constitute the violation and the law which the plaintiff is relying upon. No action shall lie if, within 30 days thereafter, the damages are paid or the circumstances giving rise to the violation are corrected.

(4) This section shall not be construed to authorize a class action suit against a home warranty association or a civil action against the department, its employees, or the Insurance Commissioner.

Section 37. Section 634 3285, Florida Statutes, is created to read

634 3285 Acquisition of controlling stock — No person may merge or consolidate with or obtain control of a home 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 38. Section 634 329, Florida Statutes, reads

634 329 Dissolution or liquidation — Any dissolution or liquidation of a corporation 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 this state with respect to the dissolution and liquidation of property and casualty insurance companies pursuant to chapter 631.

Section 39. Sections 634 335, 634 336, 634 337, 634 338, 634 339, 634 340, 634 341, 634 342, and 634 343, Florida Statutes, are created to read:

634 335 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. 634 337 to be, an unfair method of competition or an unfair or deceptive act or practice involving the business of home warranty.

634 336 Unfair methods of competition and unfair or deceptive acts or practices defined. The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(a) Misrepresentation and false advertising — Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which

(b) Is misleading or is a misrepresentation as to the financial condition of any person,
(c) Uses any name or title of any contract misrepresenting the true nature thereof, or

(d) Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any home warranty contract.

(2) FALSE INFORMATION AND ADVERTISING GENERALLY—Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public;

(a) In a newspaper, magazine, or other publication,

(b) In the form of a notice, circular, pamphlet, letter, or poster,

(c) Over any radio or television station, or

(d) In any other way,

an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of home warranty, which is untrue, deceptive, or misleading.

(3) DEFAMATION—Knowingly making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement, or any pamphlet, circular, article, or literature, which is false or maliciously critical of, or derogatory to, any person, and which is calculated to injure such person.

(4) FALSE STATEMENTS AND ENTRIES—

(a) Knowingly making any false entry of a material fact in any book, report, or statement of any person.

(b) Knowingly making any false entry of a material fact in any book, report, or statement of any person.

(5) UNFAIR CLAIM SETTLEMENT PRACTICES—

(a) Attempting to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the warranty holder;

(b) A material misrepresentation made to the warranty holder for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract on less favorable terms than those provided for, and contemplated by, such contract, or

(c) Committing or performing with such frequency as to indicate a general business practice, any of the following

1. Failing to properly investigate claims,

2. Misrepresenting pertinent facts or contract provisions relating to coverages at issue,

3. Failing to acknowledge and act promptly upon communications with respect to claims,

4. Denying claims without conducting reasonable investigations based upon available information;

5. Failing to affirm or deny coverage of claims upon written request of the warranty holder within a reasonable time after proof-of-loss statements have been completed, or

6. Failing to promptly provide a reasonable explanation to the warranty holder of the basis in the contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(6) FAILURE TO MAINTAIN COMPLAINT-HANDLING PROCEDURES—Failure of any person to maintain a complete record of a written complaint received for a 3-year period from the date of the receipt of the written complaint.

(7) REFUSAL TO ISSUE A CONTRACT—The refusal to issue a contract solely because of an individual's race, color, creed, marital status, sex, or national origin.

(8) COERCION OF DEBTORS—When a home warranty is sold as authorized by s 634 301 (3) (b), requiring as a condition precedent or condition subsequent to the lending of the money or extension of the credit, or any renewal thereof, that the person to whom such credit is extended purchase a home warranty, or failing to provide the advice required by s 634 344, or failing to comply with the provisions of s 634 345.

634 337 Power of department.—The department shall have the power to examine and investigate the affairs of every person involved in the business of home warranty in this state in order to determine whether such person has been or is engaged in any unfair method of competition or any unfair or deceptive act or practice prohibited by s 634 335.

634 338 Defined practices, hearings, witnesses, appearances, production of books, and service of process.—

(1) Whenever the department has reason to believe that any person has engaged, or is engaging, in this state, in any unfair method of competition or any unfair or deceptive act or practice as defined in s 634 336, or is engaging in the business of home warranty without being properly licensed as required by this part, and that a proceeding by it in respect thereto would be to the interest of the public, it shall conduct or cause to have conducted a hearing in accordance with chapter 120.

(2) The department or a duly empowered hearing officer shall, during the conduct of such hearing, have those powers enumerated in s 120 58, however, the penalties for failure to comply with a subpoena or with an order directing discovery shall be limited to a fine not to exceed $1,000 per violator.

(3) Statements of charges, notices, and orders under this part may be served by anyone duly authorized by the department, either in the manner provided by law for service of process in civil actions or by certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so served of such statement, notice, order, or other process setting forth the manner of the service shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, certified and mailed as aforesaid, shall be proof of service of the same.

634 339 Cease and desist and penalty orders.—After the hearing provided in s 634 338, the department shall enter a final order in accordance with ss 120 58. If it is determined that the person charged has engaged in an unfair or deceptive act or practice or the unlawful transaction of home warranty business, the department shall also issue an order requiring the violator to cease and desist from engaging in such method of competition, act or practice, or the unlawful transaction of home warranty business. Further, the department may, at its discretion, order any one or more of the following

(1) Suspension or revocation of the person's license, or eligibility for any license, if he knew, or reasonably should have known, that he was in violation of this part.

(2) If it is determined that the person charged has procured or offered to procure home warranties without proper licensure, an administrative penalty not to exceed $1,000 for each home warranty contract offered or effectuated.

634 340 Appeals from the department.—Any person subject to an order of the department under s 634 339 may obtain a review of
such order by filing an appeal therefrom in accordance with the provisions and procedures for appeal from the orders of the department in general under § 120.68.

634.341 Penalty for violation of cease and desist orders.—Any person who violates a cease and desist order of the department under § 634.339 while such order is in effect, after notice and hearing as provided in § 634.338, shall be subject, at the discretion of the department, to any one or more of the following:

1. A monetary penalty of not more than $25,000 as to all matters determined in such hearing.

2. Suspension or revocation of such person’s license, or eligibility to hold a license.

634.342 Injunction.—In addition to the penalties and other enforcement provisions of this part, in the event any person shall violate § 634.303 or § 634.319 or any rule adopted or promulgated pursuant thereto, the department is authorized to resort to proceedings for injunction in the circuit court of the county where such person shall reside or have its principal place of business, and thereupon apply for such temporary and permanent orders as the department may deem necessary to restrain such person from engaging in any such activities, until such person shall have complied with such provisions and rules.

634.343 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 40 Section 634.344, Florida Statutes, is created to read:

634.344 Coercion of debtor prohibited.—

1. When a home warranty is sold as authorized by § 634.301(3)(b), no person may require as a condition precedent or condition subsequent to the lending of the money or extension of the credit, or any renewal thereof, that the person to whom such money or credit is extended purchase a home warranty.

2. When a home warranty is purchased in connection with the lending of money as authorized by § 634.301(3)(b), the insurer or home warranty association or the insurer’s or the home warranty association’s sales representative shall advise the borrower or purchaser in writing that Florida law prohibits the lender from requiring the purchase of a home warranty as a condition precedent or condition subsequent to the making of the loan.

Section 41. Section 634.345, Florida Statutes, is created to read:

634.345 Buyer’s right to cancel.—Every warranty sold in connection with a loan as authorized by § 634.301(3)(b) shall contain a provision providing that the purchaser or borrower may cancel the warranty within 10 days of payment without penalty and upon such cancellation the insurer or home warranty association shall promptly refund the premium paid. This provision may be included in the warranty or by rider or endorsement thereto.

Section 42. Notwithstanding the provisions of the Regulatory Sunset Act, or any other provision of law which provides for review and appeal in accordance with § 11.61, Florida Statutes, and except as otherwise specifically provided herein, sections 634.301, 634.302, 634.303, 634.304, 634.305, 634.306, 634.307, 634.308, 634.310, 634.311, 634.312, 634.313, 634.314, 634.315, 634.317, 634.318, 634.319, 634.320, 634.321, 634.322, 634.323, 634.324, 634.325, 634.326, 634.327, 634.328, and 634.329, Florida Statutes, shall not stand repealed on October 1, 1983, and shall continue in full force and effect as amended herein.

Section 43. Part II of chapter 634, Florida Statutes, is repealed on October 1, 1993, and shall be reviewed by the Legislature pursuant to the Regulatory Sunset Act, s 11.61, Florida Statutes.

Section 44. Section 3 of chapter 81-148, Laws of Florida, is hereby repealed.

Section 45. This act shall take effect October 1, 1983, except that section 44 shall take effect July 1, 1983, and provided that the provisions of sections 5 and 9 of this act shall apply only to contracts entered into on or after the effective date of this act.

Rep. Simon moved the adoption of the amendment.

Amendment 1 to Amendment 1.—On page 10, line 13, strike “40” and insert “25.”

Rep. Simon moved the adoption of the amendment to the amendment.

Representative Simon offered the following amendment to the amendment.

Amendment 2.—On page 1, line 1, strike the entire title, and insert: A bill to be entitled An act relating to home warranty associations, amending § 634.301, Florida Statutes, defining “home warranty association,” “sales representative,” and “premium,” changing “contracting sales agent” to “sales representative,” deleting definition of “person,” adding definitions of “net assets,” “statutory capital,” “surplus,” “earned surplus,” “capital surplus” and “Insurance Code”; amending § 634.302, Florida Statutes, relating to powers and rules of the Department of Insurance, amending § 634.303, Florida Statutes, relating to licenses; amending § 634.304, Florida Statutes, relating to qualifications for licensure; creating § 634.3045, Florida Statutes, relating to financial requirements for issuance or renewal of licenses, creating § 634.305, Florida Statutes, relating to security deposits, providing for deposit of additional securities under certain circumstances; requiring notice of termination of a surety bond and requiring replacement, providing a penalty; amending § 634.306, Florida Statutes, relating to application for and issuance of licenses, deleting the requirement that the department refund the annual license fee when failing to issue a license, amending § 634.307, Florida Statutes, relating to license expiration and renewal, changing expiration date from September 30 to June 1 on licenses issued, amending § 634.308, Florida Statutes, relating to suspension and revocation of licenses; repealing § 634.309, Florida Statutes, relating to procedures for suspending or revoking licenses, amending § 634.310, Florida Statutes, relating to notice of suspension or revocation of license, amending § 634.311, Florida Statutes, relating to duration of suspension and reinstatement of license, amending § 634.312, Florida Statutes, allowing administrative fines in lieu of suspension or revocation, amending § 634.312, Florida Statutes, relating to filing and approval of warranty forms, creating § 634.3125, Florida Statutes, providing grounds for approval of forms, creating § 634.3126, Florida Statutes, requiring rate filings, amending § 634.313, Florida Statutes, relating to tax on premiums, annual statements and reports, providing requirements for annual statements, creating § 634.3135, Florida Statutes, requiring home warranty associations to maintain office records; amending § 634.315, Florida Statutes, relating to service of process, deleting provisions for appointment of Insurance Commissioner as process agent, repealing § 634.316, Florida Statutes, relating to service of process, amending § 634.317, Florida Statutes, relating to registration by sales representatives, amending § 634.318, Florida Statutes, providing requirements for registration; amending § 634.319, Florida Statutes, requiring reporting and accounting for funds by the sales representative, providing penalties; amending § 634.320, Florida Statutes, relating to compulsory refusal, suspension or revocation of registration of sales representatives; amending § 634.321, Florida Statutes, relating to discretionary refusal, suspension or revocation of registration of sales representatives, creating § 634.322, Florida Statutes, relating to procedure for refusal, suspension or revocation of registration of sales representatives; creating § 634.325, Florida Statutes, relating to duration of suspension or revocation of...
registration, amending ss. 634.323, Florida Statutes, relating to administra-
tion, and fixing in lieu of suspension or revocation of registration, amending ss. 634.324, Florida Statutes, relating to disposition of taxes and fees, amending ss. 634.326, Florida Statutes, prohibiting fronting by insurers or licensed home warranty associations, creating ss. 634.3275, Florida Statutes, relating to investigatory records, creating ss. 634.3284, Florida Statutes, relating to civil remedies, creating ss. 634.3285, Florida Statutes, relating to acquisition of controlling stock, creating ss. 634.335, Florida Statutes, prohibiting unfair methods of competition and unfair or deceptive acts or practices; creating ss. 634.336, Florida Statutes, defining unfair methods of competition and unfair or deceptive acts or practices; creating ss. 634.337, Florida Statutes, relating to powers of the department, creating ss. 634.338, Florida Statutes, relating to hearings, witnesses, appearances, production of books and service of process, creating ss. 634.339, Florida Statutes, relating to cease and desist and penalty orders, creating ss. 634.340, Florida Statutes, relating to appeals from the department, creating ss. 634.341, Florida Statutes, providing penalties, creating ss. 634.342, Florida Statutes, providing for injunction, creating ss. 634.343, Florida Statutes, relating to civil liability, creating ss. 634.344, Florida Statutes, prohibiting coercion of debtors, creating ss. 634.345, Florida Statutes, relating to the right of the purchaser or borrower to cancel, providing for sunset review and repeal, repealing section 3 of chapter 81-148, Laws of Florida, removing duplicate sunset provisions, providing effective dates

Rep. Simon moved the adoption of the amendment, which was adopted without objection

Under Rule 8.19, the bill was referred to the Engrossing Clerk

HB 1182—A bill to be entitled An act relating to insurance and health care cost containment, adding subsections (3) and (4) to ss. 627.411, Florida Statutes, 1982 Supplement, providing for filing and review of health insurance rates, creating ss. 627.4115, Florida Statutes, providing for examination of health insurers to ascertain compliance with chapter 627; amending ss. 627.4235 (1) and (2), Florida Statutes, 1982 Supplement, providing for coordination of health insurance benefits, adding subsection (3) to ss. 627.602, Florida Statutes, 1982 Supplement, providing for printing of notice of co-insurance provision on an insurance policy, amending ss. 627.6056, Florida Statutes, 1982 Supplement, providing for individual insurance coverage for outpatient services if such services are covered on an inpatient basis, creating ss. 627.6065, Florida Statutes, requiring second medical opinion prior to coverage for non-emergency surgery under individual health insurance policies, amending subsection (2) of ss. 627.614, Florida Statutes, as amended by chapter 82-243, Laws of Florida, providing that an insured may request reconsideration of a specified provider by the policy so that medical services, ss. 627.6176, Florida Statutes, 1982 Supplement, requiring coordination in all individual health insurance policies, renumbering and amending ss. 627.621 and 627.622, Florida Statutes, 1982 Supplement, providing for insurer payment of benefits and recovery of benefits paid under certain circumstances, repealing ss. 627.620, Florida Statutes, 1982 Supplement, to conform to the act, creating ss. 627.6371, Florida Statutes, providing that an insurer may contract with providers for alternate rates of payment, and may offer individual health insurance policies reflecting such rates to insureds, adding subsections (4) and (5) to ss. 627.643, Florida Statutes, 1982 Supplement, requiring that the department disseminate health insurance information for the benefit of individual purchasers, providing that the department shall adopt rules to govern preferred provider contracts, amending ss. 627.6573, Florida Statutes, 1982 Supplement, requiring coordination in all group health insurance policies, amending ss. 627.6616, Florida Statutes, 1982 Supplement, providing for group insurance policy coverage for outpatient services if such services are covered on an inpatient basis, creating ss. 627.6655, Florida Statutes, providing for recovery of benefits paid under certain circumstances, creating ss. 627.6666, Florida Statutes, requiring second medical opinion prior to coverage for non-emergency surgery under group health insurance policies, creating ss. 627.6691, Florida Statutes, providing that an insurer may contract with providers for alternate rates of payment, and may offer group health insurance policies reflecting such rates to insureds, creating ss. 627.916, Florida Statutes, requiring insurers to report cost containment practices, providing that the provisions of this act shall apply to health insurance policies issued or renewed after the effective date of this act, providing an effective date

—was read the second time by title

Representative Lehtinen offered the following amendment.

Amendment 1—On page 14, line 24, insert

(e) That emergency medical services are and will remain available to the insured, and that payment for such services will be made without regard to otherwise applicable policy limitations on providers or rates of payment to such providers

Rep. Lehtinen moved the adoption of the amendment, which was adopted without objection

Representative Lehtinen offered the following amendment

Amendment 2—On page 18, line 27, insert

(e) That emergency medical services are and will remain available to the insured, and that payment for such services will be made without regard to otherwise applicable policy limitations on providers or rates of payment to such providers

Rep. Lehtinen moved the adoption of the amendment, which was adopted without objection
Chapter 634, Part II

Home Warranty Associations

Section 1. Section 634.301, Florida Statutes, is amended to read:

634.301 Definitions. As used in this part:

1. "Home warranty association" or "association" means any corporation or any other organization, other than an authorized insurer, issuing home warranties as herein defined.

2. "Insurer" means any property or casualty insurer duly authorized to transact such business in this state.

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Alternative I - s. 634.301(3)

"Home warranty" or "warranty" means any contract or agreement offered in connection with the sale of residential property, or renewal of such a contract, whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. However, nothing in this part shall prohibit the giving of usual performance guarantees by either the builder of a home or the manufacturer or seller of an appliance, as long as no identifiable charge is made for such guarantee. Nothing in this part shall be construed as permitting the provision of indemnification against consequential damages arising from the failure of any structural component or appliance of a home, which practice shall constitute the transaction of insurance subject to all requirements of the Insurance Code. This part

Coding Words in struck through type are deletions from existing law; words underlined are additions.
authority, but shall be otherwise subject to the applicable provisions of this part.

Section 4. Section 634.304, Florida Statutes, is amended to read:

634.304 Qualifications for license.--The department shall not issue or renew a license to any home warranty association unless the association is qualified thereby as follows:

(1) Is a solvent corporation formed under the laws of Florida or of another state, district, territory, or possession of the United States.

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

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other association, corporation, or organization already doing business in this state as will tend to mislead or confuse the public.

(4) Makes the deposit required under s. 634.305.

(5) Is otherwise in compliance with this part.

Section 5. Section 634.3045, Florida Statutes, is created to read:

634.3045 Financial requirements.--

(1) In order to obtain or renew a license, an association shall have and maintain minimum net assets of one-sixth of premiums written. Goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances
to officers, directors, employees, salesmen, and affiliated
companies shall be deducted from the net assets of the
association in computing the net asset requirement.

(2) All assets shall be reposed in the United
States.

(3) An association shall establish and maintain an
unearned premium reserve, consisting of unencumbered assets,
equal to a minimum of 40 percent of the gross written premiums
on all warranty contracts in force, wherever written. Such
assets shall be held as prescribed under ss. 625.301-625.340.

(4) An association shall not be required to set up an
unearned premium reserve if it has purchased contractual
liability insurance which demonstrates to the satisfaction of
the department that 100 percent of its claim exposure is
covered by such insurance. Such contractual liability
insurance shall be obtained from an insurer that holds a
certificate of authority to do business within the state or
from an insurer approved by the department as financially
able of meeting the obligations incurred pursuant to the
policy. For purposes of this subsection, the contractual
liability policy shall contain the following provisions:

(a) In the event that the home warranty association is
unable to fulfill its obligation under its contracts issued in
this state, for any reason, including insolvency, bankruptcy,
or dissolution, the contract liability insurer will pay losses
and unearned premiums under such plans directly to persons
making claims under such contracts.

(b) The insurer issuing the policy shall assume full
responsibility for the administration of claims in the event
of the inability of the association to do so.
(c) The policy shall not be canceled or nonrenewed by
either the insurer or the association unless 60 days written
notice thereof has been given to the department by the insurer,
prior to the date of such cancellation or nonrenewal.

(5) An association that purchases contractual
liability insurance on the warranties that it issues shall
provide the department with claim statistics required to be
filed by associations not purchasing such insurance.

Section 6. Section 634.305, Florida Statutes, is
amended to read:

634.305 Required deposit—bond—or—letter—of—credit.--

(1) To assure the faithful performance of its
obligations to its members or subscribers in the event of
insolvency, every home warranty association shall, prior to
the issuance of its license by the department, deposit with
the department securities of the type eligible for deposit by
insurers under s. 625.52, which securities shall have at all
times a market value of not less than $100,000 during
the 2 calendar years immediately succeeding October 1, 1977,
not less than $75,000 during the next succeeding 2 calendar
years, and not less than $100,000 thereafter. Whenever the
market value of the securities deposited with the department
is less than 95 percent of the amount required, the
association shall deposit additional securities or otherwise
increase the deposit to the amount required.

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ALTERNATIVE I - s. 634.305(2)-(6)

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ALTERNATIVE I - s. 634.305(2)-(6)

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(2) In lieu of any deposit of securities required
under subsection (1).

CODING Words in struck through type are deletions from existing law, words underlined are additions.
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 II, Florida Statutes, relating to home warranty associations. A review of this part was initiated by the House Insurance Committee (now the Commerce Committee) at the conclusion of the 1982 Session. Through the process of "public workshops" attended by
legislators and representatives of the Department of Insurance and industry organizations, staff drafted the proposed legislation which is being presented for consideration by the 1983 Legislature.

Chapter 634, Part II, Florida Statutes, regulates corporations selling home warranties. Home warranties are offered in connection with the sale of residential property. They are designed to indemnify the homeowner for repair costs to structural components or appliances caused by wear and tear or inherent defect. Recognizing that home warranty associations collect premiums and incur future obligations, the provisions regulating the associations are directed at assuring that the future obligations will be satisfied. There are currently seven licensed home warranty companies in Florida. Collectively they reported $7,017,501 in premiums for 1981.

A section by section analysis of the proposed bill follows.

II. Current Law and Effect of Changes

Section 1. The bill makes the following substantive changes to the definitions contained in s. 634.301:

Subsection (3) - The definition of "home warranty" is changed to allow the sale of warranties in connection with a loan of $5,000 secured by residential property which is the subject of the warranty. Previously warranties could be offered only in connection with the sale of residential property.

Subsection (6) - The definition of "premium" is expanded to include the total consideration received, including any charge designated as fees for membership, policy, survey, inspection, or service. This change is intended to prevent a home warranty association from avoiding the premium reserve requirements, or exceeding written premium limitations, by designating part of the "premium" as an inspection fee or other such charge.

Subsection (10) - The definition of net assets is added. The definition provides that net assets means the amount by which total assets exceeds total liabilities.

Subsections (11)-(15) - Definitions are added for "state capital," "surplus," "earned surplus," "capital surplus," and "Insurance Code," the terms used by the department in determining adherence to the financial requirements of their charter. The additions provide precise definitions for review of warranty associations' financial condition. (These definitions are similar to those added to Part I of Chapter 634, relating to Automobile Inspection and Warranty Associations, reviewed under sunset in 1982.)

Section 2. Technical change only to s. 634.302, authorizing the Department of Insurance to adopt rules pursuant to this chapter.

Section 3. No changes are proposed for s. 634.303, which requires all home warranty associations to obtain a license in order to do business. A properly licensed property and casualty insurer may transact warranty business without further qualifications.

Section 4. Technical change to s. 634.304 which makes the qualifications for renewal of a license the same as for issuance of a new license.

Section 5. s. 634.3045 provides the minimum financial requirements that must be met by a home warranty association in order to obtain and maintain a license to do business. The financial requirements listed here were drawn from various sections of the existing statutes. In addition to substantive changes, the intent of this new section is to organize the various requirements under one section, and clarify where necessary.
Subsection (1) - The definition of "net assets" is amended to exclude certain intangible assets such as goodwill, franchises, customer lists, patents of 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. This has resulted in a situation where companies may include certain types of "assets" on their balance sheet which would be of little value in the event of financial trouble. As presently required, this section mandates companies to maintain minimum net assets of 1/6 of written premium.

Subsection (2) - Increases the minimum unearned premium reserve requirement from 25 to 40 percent of gross written premiums, which must be held as cash or securities to pay losses.

Subsection (3) - New language exempts a home warranty from the reserve requirements if the association purchases contractual liability insurance for 100% of its claim exposure. The subsection provides the specifications required of the contractual liability insurance, if the home warranty association is to be exempt from the reserve requirements.

Subsection (4) - Requires all home warranty associations to maintain claim statistics.

Section 6. s.634.305 requires associations to deposit $100,000 in cash or securities with the department. New language is added requiring additional securities when the market value of the securities used as a deposit drops below the required amount.

Presently, a home warranty association may file a surety bond or an irrevocable letter of credit with the department in lieu of cash or securities to meet the deposit requirement. The bill eliminates the letter of credit, as a substitute for securities in meeting the deposit requirement. The use of a bond is changed. The bill now requires $25,000 cash or securities, and a $75,000 surety bond in order to meet the deposit requirement. A bond without the $25,000 securities is no longer acceptable. The time period required for notice to the department of cancellation of the bond is increased from 30 to 60 days. The bill also requires that within 30 days of issuing the notice of cancellation of the bond, the home warranty association must replace the bond or have its license suspended.

Section 7. s. 634.306 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 applicant is denied a license. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)

Section 8. s. 634.307 requires company 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. s. 634.308 lists the grounds for discretionary suspension or revocation of a license. The bill provides that violation of a rule of the department is a ground for suspension or revocation. Reserve requirements and net worth requirements are eliminated here as they are now provided for under the financial requirements in section 5 of the bill.

Paragraphs (b) thru (f) are added to the discretionary grounds. Previously, violations of these requirements resulted in mandatory suspension or revocation of a license. These grounds would be made discretionary to allow the department greater flexibility in dealing with violations.

Subsection (1)(h) is new language to separate the business practices standard from the financial requirements outlined previously.
Subsection (2) provides the grounds for discretionary suspension of a company's license. Technical changes were made in paragraph (b) to clarify the requirements concerning unearned premium reserves.

Section 10. s. 634.309 provides the procedure for suspending or revoking a license. The bill repeals this section because the rules of the Administrative Procedure Act (ch. 120) apply to license revocation.

Section 11. The bill makes no substantive change to s. 634.310 which requires notice of suspension or revocation to be given by the department to an association's sales representatives.

Section 12. s. 634.311 provides for a maximum one year suspension of a license if the causes of the suspension have been corrected. The bill strikes the reference to a notice and hearing, because the requirements of the Administrative Procedure Act (ch. 120) 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. s. 634.3112 is a new section providing for a fine in lieu of suspension or revocation of a license. The new section authorizes a maximum fine of $500 for a nonwillful violation of the provisions of the chapter, with a maximum fine of $5,000 for all nonwillful 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% per year.

Section 14. s. 634.312 provides the procedure for filing and approval of forms.

Section 15. s. 634.3125 is created 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 a heading which is misleading, (4) is illegible, (5) fails to attain a reasonable degree of readability, simplicity and conciseness, or (6) is subject to renewal.

Section 16. s. 634.3126 is created providing that home warranty associations file for informational purposes the rates charged for their warranty contracts.

Section 18. s. 634.3135 is created requiring associations to maintain permanent office records, including accounting records, a detailed warranty register, and a centralized claims record. Such information is considered necessary for the department's examination of the warranty association as required under s. 634.416.

Section 19. s. 634.314 is unchanged. It provides for periodic examinations by the department of home warranty associations.

Section 20. s. 634.315 provides procedures for service of process on home warranty associations. If amended, associations would be subject to the same terms, conditions, and fees as are applicable to insurance companies under chapter 624.

Section 22. Is amended to clarify what persons need to be registered. The section provides that all persons who solicit, negotiate, or effectuate home warranties for remuneration shall be registered, except when warranties are sold thru real estate sales offices. In that case only one broker per sales office would be required to register. That broker would be responsible for all warranty contracts issued or sold thru his office.

Section 23. s. 634.318 deals with the term of registration and the filing fee. The new provisions change the registration requirements from annual to biennial. The registration fee is increased from $20 to $40 to reflect the new two-year term.
Section 24. s. 634.319 details how funds received for warranties are to be handled by sales representatives. No substantive changes are made.

Section 25. s. 634.320 lists the grounds for the mandatory refusal, suspension, or revocation of the registration of a sales representative. The bill adds one ground, not in the existing law, which states that if the sales representative is found guilty or pleads guilty or nolo contendere to a felony involving moral turpitude, it is grounds for suspension or revocation. This ground exists for insurance agents in s. 626.611.

Section 26. s. 634.321 lists the grounds for discretionary refusal, suspension or revocation of the registration of a sales representative. The bill adds conviction of a felony, or pleading guilty or nolo contendere to a felony as grounds for suspension or revocation. This is similar to that provided for insurance agents in s. 626.621.

Section 27. s. 634.322 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 28. s. 634.3225 is a new section providing for a maximum one year suspension of the registration of a sales representative. It also provides a two-year period before a person has the right to apply for registration.

Section 29. s. 634.323 is amended to increase the maximum fine against a sales representative in lieu of suspension or revocation from $100 to $500 for a nonwillful violation, and from $500 to $1,000 for willful misconduct.

Section 30. Editorial changes are made to s. 634.324 which requires that all fees and taxes collected under this part are to be deposited in the Insurance Commissioner’s Regulatory Trust Fund.

Section 31. No change is proposed to s. 634.325 which specifies that this part does not authorize a home warranty association to engage in the business of insurance beyond that specifically authorized, unless the association is an authorized insurer.

Section 32. s. 634.326 presently prohibits an authorized insurer or home warranty association from transferring to unauthorized insurers through reinsurance or otherwise substantially all of the risk of loss under its warranty contract. As amended, transferring any part of the risk to an unauthorized insurer, rather than "substantially all" of the risk is prohibited.

Section 33. No change is made to s. 634.327 which exempts from this part warranties written on new homes by an insurer licensed to do business in the state.

Section 34. 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 35. No change is made to s. 634.328 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 36. s. 634.3284 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 to correct
the circumstances giving rise to the violation, in which case no action
would lie.

Section 37. s. 634.3285 provides that no entity may merge,
consolidate or obtain control of a home warranty association without
approval of the department.

Section 38. No change is made to s. 634.430 which provides the
department with the same supervisory powers relative to the dissolution or
liquidation of a home warranty association, as it has with respect to
insurance companies under Chapter 631.

Section 39. New sections are created listing unfair methods of
competition and unfair or deceptive acts or practices that would be
prohibited for home 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 home
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 40. s. 634.393 is created to prohibit lenders from
requiring the purchase of warranties as condition precedent or subsequent
to the making of a loan.

Section 41. s. 634.395 is created to allow cancellation of
warranties sold in connection with a loan within 10 days of purchase
without penalty to the buyer.

Section 42. Reenacts Part II Chapter 634, as amended.

Section 43. Part II of Chapter 634 is repealed on October 1, 1993,
to be reviewed pursuant to the Regulatory Sunset Act.

Section 44. Repeals section 3 of Chapter 81-148, Laws of Florida,
which provides for a July 1, 1983 repeal of this part.

Section 45. The act shall take effect October 1, 1983 except for
Section 43 (the repeal of the July 1 repealer) which takes effect July 1,
1983.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

There are currently seven home warranty associations licensed by the
Department of Insurance under the provisions of this part. Collectively in
1981 they reported $7,017,501 in earned premiums. Of that amount,
$6,381,305 was attributable to one company. The premium tax generated
$46,440 in revenue. The three largest companies reported a combined loss
ratio for Florida business of 50%. 
Presently home warranty associations are required to maintain 25% of their unearned premiums in reserve. The bill would increase this figure to 40%. Increasing the unearned premium reserve, unlike increasing the deposit and net asset requirement, should not have a detrimental effect on entry into the marketplace, as increasing deposit requirements might. Premium reserves are one of the most effective methods of insuring that future obligations will be met.

Registration of a sales representative requires a biennial fee of $40 which affects companies doing business in the state, and the cost of the product they sell.

Eliminating the use of the letter of credit to meet the deposit requirement will affect entry into the marketplace. However, no home warranty associations use letter of credit at this time, so the impact of the change is unknown. For large organizations doing business in a number of states, the requirement of cash or securities for deposit in each state may prove burdensome.

The creation of the administrative fine section (in lieu of suspension or revocation of certificates) could affect those persons found in violation of the requirements of this chapter.

B. PUBLIC SECTOR CONSIDERATIONS

Revenues to the Department of Insurance realized from home warranty business were $1,400 in association license fees and $46,440 in premium taxes. No changes are proposed in the tax, or license fees.

Regulation of home 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 $309,531 of the revenue.) The bureau is responsible for the regulation of 12 types of preneed contracts, including home warranty associations, but the department does not have figures allocating the cost of regulation to any one particular type of preneed contract.

IV. COMMENTS

The Department of Insurance reports that it has issued a cease and desist order against one company for failure to meet the financial responsibility requirements of the chapter. The department has received 34 complaints regarding home warranty associations during 1981. None of the complaints required any administrative action.

V. AMENDMENTS

Prepared by: W. Kevin Russell

Staff Director: Wyatt T. Martin
Bill Analysis

Florida House of Representatives
H. Lee Mollo, Speaker Steve Puicic, Speaker pro tempore
Committee on Commerce

STAFF SUMMARY AND ANALYSIS

HB 108 by Bell
relating to Home Warranty
Associations (Sunset)

Other Committees of Reference:

DATE: June 13, 1983
REvised:

SENATE BILL:
EFFECTIVE DATE:

October 1, 1983

I. SUMMARY AND PURPOSE

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legislators and representatives of the Department of Insurance and industry organizations, staff drafted the proposed legislation which is being presented for consideration by the 1983 Legislature.

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A section by section analysis of the proposed bill follows.

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Section 3. Technical changes only for s. 634.303, which requires all home warranty associations to obtain a license in order to do business. A properly licensed property and casualty insurer may transact warranty business without further qualifications.

Section 4. Technical change to s. 634.304 which makes the qualifications for renewal of a license the same as for issuance of a new license.

Section 5. s. 634.3045 provides the minimum financial requirements that must be met by a home warranty association in order to obtain and maintain a license to do business. The financial requirements listed here were drawn from various sections of the existing statutes. In addition to substantive changes, the intent of this new section is to organize the various requirements under one section, and clarify where necessary.
Subsection (1) - The definition of "net assets" is amended to exclude certain intangible assets such as goodwill, franchises, customer lists, patents of 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. This has resulted in a situation where companies may include certain types of "assets" on their balance sheet which would be of little value in the event of financial trouble. As presently required, this section mandates companies to maintain minimum net assets of 1/6 of written premium.

The bill provides an exemption from the requirement that net assets be at least 1/6 of written premiums, if the association has at least $500,000 in net assets and if it maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40% of all gross written premiums in force.

Subsection (2) - Maintains the minimum unearned premium reserve requirement of 25 percent of gross written premiums in force, which must be held as cash or securities to pay losses.

Subsection (3) - New language exempts a home warranty from the reserve requirements if the association purchases contractual liability insurance for 100% of its claim exposure. The subsection provides the specifications required of the contractual liability insurance, if the home warranty association is to be exempt from the reserve requirements.

Subsection (4) - Requires all home warranty associations to maintain claim statistics.

Section 6. s.634.305 requires associations to deposit $100,000 in cash or securities with the department. New language is added requiring additional securities when the market value of the securities used as a deposit drops below the required amount.

Currently, a home warranty association may file a surety bond or an irrevocable letter of credit with the department in lieu of cash or securities to meet the deposit requirement. The bill eliminates the letter of credit, as a substitute for securities in meeting the deposit requirement. The use of a bond is changed. The bill authorizes $25,000 cash or securities, and a $75,000 surety bond in order to meet the deposit requirement. The time period required for notice to the department of cancellation of the bond is increased from 30 to 60 days. The bill also requires that within 30 days of issuing the notice of cancellation of the bond, the home warranty association must replace the bond or have its license suspended.

Section 7. s. 634.306 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 applicant is denied a license. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)

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Paragraphs (1)(b) thru (f) are added to the discretionary grounds. Previously, violations of these requirements resulted in mandatory suspension or revocation of a license. These grounds would be made discretionary to allow the department greater flexibility in dealing with violations.
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Section 16. s. 634.3126 is created providing that home warranty associations file for informational purposes the rates charged for their warranty contracts.

Section 17. Section 634.313 is amended to require annual statements to contain a balance sheet and a schedule used to compute net assets and earned surplus. Annual statements must use generally accepted accounting principles. The $100 per day fine for the late filing of an annual statement is made a maximum fine.

Section 18. s. 634.3135 is created requiring associations to maintain permanent office records, including accounting records, a detailed warranty register, and a centralized claims record. Such information is considered necessary for the department's examination of the warranty association as required under s. 634.416.

Section 19. s. 634.314 is unchanged. It provides for periodic examinations by the department of home warranty associations.

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registered. The section provides that all persons who solicit, negotiate,
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that all fees and taxes collected under this part are to be deposited in
the Insurance Commissioner's Regulatory Trust Fund.

Section 31. No change is proposed to s. 634.325 which specifies
that this part does not authorize a home warranty association to engage in
the business of insurance beyond that specifically authorized, unless the
association is an authorized insurer.

Section 32. s. 634.326 presently prohibits an authorized insurer or
home warranty association from transferring to unauthorized insurers
through reinsurance or otherwise substantially all of the risk of loss
under its warranty contract. As amended, transferring any part of the risk
to an unauthorized insurer, rather than "substantially all" of the risk is
prohibited.

Section 33. No change is made to s. 634.327 which exempts from this
part warranties written on new homes by an insurer licensed to do business
in the state.

Section 34. 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 35. No change is made to s. 634.328 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 36. s. 634.3284 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 to correct the circumstances giving rise to the violation, in which case no action would lie.

Section 37. s. 634.3285 provides that no entity may merge, consolidate or obtain control of a home warranty association without approval of the department.

Section 38. No change is made to s. 634.430 which provides the department with the same supervisory powers relative to the dissolution or liquidation of a home warranty association, as it has with respect to insurance companies under Chapter 631.

Section 39. New sections are created listing unfair methods of competition and unfair or deceptive acts or practices that would be prohibited for home 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 home 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 40. s. 634.393 is created to prohibit lenders from requiring the purchase of warranties as condition precedent or subsequent to the making of a loan.

Section 41. s. 634.395 is created to allow cancellation of warranties sold in connection with a loan within 10 days of purchase without penalty to the buyer.

Section 42. Reenacts Part II Chapter 634, as amended.

Section 43. Part II of Chapter 634 is repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 44. Repeals section 3 of Chapter 81-148, Laws of Florida, which provides for a July 1, 1983 repeal of this part.
Section 45. The act shall take effect October 1, 1983 except for Section 43 (the repeal of the July 1 repealer) which takes effect July 1, 1983.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

There are currently seven home warranty associations licensed by the Department of Insurance under the provisions of this part. Collectively in 1981 they reported $7,017,501 in earned premiums. Of that amount, $6,381,305 was attributable to one company. The premium tax generated $46,440 in revenue. The three largest companies reported a combined loss ratio for Florida business of 50%.

Presently home warranty associations are required to maintain 25% of their unearned premiums in reserve and to maintain net assets equal to 1/6 of gross written premiums. The bill provides an exemption from the requirement that net assets be at least 1/6 of written premiums, if the association has at least $500,000 in net assets and if it maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40% of all gross written premiums in force.

Registration of a sales representative requires a biennial fee of $40 which affects companies doing business in the state, and the cost of the product they sell.

Eliminating the use of the letter of credit to meet the deposit requirement will affect entry into the marketplace. However, no home warranty associations use letter of credit at this time, so the impact of the change is unknown. For large organizations doing business in a number of states, the requirement of cash or securities for deposit in each state may prove burdensome.

The creation of the administrative fine section (in lieu of suspension or revocation of certificates) could affect those persons found in violation of the requirements of this chapter.

B. PUBLIC SECTOR CONSIDERATIONS

Revenues to the Department of Insurance realized from home warranty business were $1,400 in association license fees and $46,440 in premium taxes. No changes are proposed in the tax, or license fees.

Regulation of home 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 $309,531 of the revenue.) The bureau is responsible for the regulation of 12 types of preneed contracts, including home warranty associations, but the department does not have figures allocating the cost of regulation to any one particular type of preneed contract.

IV. COMMENTS

The Department of Insurance reports that it has issued a cease and desist order against one company for failure to meet the financial responsibility requirements of the chapter. The department has received 34 complaints regarding home warranty associations during 1981. None of the complaints required any administrative action.
V. AMENDMENTS

Prepared by: W. Kevin Russell

Staff Director: Wyatt T. Martin
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 II, Florida Statutes, relating to home warranty associations. A review of this part was initiated by the House Insurance Committee (now the Commerce Committee) at the conclusion of the 1982 Session. Through the process of "public workshops" attended by...
legislators and representatives of the Department of Insurance and industry organizations, staff drafted the proposed legislation which is being presented for consideration by the 1983 Legislature.

Chapter 634, Part II, Florida Statutes, regulates corporations selling home warranties. Home warranties are offered in connection with the sale of residential property. They are designed to indemnify the homeowner for repair costs to structural components or appliances caused by wear and tear or inherent defect. Recognizing that home warranty associations collect premiums and incur future obligations, the provisions regulating the associations are directed at assuring that the future obligations will be satisfied. There are currently seven licensed home warranty companies in Florida. Collectively they reported $7,017,501 in premiums for 1981.

A section by section analysis of the proposed bill follows.

II. CURRENT LAW AND EFFECT OF CHANGES

Section 1. The bill makes the following substantive changes to the definitions contained in s. 634.301:

Subsection (3) - The definition of "home warranty" is changed to allow the sale of warranties in connection with a loan of $5,000 or more secured by residential property which is the subject of the warranty. Previously warranties could be offered only in connection with the sale of residential property.

Subsection (6) - The definition of "premium" is expanded to include the total consideration received, including any charge designated as fees for membership, policy, survey, inspection, or service. This change is intended to prevent a home warranty association from avoiding the premium reserve requirements, or exceeding written premium limitations, by designating part of the "premium" as an inspection fee or other such charge.

Subsection (10) - The definition of net assets is added. The definition provides that net assets means the amount by which total assets exceed total liabilities.

Subsections (11)-(15) - Definitions are added for "state capital," "surplus," "earned surplus," "capital surplus," and "Insurance Code," the terms used by the department in determining adherence to the financial requirements of the chapter. The additions provide precise definitions for review of warranty associations' financial condition. (These definitions are similar to those added to Part I of Chapter 634, relating to Automobile inspection and Warranty Associations, reviewed under sunset in 1982.)

Section 2. Technical change only to s. 634.302, authorizing the Department of Insurance to adopt rules pursuant to this chapter.

Section 3. Technical changes only for s. 634.303, which requires all home warranty associations to obtain a license in order to do business. A properly licensed property and casualty insurer may transact warranty business without further qualifications.

Section 4. Technical change to s. 634.304 which makes the qualifications for renewal of a license the same as for issuance of a new license.

Section 5. s. 634.3045 provides the minimum financial requirements that must be met by a home warranty association in order to obtain and maintain a license to do business. The financial requirements listed here were drawn from various sections of the existing statutes. In addition to substantive changes, the intent of this new section is to organize the various requirements under one section, and clarify where necessary.
Subsection (1) - The definition of "net assets" is amended to exclude certain intangible assets such as goodwill, franchises, customer lists, patents of 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. This has resulted in a situation where companies may include certain types of "assets" on their balance sheet which would be of little value in the event of financial trouble. As presently required, this section mandates companies to maintain minimum net assets of 1/6 of written premiums.

The bill provides an exemption from the requirement that net assets be at least 1/6 of written premiums, if the association has at least $500,000 in net assets and if it maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40% of all gross written premiums in force.

Subsection (2) - Maintains the minimum unearned premium reserve requirement of 25 percent of gross written premiums in force, which must be held as cash or securities to pay losses.

Subsection (3) - New language exempts a home warranty from the reserve requirements if the association purchases contractual liability insurance for 100% of its claim exposure. The subsection provides the specifications required of the contractual liability insurance, if the home warranty association is to be exempt from the reserve requirements.

Subsection (4) - Requires all home warranty associations to maintain claim statistics.

Section 6. s.634.305 requires associations to deposit $100,000 in cash or securities with the department. New language is added requiring additional securities when the market value of the securities used as a deposit drops below the required amount.

Presently, a home warranty association may file a surety bond or an irrevocable letter of credit with the department in lieu of cash or securities to meet the deposit requirement. The bill eliminates the letter of credit, as a substitute for securities in meeting the deposit requirement. The use of a bond is changed. The bill authorizes $25,000 cash or securities, and a $75,000 surety bond in order to meet the deposit requirement. The time period required for notice to the department of cancellation of the bond is increased from 30 to 60 days. The bill also requires that within 30 days of issuing the notice of cancellation of the bond, the home warranty association must replace the bond or have its license suspended.

Section 7. s.634.306 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 applicant is denied a license. (There is no separate application fee. The $200 license fee is the only fee required of an applicant.)

Section 8. s.634.307 requires company 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. s.634.308 lists the grounds for discretionary suspension or revocation of a license. The bill provides that violation of a rule of the department is a ground for suspension or revocation. Reserve requirements and net worth requirements are eliminated here as they are now provided for under the financial requirements in section 5 of the bill.

Paragraphs (1)(b) thru (f) are added to the discretionary grounds. Previously, violations of these requirements resulted in mandatory suspension or revocation of a license. These grounds would be made discretionary to allow the department greater flexibility in dealing with violations.
Subsection (1)(h) is new language to separate the business practices standard from the financial requirements outlined previously.

Subsection (2) provides the grounds for discretionary suspension of a company's license. Technical changes were made in paragraph (b) to clarify the requirements concerning unearned premium reserves.

Section 10. s. 634.309 provides the procedure for suspending or revoking a license. The bill repeals this section because the rules of the Administrative Procedure Act (ch. 120) apply to license revocation.

Section 11. The bill makes no substantive change to s. 634.310 which requires notice of suspension or revocation to be given by the department to an association's sales representatives.

Section 12. s. 634.311 provides for a maximum one year suspension of a license if the causes of the suspension have been corrected. The bill strikes the reference to a notice and hearing, because the requirements of the Administrative Procedure Act (ch. 120) 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. s. 634.3112 is a new section providing for a fine in lieu of suspension or revocation of a license. The new section authorizes a maximum fine of $500 for a nonwillful violation of the provisions of the chapter, with a maximum fine of $5,000 for all nonwillful 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% per year.

Section 14. Technical changes only to s. 634.312 which provides the procedure for filing and approval of forms.

Section 15. s. 634.3125 is created providing standards for the department to use in approving of 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 a heading which is misleading, (4) is illegible, (5) fails to attain a reasonable degree of readability, simplicity and conciseness, or (6) is subject to renewal.

Section 16. s. 634.3126 is created providing that home warranty associations file for informational purposes the rates charged for their warranty contracts.

Section 17. Section 634.313 is amended to require annual statements to contain a balance sheet and a schedule used to compute net assets and earned surplus. Annual statements must use generally accepted accounting principles. The $100 per day fine for the late filing of an annual statement is made a maximum fine.

Section 18. s. 634.3135 is created requiring associations to maintain permanent office records, including accounting records, a detailed warranty register, and a centralized claims record. Such information is considered necessary for the department's examination of the warranty association as required under s. 634.416.

Section 19. s. 634.314 is unchanged. It provides for periodic examinations by the department of home warranty associations.

Section 20. s. 634.315 provides procedures for service of process on home warranty associations. If amended, associations would be subject to the same terms, conditions, and fees as are applicable to insurance companies under chapter 624.

Section 21. Section 634.316 is repealed. This is considered a technical change only.
Section 22. Is amended to clarify what persons need to be registered. The section provides that all persons who solicit, negotiate, or effectuate home warranties for remuneration shall be registered, except when warranties are sold thru real estate sales offices. In that case only one broker per sales office would be required to register. That broker would be responsible for all warranty contracts issued or sold thru his office.

Section 23. s. 634.318 deals with the term of registration and the filing fee. The new provisions change the registration requirements from annual to biennial. The registration fee is increased from $20 to $40 to reflect the new two-year term.

Section 24. s. 634.319 details how funds received for warranties are to be handled by sales representatives. No substantive changes are made.

Section 25. s. 634.320 lists the grounds for the mandatory refusal, suspension, or revocation of the registration of a sales representative. The bill adds one ground, not in the existing law, which states that if the sales representative is found guilty or pleads guilty or nolo contendere to a felony involving moral turpitude, it is grounds for suspension or revocation. This ground exists for insurance agents in s. 626.611.

Section 26. s. 634.321 lists the grounds for discretionary refusal, suspension or revocation of the registration of a sales representative. The bill adds conviction of a felony, or pleading guilty or nolo contendere to a felony as grounds for suspension or revocation. This is similar to that provided for insurance agents in s. 626.621.

Section 27. s. 634.322 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 28. s. 634.3225 is a new section providing for a maximum one year suspension of the registration of a sales representative. It also provides a two-year period before a person has the right to apply for registration.

Section 29. s. 634.323 is amended to increase the maximum fine against a sales representative in lieu of suspension or revocation from $100 to $500 for a nonwillful violation, and from $500 to $1,000 for willful misconduct.

Section 30. Editorial changes are made to s. 634.324 which requires that all fees and taxes collected under this part are to be deposited in the Insurance Commissioner's Regulatory Trust Fund.

Section 31. No change is proposed to s. 634.325 which specifies that this part does not authorize a home warranty association to engage in the business of insurance beyond that specifically authorized, unless the association is an authorized insurer.

Section 32. s. 634.326 presently prohibits an authorized insurer or home warranty association from transferring to unauthorized insurers through reinsurance or otherwise substantially all of the risk of loss under its warranty contract. As amended, transferring any part of the risk to an unauthorized insurer, rather than "substantially all" of the risk is prohibited.

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Section 41. s. 634.395 is created to allow cancellation of warranties sold in connection with a loan within 10 days of purchase without penalty to the buyer.

Section 42. Reenacts Part II Chapter 634, as amended.

Section 43. Part II of Chapter 634 is repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 44. Repeals section 3 of Chapter 81-148, Laws of Florida, which provides for a July 1, 1983 repeal of this part.
Section 45. The act shall take effect October 1, 1983 except for Section 43 (the repeal of the July 1 repealer) which takes effect July 1, 1983.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

There are currently seven home warranty associations licensed by the Department of Insurance under the provisions of this part. Collectively in 1981 they reported $7,017,501 in earned premiums. Of that amount, $6,381,305 was attributable to one company. The premium tax generated $46,440 in revenue. The three largest companies reported a combined loss ratio for Florida business of 50%.

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The creation of the administrative fine section (in lieu of suspension or revocation of certificates) could affect those persons found in violation of the requirements of this chapter.

B. PUBLIC SECTOR CONSIDERATIONS

Revenues to the Department of Insurance realized from home warranty business were $1,400 in association license fees and $46,440 in premium taxes. No changes are proposed in the tax, or license fees.

Regulation of home 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 $309,531 of the revenue.) The bureau is responsible for the regulation of 12 types of preneed contracts, including home warranty associations, but the department does not have figures allocating the cost of regulation to any one particular type of preneed contract.

IV. COMMENTS

A. General

The Department of Insurance reports that it has issued a cease and desist order against one company for failure to meet the financial responsibility requirements of the chapter. The department has received 34 complaints regarding home warranty associations during 1981. None of the complaints required any administrative action.
B. Statement of Substantial Changes in Committee Substitute

Requires that notice of intent to file a civil remedy be in writing, and that the notice state the section authorizing the civil remedy.

V. AMENDMENTS

Prepared by: W. Kevin Russell

Staff Director: Wyatt T. Martin
August 18, 1982

Mr. Brian Deffenbaugh  
Staff Director  
Florida House of Representatives  
Committee on Insurance  
18 House Office Building  
Tallahassee, Florida 32301

Dear Mr. Deffenbaugh:

In accordance with the Sunset Review Process enacted by the Florida legislature, Ticor Home Protection would very much appreciate participating in review of Chapter 634 (Part II), Home Warranty Associations.

As a licensed home warranty association in the State of Florida, and one of the largest companies in the home warranty industry, hopefully our experience to date will be of assistance in the review of Chapter 634 (Part II).

Specifically, within Chapter 634 (Part II), there are three areas that could be considered for modification. These areas are as follows:

1) 634.308 (1)(b)  
This section currently requires a minimum funded unearned premium reserve account equal to 25% of premiums in force. Our experience and the experience of other industry member participants, indicates that this minimum is too low, and may not adequately protect policyholders in the event of a home warranty association's demise. Experience indicates that a funded reserve of 40% of premiums written would be more in line with industry experience.
These sections specifically relate to the length of coverage and renewability of a warranty contract. While there is no problem with the length of coverage provision (which currently is not to exceed 18 months), we see no reason why a warranty should not be renewed. A home warranty provides a homeowner with the ability to insure against major problems with operating systems within the home; this is a valuable service to the public. The policyholder should have the ability to renew provided that the company’s underwriting experience on the covered property is within acceptable underwriting parameters established by the company. These sections currently do not provide a reasonable relationship between the state’s regulatory power and the public welfare.

This section in effect requires that real estate sales persons offering a home warranty to their clients be registered. It is our position that the real estate sales persons offering and/or recommending a home warranty to a client is no different than the sales person offering and/or recommending title insurance or termite service. The current law discriminates against a real estate sales person offering home protection inasmuch as they are required to obtain registration to do so, and pay a filing fee. The registration and filing fee inhibit the ability of warranty companies to offer their product in the free market, as many real estate sales persons are reticent about registering and paying the filing fee. It is our understanding that in many cases the home warranty company pays the filing fee for the real estate sales person, which becomes an obvious form of rebate which is, we believe, prohibited by RESPA. This section has the effect of directly or indirectly increasing the cost of home warranties in the State of Florida inasmuch as a warranty company paying the $20.00 filing fee for potentially several thousand real estate sales persons will incur a significant increase in their cost of doing business which will have to be passed on to the consumer.
Consideration of the aforementioned by the Committee on Insurance and the Senate Commerce Committee is most appreciated.

We will attend the 1983 Sunset Review Insurance Committee Workshop currently scheduled for 10 a.m. on Thursday, September 23rd, 1982 in Room 24 of the House Office Building; please notify us of any additional meetings that may be applicable to our industry and please put us on your mailing list for future Home Warranty Association items.

Very truly yours,

Philip B. Branson

cc: Mr. Fred Martin
Staff Director
Florida State Senate
Senate Commerce Committee
410 Senate Office Building
Tallahassee, Florida 32301
A bill to be entitled
An act relating to home warranty associations;
revising, reviving, and readopting,
notwithstanding the Regulatory Sunset Act,
chapter 634, Florida Statutes, relating to the
regulation of home warranty associations;
amending s. 634.301(6), Florida Statutes, and
adding subsections (11)-(15) to said section;
amending ss. 634.304, 634.305(1), 634.306(4),
634.308, 634.313(1), (2), 634.315, 634.318,
634.324, 634.326, Florida Statutes; creating s.
634.3045, Florida Statutes; providing
definitions; providing qualifications for
renewal of license; requiring an unearned
premium reserve fund; specifying minimum
required net assets; prohibiting refund of
license fee upon denial of license; providing
procedure for service of process; providing for
biennial registration of sales agents;
providing fees; allowing to stand repealed
pursuant to the Regulatory Sunset Act, s.
634.316, Florida Statutes, relating to service
of process; providing for legislative review;
providing an effective date.

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

Section 1. Subsection (6) of section 634.301, Florida
Statutes, is amended, and subsections (11), (12), (13), (14),
and (15) are added to said section to read:

634.301 Definitions.--As used in this part:

CODING: Words in [square] through type are deletions from existing law, words underlined are additions.
(6) "Premium" means the total consideration paid, or
to be paid, by whatever name called, to an insurer or home
warranty association, received; or to be received; by an
insurer or home warranty association for the issuance and
delivery of any binder or warranty. No "assessment" or any
"membership fee," "policy fee," "survey fee," "inspection fee,"
or similar fee shall be charged.

(11) "Net assets" means the amount by which the total
assets of an association exceed 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.

(12)(a) "Stated capital" means, at any particular
time, the sum of:

1. The par value of all shares of the association
having a par value that have been issued and have not been
canceled;

2. The amount of consideration received by the
association for all shares of the association without par
value that have been issued, except such part of the
consideration therefor as may have been allocated to capital
surplus in a manner permitted by law; and

3. Such amounts, not included in subparagraphs 1. and
2. as have been transferred to stated capital of the
association, whether upon the issue of shares as a share
dividend or otherwise, minus all reductions from such sum as
have been effected in a manner permitted by law.

(b) Irrespective of the manner of designation thereof
by the laws under which a foreign corporation is organized,
the stated capital of a foreign association shall be
determined on the same basis and in the same manner as the
stated capital of a domestic association, for the purpose of
computing taxes on qualification and other charges imposed by
this act.

(13) "Surplus" means the excess of the net assets of
an association over its stated capital.

(14) "Earned surplus" means the portion of the surplus
of an association that is equal to the balance of its net
profits, income, gains, and losses from the date of
incorporation or existence, or from the latest date on which a
deficit in earned surplus was eliminated by an application of
its capital surplus or stated capital or otherwise, after
deducting subsequent distributions to shareholders and
transfers to stated capital and capital surplus to the extent
that such distributions and transfers are made out of earned
surplus. "Earned surplus" shall also include any portion of
surplus allocated to earned surplus in mergers,
consolidations, or acquisitions of all or substantially all of
the outstanding shares or of the property and assets of
another corporation, domestic or foreign.

(15) "Capital surplus" means the entire surplus of an
association other than its earned surplus.

Section 2. Section 634.304, Florida Statutes, is
amended to read:

634.304 Qualifications for license.—The department
shall not issue or renew a license to any home warranty
association unless the association is qualified therefor, as
follows:

(1) Is a solvent corporation formed under the laws of
Florida or of another state, district, territory, or
possession of the United States.
(2) Furnishes the department with evidence satisfactory to it that the management of the association is competent and trustworthy and can successfully manage the association's affairs in compliance with law.

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other association, corporation, or organization already doing business in this state as will tend to mislead or confuse the public.

(4) Makes the deposit or files the bond or letter of credit required under s. 634.305.

Section 3. Section 634.3045, Florida Statutes, is created to read:

634.3045 Financial requirements.--

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts in force. Such assets shall be held in the form of cash or invested in securities for investments as provided in part II of the Florida Insurance Code.

(2) An association shall maintain, at a minimum, net assets equal to one-sixth of the written premiums it receives for the issuance and delivery of any in force binder or warranty.

(3) In computing the net asset requirement, goodwill; franchises; customer lists; patents or trademarks; receivables from or advances to officers, directors, employees, salesmen, or affiliated companies; and assets deposited outside the

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United States shall be deducted from the net assets of the
association.

Section 4. Subsection (1) of section 634.305, Florida
Statutes, is amended to read:

634.305 Required deposit, bond, or letter of credit.--

(1) To assure the faithful performance of its
obligations to its members or subscribers in the event of
insolvency, every home warranty association shall, prior to
the issuance of its license by the department, deposit with
the department securities of the type eligible for deposit by
insurers under s. 625.52, which securities shall have at all
times a market value of not less than $50,000 during the 2
calendar years immediately succeeding October 1, 1977, not
less than $75,000 during the next succeeding 2 calendar years,
and not less than $100,000 thereafter.

Section 5. Subsection (4) of section 634.306, Florida
Statutes, is amended to read

634.306 Application for and issuance of license.--

(4) Upon completion of the application for license,
the department shall examine the same and make such further
investigation of the applicant as it deems advisable. If it
finds that the applicant is qualified therefor, the department
shall issue to the applicant a license as a home warranty
association. If the department does not so find, it shall
refuse to issue the license and shall give the applicant
written notice of such refusal, setting forth the grounds
therefor. Any such notice of refusal shall be accompanied by
refund of the annual license fee tendered in connection with
the application. The department shall act upon any such
application within a reasonable period of time after its
completion.

CODING. Words in struck through type are deletions from existing law, words underlined are additions.
Section 6. Section 634.308, Florida Statutes, is amended to read:

634.308 Grounds for suspension or revocation of license.--

(1) The license of any home warranty association may be revoked or suspended, or the department may refuse to renew any such license, if it is determined that:

(a) The association has violated any lawful order of the department or any provision of this part.

(b) The association has not maintained a funded unearned premium reserve account as required by s. 634.3045(1), reserve account equal to a minimum of 25 percent of the premiums received by it from all warranty contracts in force:

(c) The association has not maintained, at a minimum, net assets as required by s. 634.3045(2), a net worth equal to one-sixth of the written premiums it receives for the issuance and delivery of any in force binder or warranty:

(2) The license of any home warranty association shall be suspended, or revoked, or not renewed if it is determined that such association:

(a) Is in unsound financial condition or is in such condition or using such methods and practices in the conduct of its business as to render its further transaction of warranties in this state hazardous or injurious to its warranty holders or to the public.

(b) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers have refused to give information with respect to its affairs or have refused to perform any other legal obligation as to such examination, when required by the department.
(c) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

(d) Has, with such frequency as to indicate its general business practice in this state, and without just cause, refused to pay proper claims arising under its warranties or, without just cause, compels warranty holders to accept less than the amount due them or to employ attorneys or to bring suit against the association to secure full payment or settlement of such claims.

(e) Is affiliated with, and under the same general management, interlocking directorate, or ownership as, another home warranty association which transacts direct warranties in this state without having a license therefor.

(f) Has issued warranty contracts which provide for renewal thereof.

(3) The department may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the license of any home warranty association if it finds that one or more of the following circumstances exist:

(a) The association is insolvent or impaired.

(b) The reserve account or net asset ratio requirement of s. 634.3045 required by paragraph (1)(b) or the ratio of net worth to premiums written required by paragraph (1)(e) is not maintained.

(c) Proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings regarding the association have been commenced in any state.

(d) The financial condition or business practices of the association otherwise pose an imminent threat to the
public health, safety, or welfare of the residents of this state.

(4) Violation of this part by an insurer shall be grounds for suspension or revocation of the insurer’s certificate of authority in this state.

Section 7. Subsections (1) and (2) of section 634.313, Florida Statutes, are amended to read:

634.313 Tax on premiums and assessments; annual statement; reports.--

(1) In addition to paying the license taxes provided for in this part for home warranty associations and license taxes provided in the Insurance Code as to insurers, each such association and each such insurer shall, annually on or before March 1, file with the department its annual statement, in the form prescribed by the department, showing all premiums or assessments received by it in connection with the issuance of warranties in this state during the preceding calendar year and using accounting principles which will enable the department to ascertain whether the reserve required by ss. 634.3045 and 634.308(1)(b) has been maintained. Further, each association and each insurer shall pay to the State Treasurer a tax in an amount equal to 2 percent of the amount of such premiums or assessments so received; however, the same exemptions and credits as set forth in ss. 624.512 and 624.514 of the Insurance Code allowed to insurers shall apply to insurers and home warranty associations under this part.

(2) Premiums and assessments received by insurers and taxed under this section shall not be subject to any premium tax provided for in the Insurance Code.

Section 8. Section 634.315, Florida Statutes, is amended to read:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
(Substantial rewording of section. See s. 634.315, F.S., for present text.)

634.315 Service of process.—Home warranty associations shall be subject to service of process in the same manner and subject to the same terms, conditions, and fees as applies to insurers under chapter 624.

Section 9 Section 634.318, Florida Statutes, is amended to read:

634.318 Contracting sales agents to be registered.—Every home warranty association or insurer shall, on forms prescribed by the department, register, on or before October 1 of each even-numbered year, the name and business address of each contracting sales agent utilized by it in Florida and shall, within 30 days after termination of the contract, notify the department of such termination. At the time of biennial and annual registration, a $40 filing fee for each contracting sales agent shall be paid by the warranty association or insurer to the department. Any contracting sales agent utilized subsequent to the October 1 filing date shall be registered with the department within 10 days after such utilization. No employee or contracting sales agent of a home warranty association or insurer 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.

Section 10 Section 634.324, Florida Statutes, is amended to read:

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

Section 11. Section 634.326, Florida Statutes, is
amended to read:

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

Section 12. Notwithstanding the provisions of the
Regulatory Sunset Act, sections 634.301 through 634.329,
Florida Statutes, shall not stand repealed on October 1, 1983,
as scheduled by such act, but such sections, as amended, are
revived and readopted, except that section 634.316, Florida
Statutes, shall stand repealed on October 1, 1983, as
scheduled by the Regulatory Sunset Act.

Section 13. Sections 634.301 through 634.329, Florida
Statutes, are repealed on October 1, 1993, and shall be
reviewed pursuant to section 11.61, Florida Statutes.

Section 14. This act shall take effect October 1,
1983.

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SENATE SUMMARY
Revises, revives, and readopts, notwithstanding the
Regulatory Sunset Act, chapter 634, Florida Statutes,
relating to regulation of home warranty associations.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
Establishes financial requirements for home warranty associations.
Amendment No. 2

On page......5....... line....3........ strike

If amendment is text from another bill insert:

Bill No.: Draft No.: 

and insert:

Section 4. Section 634.3045, Florida Statutes, is created to read:

634.3045 Financial requirements.--

(1) An association shall not be required to set up an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the department that 100 percent of its claim exposure is covered by such insurance. Such contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state or from an insurer approved by the department as financially capable of meeting the obligations incurred pursuant to the policy. For purposes of this subsection, the contractual liability policy shall contain the following provisions:

(a) In the event that the home warranty association is unable to fulfill its obligation under its contracts issued in this state, for any reason, including insolvency, bankruptcy, or dissolution, the contract liability insurer will pay losses:
and unearned premiums under such plans directly to persons making claims under such contracts.

(b) The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

(c) The policy shall not be canceled or nonrenewed by either the insurer or the association unless 60 days written notice thereof has been given to the department by the insurer prior to the date of such cancellation or nonrenewal.

(d) An association that purchases contractual liability insurance on the warranties that it issues shall provide the department with claim statistics required to be filed by associations not purchasing such insurance.

Renumber subsequent sections
I. SUMMARY:

A. Present Situation:

Part II, chapter 634, Florida Statutes, provides the Department of Insurance administrative and enforcement authority over home warranty associations. Pursuant to the Regulatory Sunset Act, the statutory authority will be repealed on October 1, 1983, unless reenacted by the legislature prior to that date.

Home warranties are designed to indemnify the warranty holder against the cost of repair or replacement caused by wear and tear or inherent defects of structural components or appliances in the home. Home warrantors collect premiums for the future obligations they incur; the provisions of part II, chapter 634, Florida Statutes, were created to assure that those future obligations will be satisfied. The warranty association must obtain a license from the department and meet certain financial and reporting requirements. The association must file a deposit with the department in the form of securities, a security bond, or a letter of credit; maintain a minimum net worth of 1/6 of written premiums and maintain an unearned premium reserve account equal to a minimum of 25 percent of the premiums received. In order to meet the requirements of part II, associations must also comply with reporting requirements that seek to insure managerial competence. The warranty association is subject to license fees and license taxes and a premium tax on an amount equal to 2 percent of the amount of premiums written. Domestic associations are exempt from the premium tax.

B. Effect of Proposed Changes:

The bill reenacts part II of chapter 634, Florida Statutes, notwithstanding the provisions of the Regulatory Sunset Act.

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

Section 1. Section 634.301.

Subsection (6) The definition of premium would be expanded to include total consideration received by the association in connection with issuance of a contract.

Subsection (11) Would add a definition of net assets for purposes of calculating premium reserve and premium - net worth ratio.

Section 2. Section 634.304, would apply the same requirements necessary to obtain a license to those who would renew that license.
Section 3. Section 634.3045 would provide the minimum financial requirements that must be met by a warrantor in order to maintain its license. The requirements here listed were contained in various sections of part II, chapter 634.

The net asset requirement definition is amended to exclude goodwill, franchises, customer lists, patents or trademarks, receivables from or advances to officers, directors, employees, salesmen or affiliated companies and assets deposited outside the United States.

In addition to the substantive changes, the intent of the new section is to organize the various financial requirements under one section. Presently the net asset definition does not specify what is acceptable for the purposes of net asset calculation.

Section 4. Section 634.305 would delete obsolete language.

Section 5. Section 634.306 deletes language authorizing refund of a $200 license fee if an applicant is denied a license.

Section 6. Section 634.308 would list the grounds for discretionary suspension or revocation of a license.

Section 7. Section 634.313 would provide technical, changes.

Section 8. Section 634.315, would provide procedures for service of process so that home warranty associations are subject to the same terms, conditions and fees as are applicable to insurance companies under the Insurance Code.

Section 9. Section 634.318 would change registration requirements from annual ($20) to biennial ($40).

Section 10. Section 634.324 would provide conforming language.

Section 11. Section 634.326 would prevent an insurer from transferring any of the risk of loss under its warranty contract to unauthorized insurers instead of "substantially all" of the risk as the statute now reads.

Section 12. Would reenact part II, of chapter 634 as amended.

Section 13. Part II, chapter 634, would be repealed on October 1, 1993 to be reviewed pursuant to the Regulatory Sunset Act.

Section 14. The act would take effect on October 1, 1983.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

There are seven home warranty associations licensed in Florida. In 1981 these seven reported a total of $7,017,501 in earned premiums. Of this amount, $6,381,305 was generated by one company. The three largest companies reported a combined loss rate for Florida business of 50 percent. It is not anticipated that the bill would impact significantly upon the industry.

B. Government:

The Department of Insurance realized $1,400 in license fees and $46,440 in premium taxes in 1981. No changes are proposed in these areas.
III. COMMENTS:

Only one cease and desist order has been issued by the department for failure to meet the requirements of chapter 634. None of the 34 complaints received by the department regarding home warranty associations has required any administrative action.

IV. AMENDMENTS:
I. SUMMARY:

A. Present Situation:

Part II, chapter 634, Florida Statutes, provides the Department of Insurance administrative and enforcement authority over home warranty associations. Pursuant to the Regulatory Sunset Act, the statutory authority will be repealed on October 1, 1983, unless reenacted by the Legislature prior to that date.

Home warranties are designed to indemnify the warranty holder against the cost of repair or replacement caused by wear and tear or inherent defects of structural components or appliances in the home. Home warrantors collect premiums for the future obligations they incur; the provisions of part II, chapter 634, Florida Statutes, were created to assure that those future obligations will be satisfied. The warranty association must obtain a license from the department and meet certain financial and reporting requirements. The association must file a deposit with the department in the form of securities, a security bond, or a letter of credit; maintain a minimum net worth of 1/6 of written premiums and maintain an unearned premium reserve account equal to a minimum of 25 percent of the premiums received. In order to meet the requirements of part II, associations must also comply with reporting requirements that seek to insure managerial competence. The warranty association is subject to license fees and license taxes and a premium tax on an amount equal to 2 percent of the amount of premiums written. Domestic associations are exempt from the premium tax.

B. Effect of Proposed Changes:

The bill reenacts part II of chapter 634, Florida Statutes, notwithstanding the provisions of the Regulatory Sunset Act.

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

Section 1. Section 634.301.

Subsection (6). The definition of premium would be expanded to include total consideration received by the association in connection with issuance of a contract.

Subsection (11). Would add a definition of net assets for purposes of calculating premium reserve and premium - net worth ratio.

Section 2. Section 634.304, would apply the same requirements necessary to obtain a license to those who would renew that license.
Section 3. Section 634.3045 would provide the minimum financial requirements that must be met by a warrantor in order to maintain its license. The requirements here listed were contained in various sections of part II, chapter 634.

The net asset requirement definition is amended to exclude goodwill, franchises, customer lists, patents or trademarks, receivables from or advances to officers, directors, employees, salesmen or affiliated companies and assets deposited outside the United States. Purchase of contractual liability insurance is authorized as an alternative to an unearned premium reserve.

Section 4. Section 634.305 permits $100,000 of eligible securities, a surety bond or a letter of credit as acceptable forms of deposit for associations to ensure that future obligations will be met. The bill eliminates letters of credit. It requires deposit of $100,000 in securities or $25,000 in securities and a $75,000 bond. It requires that if the value of deposited securities drops below 95 percent, an additional deposit must be made.

Section 5. Section 634.306 is amended to delete language authorizing refund of the $200 license fee if an applicant is refused a license.

Section 6. Section 634.307 is amended to provide for license renewal on June 1 rather than September 30.

Section 7. Section 634.408 is amended to reflect changes elsewhere in the bill relating to revocation of an association's license.

Section 8. Section 634.3125 is created to provide grounds for disapproval of forms.

Section 9. Section 634.3126 is created to provide that rates must be filed for informational purposes.

Section 10. Section 634.313(3) provides what must be included in an annual statement.

Section 11. Section 634.3135 is created to specify what must be included in office records.

Section 12. Section 634.315 provides for service of process procedures that conform with those in the Insurance Code.

Section 13. Section 634.318 changes registration of agents from an annual to a biennial event and accordingly increases the $20 fee to $40.

Section 14. Section 634.319 corrects penalty reference for agents who divert funds.

Section 15. Section 634.320 provides the standards for compulsory suspension or revocation of an agent's sales registration. A new subsection is added to include being found guilty or pleading nolo contendere to a felony charge involving moral turpitude.

Section 16. Section 634.321 provides the standards for discretionary suspension or revocation of an agent's sales registration. A new subsection is added to include being found guilty or pleading nolo contendere to a felony charge.

Section 17. Section 634.3225 is created to provide for the duration of suspension or revocation of registration.
Section 18. Section 634.3285 is created to require department approval prior to merger or consolidation of home warranty associations.

Section 19. Section 634.323(1) is amended to increase fines in lieu of suspension or revocation of registration from $100 to $500 and from $500 to $1,000 for each willful violation.

Section 20. Section 634.322 is amended to provide technical conformity.

Section 21. Section 634.326 would prevent an insurer or home warranty association from transferring any instead of "substantially all" of the risk of loss under its warranty contracts to unauthorized insurers.

Section 22. Reenacts part III of ch. 634 as amended.

Section 23. Part II, chapter 634, would be repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 24. Repeals the former Sunset repeal date of July 1, 1983.

Section 25. The act would take effect on October 1, 1983, except that section 24 is retroactive.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The last available information indicates that there were six home warranty associations licensed in Florida. In 1981 a total of $7,017,501 was earned in premiums. Of this amount, $6,381,305 was generated by one company.

Eliminating the letter of credit to meet the deposit requirement may affect entry into the marketplace. However, no home warranty associations are using letters of credit at this time.

The increase in administrative fines may impact on the industry but the extent of this is unknown. It is not anticipated that the bill will impact significantly upon the industry.

B. Government:

None.

III. COMMENTS:

Only one cease and desist order has been issued by the department for failure to meet the requirements of chapter 634. None of the 34 complaints received by the department regarding home warranty associations has required any administrative action.

IV. AMENDMENTS:
I. SUMMARY:

A. Present Situation:

Part II, chapter 634, Florida Statutes, provides the Department of Insurance administrative and enforcement authority over home warranty associations. Pursuant to the Regulatory Sunset Act, the statutory authority will be repealed on October 1, 1983, unless reenacted by the Legislature prior to that date.

Home warranties are designed to indemnify the warranty holder against the cost of repair or replacement caused by wear and tear or inherent defects of structural components or appliances in the home. Home warrantors collect premiums for the future obligations they incur; the provisions of part II, chapter 634, Florida Statutes, were created to assure that those future obligations will be satisfied. The warranty association must obtain a license from the department and meet certain financial and reporting requirements. The association must file a deposit with the department in the form of securities, a security bond, or a letter of credit; maintain a minimum net worth of 1/6 of written premiums and maintain an unearned premium reserve account equal to a minimum of 25 percent of the premiums received. In order to meet the requirements of part II, associations must also comply with reporting requirements that seek to insure managerial competence. The warranty association is subject to license fees and license taxes and a premium tax on an amount equal to 2 percent of the amount of premiums written. Domestic associations are exempt from the premium tax.

B. Effect of Proposed Changes:

The bill reenacts part II of chapter 634, Florida Statutes, notwithstanding the provisions of the Regulatory Sunset Act.

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

Section 1. Section 634.301.

Subsection (3). Amends definition of home warranty to provide that a home warranty may be offered in connection with a loan of $5,000 or more which is secured by residential property which is the subject of the warranty, but not in connection with the sale of such property.

Subsection (6). The definition of premium would be expanded to include total consideration received by the association in connection with issuance of a contract.
Subsection (11). Would add a definition of net assets for purposes of calculating premium reserve and premium - net worth ratio.

Subsections (12)-(15) amend financial definitions.

Section 2. Section 634.304, would apply the same requirements necessary to obtain a license to those who would renew that license.

Section 3. Section 634.3045 would provide the minimum financial requirements that must be met by a warrantor in order to maintain its license. The requirements here listed were contained in various sections of part II, chapter 634.

The net asset requirement definition is amended to exclude goodwill, franchises, customer lists, patents or trademarks, receivables from or advances to officers, directors, employees, salesmen or affiliated companies and assets deposited outside the United States. Purchase of contractual liability insurance is authorized as an alternative to an unearned premium reserve.

Section 4. Section 634.305 permits $100,000 of eligible securities, a surety bond or a letter of credit as acceptable forms of deposit for associations to ensure that future obligations will be met. The bill eliminates letters of credit. It requires deposit of $100,000 in securities or $25,000 in securities and a $75,000 bond. Revises requirements relating to cancellation of bonds and requires 60 days rather than 30 days notice of cancellation. Requires replacement of a cancelled bond with another bond or with securities. It requires that if the value of deposited securities drops below 95 percent, an additional deposit must be made.

Section 5. Section 634.306 is amended to delete language authorizing refund of the $200 license fee if an applicant is refused a license.

Section 6. Section 634.307 is amended to provide for license renewal on June 1 rather than September 30.

Section 7. Section 634.308 is amended to reflect changes elsewhere in the bill relating to revocation of an association's license.

Section 8. Technical - name change of agents.


Section 10. Creates s. 634.3112 to provide for administrative fine in lieu of suspension or revocation of license.

Section 11. Section 634.3125 is created to provide grounds for disapproval of forms.

Section 12. Section 634.3126 is created to provide that rates must be filed for informational purposes.

Section 13. Section 634.313(1)(2) provides what must be included in an annual statement.

Section 14. Section 634.3135 is created to specify what must be included in office records. Provides that computer records are permitted.

Section 15. Section 634.315 provides for service of process procedures that conform with those in the Insurance Code.
Section 16. Section 634.317 requires registration of sales representatives. Requires certain real estate brokers to be registered.

Section 17. Provides for biennial registration of sales representatives and increases fees accordingly.

Section 18. Section 634.319 corrects penalty reference for agents who divert funds.

Section 19. Section 634.320 provides the standards for compulsory suspension or revocation of a sales representative's registration. A new subsection is added to include being found guilty or pleading nolo contendere to a felony charge involving moral turpitude.

Section 20. Section 634.321 provides the standards for discretionary suspension or revocation of a sales representative's registration. A new subsection is added to include being found guilty or pleading nolo contendere to a felony charge.

Section 21. Makes various technical changes.

Section 22. Section 634.322 is created to provide for the duration of suspension or revocation of registration.

Section 23. Section 634.323(1) is amended to increase fines in lieu of suspension or revocation of registration from $100 to $500 and from $500 to $1,000 for each willful violation.

Section 24. Technical changes.

Section 25. Section 634.326 would prevent an insurer or home warranty association from transferring any instead of "substantially all" of the risk of loss under its warranty contracts to unauthorized insurers.

Section 26. Provides that department investigative records are confidential until completion of investigations.

Section 27. Section 634.328 is created to require department approval prior to merger or consolidation of associations.

Section 28. Prohibits unfair trade and competition, provides definitions of such, provides remedies.

Section 29. Prohibits coercion of debtors.

Section 30. Requires buyer to have 10 days to cancel a home warranty purchased in connection with certain loans.

Section 31. Reenacts part III of ch. 634 as amended.

Section 32. Part II, chapter 634, would be repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 33. Repeals the former Sunset repeal date of July 1, 1983.

Section 34. The act would take effect on October 1, 1983, except that section 31 is retroactive.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The last available information indicates that there were six home warranty associations licensed in Florida. In 1981 a
total of $7,017,501 was earned in premiums. Of this amount, 
$6,381,305 was generated by one company.

Eliminating the letter of credit to meet the deposit 
requirement may affect entry into the marketplace. However, no 
home warranty associations are using letters of credit at this 
time.

The increase in administrative fines may impact on the industry 
but the extent of this is unknown. It is not anticipated that 
the bill will impact significantly upon the industry.

B. Government:

None.

III. COMMENTS:

Only one cease and desist order has been issued by the department 
for failure to meet the requirements of chapter 634. None of the 
34 complaints received by the department regarding home warranty 
associations has required any administrative action.

IV. AMENDMENTS:
1. Provides that a home warranty may be offered in connection with a loan of $5,000 or more which is secured by residential property which is the subject of the warranty, but not in connection with the sale of the property.

2. Revises bond requirements.

3. Provides that maintenance of office records by computer is not prohibited.

4. Requires a real estate office which sells or issues home warranties to register one real estate broker per office as a sales representative.

5. Prohibits unfair methods of competition and unfair and deceptive acts, defines such, and provides remedies for violations.

6. Prohibits debtor from being coerced into purchasing a home warranty. Provides a buyer with a 10-day right to cancel a home warranty sold in connection with a loan.
A bill to be entitled
An act relating to home warranty associations,
revising, reviving, and readopting,
notwithstanding the Regulatory Sunset Act, ss
634.301-634.329, Florida Statutes, relating to
the regulation of home warranty associations;
amending s. 634.301(3), (5)-(7), Florida
Statutes, and adding subsections (11)-(16) to
said section; amending ss. 634.304, 634.305,
634.306(4), 634.307, 634.308, 634.310(1),
634.311(4), 634.313(1), (2), 634.315, 634.317,
634.318, 634.319, 634.321, 634.322, 634.323(1),
634.324, 634.326, Florida Statutes; adding s.
634.320(11), Florida Statutes; creating ss.
634.3045, 634.3112, 634.3125, 634.3126,
634.3135, 634.3225, 634.3275, 634.329;
634.3285, 634.335-634.345, Florida Statutes;
providing definitions; providing qualifications
for renewal of license; requiring an unearned
premium reserve fund; specifying minimum
required net assets; providing for contractual
liability insurance in lieu of an unearned
premium reserve; eliminating letters of credit,
prohibiting refund of license fee upon denial
of license; providing for administrative fines
in lieu of suspension or revocation of license,
providing for disapproval of forms; providing
for rates to be filed for informational
purposes; specifying contents of annual
statements; providing minimum requirements for
office records and permitting computer records;
(16) "Insurance Code" means the Florida Insurance Code.

Section 2. Section 634.304, Florida Statutes, is amended to read:

634.304 Qualifications for license.--The department shall not issue or renew a license to any home warranty association unless the association is qualified therefor, as follows:

(1) Is a solvent corporation formed under the laws of Florida or of another state, district, territory, or possession of the United States

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

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other association, corporation, or organization already doing business in this state as will tend to mislead or confuse the public.

(4) Meets the deposit requirements or files the bond or letter of credit required under s. 634.305.

(5) Is otherwise in compliance with this part.

Section 3. Section 634.3045, Florida Statutes, is created to read:

634.3045 Financial requirements.--

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all
warranty contracts in force. Such assets shall be held in the
form of cash or invested in securities for investments as
provided in part II, chapter 625.

(2) An association shall maintain, at a minimum, net
assets equal to one-sixth of the written premiums it receives
for the issuance and delivery of any in force binder or
warranty. Net assets may be less than 1/6 of premiums written
provided the association has net assets of not less than
$500,000 and maintains a funded, unearned premium reserve
account consisting of unencumbered assets equal to a minimum
of 40 percent of the gross written premiums received by it
from all warranty contracts in force which shall be held in
the form of cash or invested in securities for investments as
provided in part II, chapter 625.

(3) In computing the net asset requirement, goodwill,
franchises; customer lists, patents or trademarks; receivables
from or advances to officers, directors, employees, salesmen,
or affiliated companies; and assets deposited outside the
United States shall be deducted from the net assets of the
association.

(4) An association shall not be required to set up an
unearned premium reserve if it has purchased contractual
liability insurance which demonstrates to the satisfaction of
the department that 100 percent of its claim exposure is
covered by such insurance. Such contractual liability
insurance shall be obtained from an insurer that holds a
certificate of authority to do business within the state or
from an insurer approved by the department as financially
capable of meeting the obligations incurred pursuant to the
policy For purposes of this subsection, the contractual
liability policy shall contain the following provisions.
(a) In the event that the home warranty association is unable to fulfill its obligation under its contracts issued in this state, for any reason, including insolvency, bankruptcy, or dissolution, the contractual liability insurer will pay losses and unearned premiums under such plans directly to persons making claims under such contracts.

(b) The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

(c) The policy shall not be canceled or nonrenewed by either the insurer or the association unless 60 days written notice thereof has been given to the department by the insurer prior to the date of such cancellation or nonrenewal.

(5) An association that purchases contractual liability insurance on the warranties that it issues shall provide the department with claim statistics required to be filed by associations not purchasing such insurance.

Section 4. Section 634.305, Florida Statutes, is amended to read:

634.305 Required deposit or bond, or letter of credit.--

1. To assure the faithful performance of its obligations to its members or subscribers in the event of insolvency, every home warranty association shall, prior to the issuance of its license by the department, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52, which securities shall have at all times a market value of not less than $50,000 during the 2 calendar years immediately succeeding October 1, 1977, not less than $75,000 during the next succeeding 2 calendar years, and not less than $100,000 thereafter.
A BILL relating to
(Brief statement of subject)
home warranty associations,

By Senator

By the Committee on
COMMERC

Chairman's signature

and

SENATE ACTION

HOUSE ACTION

Read 1st Time
Referred to Committees on
COMMERC
Fav Unfav With Amend Com Sub
Fav Unfav With Amend Com Sub
Read 2nd Time
Read 3rd Time
and

Read 1st Time
Referred to Committees on
COMMERC
Fav Unfav With Amend Com Sub
Fav Unfav With Amend Com Sub
Read 2nd Time
Read 3rd Time
and

Secretary of Senate

Clerk House of Representatives

☐ Immediately Certified to House
☐ Laid on Table
☐ Motion to Reconsider by Senator

☐ Immediately Certified to Senate
☐ Laid on Table under Rule
☐ Motion to Reconsider pending

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING
Tallahassee, FL 32399-0250
Series 18 Carton 1380
A bill to be entitled
An act relating to home warranty associations;
revising, reviving, and readopting,
notwithstanding the Regulatory Sunset Act, ss.
634.301-634.329, Florida Statutes, relating to
the regulation of home warranty associations;
amending s. 634.301(6), Florida Statutes, and
adding subsections (11)-(15) to said section;
amending ss. 634.304, 634.305, 634.306(4),
634.307, 634.308, 634.313(1), (2), 634.315,
634.318, 634.319(2), 634.321(6), 634.323(1),
634.324, 634.326, Florida Statutes; adding s.
634.320(11), Florida Statutes; creating ss.
634.3045, 634.3125, 634.3126, 634.3135,
634.3225, 634.3285, Florida Statutes; providing
definitions; providing qualifications for
renewal of license; requiring an unearned
premium reserve fund; specifying minimum
required net assets; providing for contractual
liability insurance in lieu of an unearned
premium reserve; prohibiting refund of license
fee upon denial of license; providing procedure
for service of process; providing for
disapproval of forms; providing rates to be
filed for informational purposes; specifying
contents of annual statements; providing
minimum requirements for office records;
providing for biennial registration of sales
agents; providing grounds for suspension or
revocation of registration; specifying duration
of suspension or revocation; requiring

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
departmental approval of mergers or
consolidations of associations; increasing
administrative fines imposed in lieu of
suspension or revocation; providing fees,
allowing to stand repealed pursuant to the
Regulatory Sunset Act, s. 634.316, Florida
Statutes, relating to service of process,
providing for legislative review; providing
retroactivity; providing an effective date.

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

Section 1. Subsection (6) of section 634.301, Florida
Statutes, is amended, and subsections (11), (12), (13), (14),
and (15) are added to said section to read:

634.301 Definitions.--As used in this part:
(6) "Premium" means the total consideration paid, or
to be paid, by whatever name called, to an insurer or home
warranty association, received or to be received, by an
insurer or home warranty association for the issuance and
delivery of any binder or warranty. No "assessment" or any
"membership fee," "policy fee," "survey fee," "inspection fee,"
or similar fee shall be charged.
(11) "Net assets" means the amount by which the total
assets of an association exceed 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.
(12)(a) "Stated capital" means, at any particular
time, the sum of.

CODING Words in struck through type are deletions from existing law, words underlined are additions.
surplus. "Earned surplus" shall also include any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(15) "Capital surplus" means the entire surplus of an association other than its earned surplus.

Section 2. Section 634.304, Florida Statutes, is amended to read:

634.304 Qualifications for license.--The department shall not issue or renew a license to any home warranty association unless the association is qualified therefor, as follows:

(1) Is a solvent corporation formed under the laws of Florida or of another state, district, territory, or possession of the United States.

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

(3) Proposes to use and uses in its business a name, together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other association, corporation, or organization already doing business in this state as will tend to mislead or confuse the public.

(4) Makes the deposit or files the bond or letter of credit required under s. 634.305.

Section 3. Section 634.3045, Florida Statutes, is created to read:

634.3045 Financial requirements.--

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts in force. Such assets shall be held in the form of cash or invested in securities for investments as provided in part II of the Florida Insurance Code.

(2) An association shall maintain, at a minimum, net assets equal to one-sixth of the written premiums it receives for the issuance and delivery of any in force binder or warranty.

(3) In computing the net asset requirement, goodwill; franchises; customer lists; patents or trademarks; receivables from or advances to officers, directors, employees, salesmen, or affiliated companies; and assets deposited outside the United States shall be deducted from the net assets of the association.

(4) An association shall not be required to set up an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the department that 100 percent of its claim exposure is covered by such insurance. Such contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state or from an insurer approved by the department as financially capable of meeting the obligations incurred pursuant to the policy. For purposes of this subsection, the contractual liability policy shall contain the following provisions:

(a) In the event that the home warranty association is unable to fulfill its obligation under its contracts issued in this state, for any reason, including insolvency, bankruptcy,
or dissolution, the contract liability insurer will pay losses and unearned premiums under such plans directly to persons making claims under such contracts.

(b) The insurer issuing the policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so.

(c) The policy shall not be canceled or nonrenewed by either the insurer or the association unless 60 days written notice thereof has been given to the department by the insurer prior to the date of such cancellation or nonrenewal.

(5) An association that purchases contractual liability insurance on the warranties that it issues shall provide the department with claim statistics required to be filed by associations not purchasing such insurance.

Section 4. Section 634.305, Florida Statutes, is amended to read:

634.305 Required deposit or bond or letter of credit.

(1) To assure the faithful performance of its obligations to its members or subscribers in the event of insolvency, every home warranty association shall, prior to the issuance of its license by the department, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52, which securities shall have at all times a market value of not less than $50,000 during the 2 calendar years immediately succeeding October 1, 1977, not less than $75,000 during the next succeeding 2 calendar years, and not less than $100,000 thereafter.

(2) In lieu of any deposit of securities required under subsection (1), the association may:

CODING Words in struck through type are deletions from existing law, words underlined are additions.
August 6, 1982

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 II of Chapter 634, Florida Statutes, Home 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
CHAPTER 618
WARRANTY ASSOCIATIONS

PART I AUTOMOBILE INSPECTION AND WARRANTY ASSOCIATIONS
(25, 634.011-634.25)

PART II HOME WARRANTY ASSOCIATIONS (25, 614.101-614.329)

PART III SERVICE WARRANTY ASSOCIATION (25, 634.401-634.433)

PART II
HOME WARRANTY ASSOCIATIONS*

1634.301 Definitions. As used in this part:

(1) "Home warranty association" or "association" means any corporation or any other organization, other than an authorized insurer, issuing home warranties as herein defined.

(2) "Insurer" means any property or casualty insurer duly authorized to transact such business in this state.

(3) "Home warranty" or "warranty" means any contract or agreement offered in connection with the sale of residential property whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. However, nothing in this part shall prohibit the giving of usual performance guarantees by either the builder of a home or the manufacturer or seller of an appliance, as long as no identifiable charge is made for such guarantee. Nothing in this part shall be construed as permitting the provision of indemnification against consequential damages arising from the failure of any structural component or appliance of a home, which practice shall constitute the transaction of insurance subject to all requirements of the Insurance Code. This part shall not apply to service contracts entered into between consumers and nonprofit organizations or cooperatives whose members consist of condominium associations and condominium owners which perform repairs and maintenance for appliances or maintenance of the residential property.

(4) "Structural component" means the roof, plumbing system, electrical system, foundation, basement, walls, ceilings, or floors of a home.

(5) "Contracting sales agent" means any person with whom an insurer or home inspection or warranty association has a contract who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term shall include all employees of any insurer or association engaged directly in the sale or issuance of home warranties.

(6) "Premium" means the consideration received, or to be received, by an insurer or home warranty association for the issuance and delivery of any binder or warranty.

(7) "Department" means the Department of Insurance.

*Changes are editorial in nature unless otherwise noted.

August 4, 1982
Department of Insurance
Sunset Recommendations

by whatever name called.

No "assessment" nor any "membership," "policy," "survey," "inspection," "service," or similar fee shall be charged.

Reason: Prevents a company from designating certain charges as "fees" to circumvent reserving and premium tax requirements. Consistent with change made in Part I, Automobile Warranty, by the 1982 Legislature.
(i) "Person" shall include an individual, company, corporation, association, insurer, agent, and every other legal entity.

(9) "Insolvent" means the inability of a corporation to pay its debts as they become due in the usual course of its business.

(10) "Insolvent" means having liabilities in excess of assets.

Reason: In Section 634.304 the Department recommends the creation of a new subsection requiring minimum net assets for doing business. Definition necessary in determining whether a company complies with this new financial requirement. Additionally, definition clarifies accounting concepts utilized in financial reviews.

1634.102 Powers of department; rules. The department shall administer this part, and, to that end, it may adopt, promulgate, and enforce rules necessary and proper to effectuate any provisions of this part.

History: s. 1, ch. 77-339; s. 3, ch. 81-146; s. 2, ch. 81-148.

Note: Repealed effective July 1, 1983, by s. 3, ch. 81-146, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1634.103 License required.

(1) No person in this state shall provide or offer to provide home warranties unless authorized therefor under a subsisting license issued by the department. The home warranty association shall pay to the department a license tax of $200 for each license year, or part thereof, the license is in force.

(2) An insurance, while authorized to transact property or casualty insurance in this state, may also transact a home warranty business without additional qualifications or authority, but shall be otherwise subject to the applicable provisions of this part.

History: s. 1, ch. 77-339; s. 3, ch. 81-148; s. 2, ch. 81-148.

Note: Repealed effective July 1, 1983, by s. 3, ch. 81-146, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1634.104 Qualifications for license. The department shall or renew not issue, license to any home warranty association unless the association is qualified therefor, as follows:

(1) is a solvent corporation issued under the laws of Florida or of another state, district, territory, or possession of the United States.

(2) Furnishes the department with evidence satisfactory to it that the management of the association in competent

See 2A for new subsections (11) through (15).
(11) "Net assets" means the amount by which the total assets of an association exceed 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.

(12)(a) "Stated capital" means, at any particular time, the sum of:

1. The par value of all shares of the association having a par value that have been issued and have not been canceled;

2. The amount of consideration received by the association for all shares of the association without par value that have been issued, except such part of the consideration therefore as may have been allocated to capital surplus in a manner permitted by law; and

3. Such amounts, not included in subparagraphs 1. and 2., as have been transferred to stated capital of the association, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(b) Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign association shall be determined on the same basis and in the same manner as the stated capital of a domestic association, for the purpose of computing taxes on qualification and other charges imposed by this act.

(13) "Surplus" means the excess of the net assets of an association over its stated capital.

(14) "Earned surplus" means the portion of the surplus of an association that is equal to the balance of its net profits, income, gains, and losses from the date of incorporation or existence, or from the latest date on which a deficit in earned surplus was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent that such distributions and transfers are made out of earned surplus. "Earned surplus" shall also include any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(15) "Capital surplus" means the entire surplus of an association other than its earned surplus.
and trustworthy and can successfully manage the association's affairs in compliance with law.

(1) Proposes to use and uses in its business a name, together with a trademark or service mark, if any, which is distinctive and not so similar to the name or trademark of any other association, corporation, or organization already doing business in this state as to tend to mislead or confuse the public.

(2) Makes the deposit required under s. 634.305, paragraph (b), and required under s. 634.306.

(3) Is otherwise in compliance with this part.

History.--s. 1, ch. 77-339; s. 3, ch. 81-148; s. 2, ch. 81-118.

Note.--Repealed effective July 1, 1983, by s. 3, ch. 81-118, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

634.305 Required deposit--bond or letter of credit.

(1) To assure the faithful performance of its obligations to its members or subscribers in the event of insolvency, every home warranty association shall, prior to the issuance of its license by the department, deposit with the department securities of the type eligible for deposit by insurers under s. 625.52, which securities shall have at all times a market value of not less than 100,000. During the 2 calendar years immediately preceding the date on which the deposit is required, the market value of the deposit shall be not less than 125,000. During each of the succeeding 2 calendar years, and not less than 100,000 thereafter.

(2) In lieu of any deposit of securities required under subsection (1)...

634.3045 Financial Requirements.- See 3A for new subsections (1) through (5).

Reason: New section to establish minimum financial standards for the protection of policyholders. Similar provisions are in Part I, Automobile Warranty, which was renewed by the 1982 Legislature.

Reason: To remove obsolete grandfather language.

634.304(4) Reason: Section 634.304(4)
(1) In order to obtain or renew a license, an association shall have and maintain minimum net assets of $100,000 or one-sixth of premiums written, whichever is greater. In computing the net asset requirement, goodwill, franchises, customer lists, patents or trademarks, receivables from or advances to officers, directors, employees, salesmen, and affiliated companies shall be deducted from the net assets of the association in determining the net asset requirement.

(2) All assets shall be repositied in the United States.

(3) The association shall establish and maintain an unearned premium reserve, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premium on all warranty contracts in force, wherever written. Such assets shall be held in the form of cash or invested in securities for investments under ss. 625.30-625.340.

(4) An association shall not be required to set up an unearned premium reserve if it has purchased contractual liability insurance for 100 percent of its claim exposure. Such contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state or from an insurer approved by the department as financially capable of meeting the obligations incurred pursuant to the policy. The policy of contractual liability insurance shall contain a clause requiring the insurer to notify the department not less than 60 days prior to any lapse, cancellation, or nonrenewal of the policy.

(5) An association that purchases contractual liability insurance on the warranties that it issues shall provide the department with the claims statistics required to be filed by associations not purchasing such insurance.
(5) The depository association shall, during its solvency, have the right to exchange or substitute other securities of like quality and value for securities on deposit, to receive the interest and other income accruing to such securities, and to inspect the deposit at all reasonable times.

(6) Such deposit shall be maintained unimpaired as long as the association continues in business in this state. Whenever the association ceases to do business in this state and furnishes the department proof satisfactory to the department that it has discharged or otherwise adequately provided for all its obligations to its members or subscribers in this state, the department shall release the deposited securities to the parties entitled thereto, on presentation of the department's receipt for such securities,

History.---S. 1, ch. 77-134, s. 1, ch. 81-300, s. 2, ch. 81-318.

Note.---Repealed effective July 1, 1983, by s. 1, ch. 81-140, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1981, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

334.305 Application for and issuance of license.

(1) Application for license as a home warranty association shall be made to and filed with the department on prescribed forms prescribed and furnished by it.

(2) In addition to information relative to its qualifications as required under s. 634.304, the application shall show:

(a) The location of applicant's home office.

(b) The name and residence address of each director or officer of applicant.

(3) Such other pertinent information as may be required by the department.

(4) The application when filed shall be accompanied by:

(a) A copy of the applicant's articles of incorporation, certified by the public officials having custody of the original, and a copy of the applicant's bylaws, certified by the applicant's secretary.

(b) A copy of the most recent financial statement of the applicant, verified under oath of at least two of its principal officers.

(c) A license fee in the amount of $200, as required under s. 634.304.

(5) Upon completion of the application for license, the department shall examine the same and make such further investigation of the applicant as it deems advisable. If it finds that the applicant is qualified therefore a department shall issue to the applicant a license as a home warranty association. If the department does not so find, it shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor. Any such notice of refusal shall be accompanied by refund of the annual license fee tendered.

In accordance with this part

Reason: Clarification.

Reason: The Department incurs the cost of investigating the applicant regardless of whether the application is denied.
Chapter 120 provides applicable time periods for actions.

Reason: Chapter 120 provides applicable time periods for actions.

June 1

Reason: To make licensing renewal date of associations different from their agents and consistent with the licensing schedule for insurers.

rule or

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

Reason: To remove provisions made unnecessary as a result of the new section relating to financial requirements, 634.3045, recommended.

Reason: See new paragraph (g).
(a) Has failed to pay any final judgment rendered against it in this state within 60 days after the judgment became final.

Reason: A single offense justifies administrative penalty.

(b) Has, with such frequency as to indicate a defective business practice in this state, and without just cause, refused to pay proper claims arising under its warranties or, without just cause, compelled warranty holders to accept less than the amount due them or to employ attorneys or to bring suit against the association to secure full payment or settlement of such claims.

Reason: New subsection to separate business practices standard from the financial standard in (a).

(c) Has issued warranty contracts which provide for renewal thereof.

(d) The department may, pursuant to s. 120.60, in its discretion and without advance notice or hearing thereon, immediately suspend the license of any home warranty association if it finds that one or more of the following circumstances exist:

- The association is insolvent or impaired.
- The receiving home warranty association does not maintain the books of account or each association as required by paragraph (2)(d).
- The proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceedings regarding the association have been commenced in any state.
- The financial condition or business practices of the association otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.
- Violation of this part by an insurer shall be grounds for suspension or revocation of the insurer's certificate of authority in this state.

Reason: Technical to conform to previous changes.

634.309 Unfair Trade Practices.—Every home warranty association and its representatives and employees shall be subject to the provisions of part VII of chapter 626 (unfair insurance trade practices).

Reason: Home warranty associations are currently exempt from Little FTC Act. New section to make the Insurance Unfair Trade Practices Act applicable to home warranty associations.
163A.311 Suspension, or revocation of a home warranty association's license shall be by order made to the association by registered or certified mail. The department shall promptly also give notice of such suspension or revocation to the association's contracting sales agents in this state, of record in the department's office. The association shall not solicit or write any new warranties in this state during the period of any such suspension or revocation.

(2) In its discretion, the department may cause notice of any such revocation or suspension to be published in one or more newspapers of general circulation published in this state.

History.-s. 1, ch. 77-339; s. 3, ch. 81-148; s. 2, ch. 81-318.

Note.-Repealed effective July 1, 1983, by s. 3, ch. 81-148, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1991, by s. 2, ch. 91-118, and scheduled for review pursuant to s. 11.61 in advance of that date.

Reason: Conform to parallel provision in the Insurance Code.

163A.312 Filing, approval of forms.-

Reason: Deletes the requirement that the Department notify an association's sales agent when the association's license is reinstated. This is the association's responsibility.
No warranty or related form shall be issued or used in this state unless it has been filed with and approved by the department.

Filing of such forms shall be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from date of filing, a form so filed shall be deemed approved unless protest thereto has been filed in accordance with such form or disapproved or disapproved by written order of the department.

The department shall not approve any such form which is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

Any title, heading, or other indication of its contents is subject to renewal.

To provide specific criteria for the Department to utilize in the review of forms. Such criteria are necessary to avoid any potential delegations of authority problem.

Grounds for disapproval. The department shall disapprove any form filed under s. 634.312, or withdraw any previous approval thereof, only if the form

1. Is in any respect in violation of or does not comply with this part.
2. Contains or incorporates by reference where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general 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 part of the form substantially illegible.
5. Is subject to renewal.

To assist the Department in verifying the accuracy of financial statements and premium tax.

Rate filings. Each insurer and home warranty association shall file with the department for informational purposes the rate to be charged for each warranty and the premium, including all expenses and premiums, to be paid for the warranty. Every filing shall state the proposed effective date thereon.

To assist the Department in verifying the accuracy of financial statements and premium tax.

Each annual statement shall also contain, but not be limited to, a balance sheet listing all assets and liabilities, a schedule used to compute net assets and earned surplus including all expense, premium income and all other income items, and a schedule used to report all claims statistics. Such annual statement shall be completed using generally accepted accounting principles except where provided otherwise in this part.

To assist the Department in verifying the accuracy of financial statements and premium tax.

Technical change to conform to the change in the definition of premium.
and the completed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

163.313 Office records required. Each licensed home warranty association, as a minimum requirement for permanent office records, shall maintain:

1. A complete set of accounting records, including, but not limited to, 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 by 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 salesmen, and net premium.

5. A detailed claims register which shall include the following information: warranty number, date of issue, date of claim, type of claim, issuing salesman, amount of claim, date claim paid, and, if applicable, disposition other than payment 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 agreement company statute.

Home warranty associations shall be subject to service of process in the same manner and subject to the same terms, conditions, and fees as applies to insurers under Chapter 624 of the Insurance Code.

8. If the contract with the homeowner was entered into more than 12 months before the October 1 filing date, the warranty association or insurer shall register the contract with the department on or before October 1 of each year. If the contract with the homeowner was entered into less than 12 months before the October 1 filing date, the warranty association or insurer shall register the contract within 10 days after the termination of the contract.

9. Any warranty association or insurer for which a registration is not on file as of October 1 of each year shall not be permitted to register any additional contracts with homeowners for that calendar year.

10. No employee or contract sales agent of a warranty association or insurer shall directly or indirectly solicit or negotiate insurance contracts, or hold himself or herself out in any manner to be an insurance agent or solicitor, unless so qualified and licensed by the department of insurance.

11. Any warranty association or insurer that fails to register the required contracts with the department as required by this section shall be subject to the penalties provided by law.

12. The provisions of this chapter shall not apply to warranty associations or insurers that are not doing business in the state.
In transactions under his registration shall the trust funds so received by such agent in a fiduciary capacity, and the agent, in the applicable regular course of business, shall account for and pay the same to the insurer, association, warranty holder, or other person entitled thereto.

(2) Any contracting sales agent who, not being entitled thereto, divers or appropriates such funds or any portion thereof to his own use shall upon conviction be guilty of

Reason: Technical change to conform to changes made in the criminal laws

Note—Repealed effective July 1, 1986, by s. 3, ch. 81-130, and scheduled for review pursuant to s. 11.141 in advance of that date. Repealed effective October 1, 1987, by s. 7, ch. 81-318, and scheduled for review pursuant to s. 11.141 in advance of that date.
634.321 Grounds for discretionary refusal, suspension, or revocation of registration of contracting sales agents. The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the registration of any contracting sales agent if it is found, after notice and hearing thereon as provided in s. 634.322, that as to the agent any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.320:

1. Any cause for which granting of the registration could have been refused had it then existed and been known to the department.

2. Violation of any provision of this part, or of any other law applicable to the business of warranties, in the course of dealings under the registration.

3. Violation of any lawful order or rule of the department.

4. Failure or refusal to pay over, upon demand, to any home warranty association or insurer he represents or has represented any money coming into his hands, belonging to the association or insurer.

5. In the conduct of business under the registration, he has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under part VII of chapter 626 of the Insurance Code, or has otherwise shown himself to be a source of injury or loss to the public or detrimental to the public interest.


History.--s. 1, ch. 77-319; s. 3, ch. 81-148; s. 2, ch. 81-316.

Note.--Repealed effective July 1, 1981, by s. 1, ch. 81-148, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 1, ch. 81-118, and scheduled for review pursuant to s. 11.61 in advance of that date.

634.322 Procedure for refusal, suspension, or revocation of registration of contracting sales agents.

1. If any contracting sales agent is convicted by a court of a violation of any provision of this part, the registration of such individual shall thereby be deemed to be immediately revoked without any further procedure relative thereto by the department.

2. As to a registration which is suspended or revoked by the department, the person so aggrieved thereby shall have the right to a hearing thereon pursuant to chapter 120.

3. After an investigation or upon other evidence, the department has reason to believe that there may exist any one or more grounds for the suspension or revocation of, or refusal to renew or continue, the registration of any
Whenever it appears that any licensed insurance agent has violated the provisions of this part, the department may take such action, either ex officio or upon application, as is authorized by the Insurance Code as a penalty for a violation of the Insurance Code by such agent.

History—Ss. 1, ch. 77-319; s. 3, ch. 81-198; s. 2, ch. 81-318.

Note—Repealed effective July 1, 1983, by s. 3, ch. 81-198, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

153.323 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 or revocation of, or refusal to renew or continue, any registration issued under this part, on a first offense, and except when such suspension, revocation, or refusal is mandatory, an order may be entered suspending upon the registrant, in lieu of such suspension, revocation, or refusal, an administrative penalty for each violation in the amount of $500 or, in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine of $1,000. The administrative penalty may be augmented in amount 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 related.

(2) The order may allow the registrant a reasonable period, not to exceed 30 days, within which to pay to the department the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the department at its office in Tallahassee within the period so 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.

History—s. 1, ch. 77-319; s. 244, ch. 79-600; s. 3, ch. 81-198; s. 2, ch. 81-318.

Note—Repealed effective July 1, 1983, by s. 3, ch. 81-198, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

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

634.3225 Duration of suspension or revocation.

(1) 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 rescission 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 circumstance or circumstances for which the registration was suspended still exist or are likely to recur.

(2) 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 sought, within 2 years from the date of final court order or decree affirming the revocation. The department, however, shall not grant a new registration if it finds that the circumstance or circumstances for which the previous registration was revoked still exist or are likely to recur.

(3) If registrations as to the same person have been revoked at two separate times, the department shall not thereafter grant or issue any registration as to such person.

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

Reason: Provides statutory standards for determining duration of suspension or revocation of a salesman's registration. Conforms to similar provisions for insurance agents and other warranty salesmen.

$500

Reason: Updates the level of fines to reasonable levels.

$1,000

Reason: Technical.
1630.325 Insurance business not authorized.—Nothing in this part shall be deemed to authorize any home warranty association to transact any business other than that of home 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 of this state.

History.—s. 1, ch. 77-339; s. 3, ch. 81-148; s. 2, ch. 81-318.

Note.—Repealed effective July 1, 1983, by s. 1, ch. 81-148, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1630.326 Fronting not permitted.—No authorized insurer or licensed home warranty association shall act as a fronting company for any unauthorized insurer or unlicensed home warranty association. A "fronting company" is an authorized insurer or licensed home warranty association which, by endorsement or otherwise, generally transfers to one or more unauthorized insurers or unlicensed home warranty associations substantially all of the risk of loss under warranties written by it in this state.

Reason: To avoid circumvention of fronting prohibition.

History.—s. 1, ch. 77-339; s. 3, ch. 81-148; s. 2, ch. 81-318.

Note.—Repealed effective July 1, 1983, by s. 1, ch. 81-148, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

1630.327 Applicability to warranty on new home.—This part shall not apply to any program offering a warranty on a new home which is underwritten by an insurer licensed to do business in the state when the insurance policy underwriting such program has been filed with and approved by the Department of Insurance as required by law.

History.—s. 1, ch. 77-339; s. 3, ch. 81-148; s. 2, ch. 81-318.

Note.—Repealed effective July 1, 1983, by s. 1, ch. 81-148, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.
Sec. 328. Penalty for violation. Any individual who knowingly files a false or otherwise fraudulent application for a license or registration under this part, or who knowingly violates any provision hereof, shall, in addition to any applicable denial, suspension, or revocation of, or refusal to renew or continue, any license or registration, be 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.

History.--s. 1, ch. 77-132; s. 1, ch. 81-140; s. 7, ch. 81-318.

Note.--Repealed effective July 1, 1983, by s. 1, ch. 81-140, and scheduled for review pursuant to s. 11.61 in advance of that date. Repealed effective October 1, 1983, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

634.3285 Acquisition of controlling stock.--No association or entity may merge, consolidate with another association, or acquire more than 5 percent of another association unless it has filed 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.
## ISSUE

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| I. Section 634.317 
Registration of Sales Agents | No person may sell home warranties unless he is registered with the department or is utilized by a sales representative. Registration of a sales representative requires an annual fee of $20. | 1. Retain present situation.  
2. Repeal sections 634.317, 634.318, 634.319, 634.320, 634.321, 634.322 and 634.323.  
Source: Ticor Home Protection. |
| II. Section 634.3045 
Unearned Premium Reserve | An association must maintain a funded unearned premium reserve equal to a minimum of 25 percent of the premiums received by it from all warranty contracts in force. | 1. Retain present situation.  
2. Amend section 634.3045 so that an unearned premium reserve of 40 percent is required.  
Source: Ticor Home Protection. |
## CHAPTER 634, PART II, FLORIDA STATUTES, HOME WARRANTY ASSOCIATIONS

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<td>II. <strong>Section 634.3045</strong> Unearned Premium Reserve</td>
<td>An association must maintain a funded unearned premium reserve equal to a minimum of 25 percent of the premiums received by it from all warranty contracts in force.</td>
<td>1. Retain present situation. 2. Amend section 634.3045 so that an unearned premium reserve of 40 percent is required. Source: Ticor Home Protection.</td>
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| III. Section 634.305  
Required Deposit | A home warranty association is required to deposit $100,000 with the department prior to issuance of its license. This deposit may be in the form of securities of the type eligible for deposit by insurers under section 625.52. In lieu of securities, and with departmental approval an association may file a surety bond or irrevocable letter of credit. | 1. Retain present situation.  
2. Amend section 634.305 so that a letter of credit is no longer an acceptable form of deposit. The association may either deposit $100,000 in securities of the type eligible for deposit under section 625.52 or deposit $25,000 in securities and $75,000 in the form of a surety bond.  
Source: Department of Insurance and ERA. (Amendment #1) |
| IV. Section 634.3045  
Unearned Premium Reserve | An association shall maintain an unearned premium reserve consisting of assets equal to a minimum of 25 percent of the gross written premiums on all warranty contracts in force. | 1. Retain present situation.  
2. Amend section 634.406 to exempt a home warranty association from the reserve requirements if the association purchases contractual liability insurance equal to 100 percent of its claim exposure.  
Source: Department of Insurance. (Amendment #2) |
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| V. Section 634.307 License Expiration Date | A license issued to a home warranty association shall expire on September 30 next following the date of insurance. | 1. Retain present situation.  
2. Amend section 634.307 to provide that a home warranty association license shall expire on June 1, next following the date of insurance.  
Source: Department of Insurance. (Amendment #3) |
| VI. Section 634.3125 | Provisions relating to department criteria used in the review of home warranty association forms do not exist. | 1. Retain present situation.  
2. Create section 634.3125 to provide specific criteria for the department to utilize in the review of forms.  
Source: Department of Insurance. (Amendment #4) |
| VII. Section 634.3126 Rate Filing | Provisions relating to rate filing by the home warranty association with the department do not exist. | 1. Retain present situation.  
2. Create section 634.3126 to provide that the warranty association shall file rate and premium charges and changes with the department.  
Source: Department of Insurance. (Amendment #5) |
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| VIII. Section 634.313 Tax on Premiums | Each home warranty association shall file with the department an annual statement to enable the department to ascertain whether the financial requirements of this part have been met. | 1. Retain present situation.  
2. Amend section 634.313 so that additional assets and liabilities information shall be available to the department.  
Source: Department of Insurance.  
(Amendment #6) |
| IX. Section 634.3135 Office Records         | There are no present requirements for office records to be maintained by the association.                                                                                                               | 1. Retain present situation.  
2. Create section 634.3135 to require associations to maintain permanent office records, accounting records, a detailed warranty register and a centralized claims record.  
Source: Department of Insurance.  
(Amendment #7) |
| X. Section 634.319                                               | A contracting sales agent who appropriates funds shall upon conviction be guilty of larceny.                                                                                                            | 1. Retain present situation.  
2. Amend section 634.319 so that a sales agent who appropriates funds shall upon conviction be guilty of theft as provided by section 812.014.  
Source: Department of Insurance.  
(Amendment #8) |
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<td>XI.</td>
<td><strong>Section 634.320</strong> lists the grounds for mandatory refusal, suspension or revocation of the registration of a sales representative.</td>
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<td>2. Amend section 634.320 to add conviction or a plea of guilty to a crime of moral turpitude as grounds for suspension or revocation of a sales representative.</td>
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<td>Source: Department of Insurance. (Amendment #9)</td>
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<td>Source: Department of Insurance. (Amendment #10)</td>
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<td>XIII.</td>
<td>There are no present statutory standards for determining duration of suspension or revocation of the registration of a sales representative.</td>
<td>1. Retain present situation.</td>
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<td>2. Create section 634.3225 to provide for a maximum one year suspension of the registration of a sales representative and to provide a two-year period before a person may re-apply for registration.</td>
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<td>Source: Department of Insurance. (Amendment #11)</td>
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| XIV. Section 634.3285 Acquisition of controlling stock. | There are no standards with which to review qualifications of prospective buyers prior to the sale of the certificate of authority. | 1. Retain present situation.  
2. Create section 634.3285 so that any person who merges or consolidates with or obtains control of a home warranty association to file documentation with the department.  
Source: Department of Insurance. (Amendment #12) |
| XV. Section 634.323 Administrative fine in lieu of suspension. | Section 634.323 provides that the maximum fine against a sales representative in lieu of suspension or revocation is $100 for a non-willful violation and $500 for a willful violation. | 1. Retain present situation.  
2. Amend section 634.323 to increase the maximum fine from $100 to $500 for a non-willful violation and from $500 to $1,000 for willful misconduct.  
Source: Department of Insurance. (Amendment #13) |
I. SUMMARY:

A. Present Situation:

Part II, chapter 634, Florida Statutes, provides the Department of Insurance administrative and enforcement authority over home warranty associations. Pursuant to the Regulatory Sunset Act, the statutory authority will be repealed on October 1, 1983, unless reenacted by the Legislature prior to that date.

Home warranties are designed to indemnify the warranty holder against the cost of repair or replacement caused by wear and tear or inherent defects of structural components or appliances in the home. Home warrantors collect premiums for the future obligations they incur; the provisions of part II, chapter 634, Florida Statutes, were created to assure that those future obligations will be satisfied. The warranty association must obtain a license from the department and meet certain financial and reporting requirements. The association must file a deposit with the department in the form of securities, a security bond, or a letter of credit; maintain a minimum net worth of 1/6 of written premiums and maintain an unearned premium reserve account equal to a minimum of 25 percent of the premiums received. In order to meet the requirements of part II, associations must also comply with reporting requirements that seek to assure managerial competence. The warranty association is subject to license fees and license taxes and a premium tax on an amount equal to 2 percent of the amount of premiums written. Domestic associations are exempt from the premium tax.

B. Effect of Proposed Changes:

The bill reenacts part II of chapter 634, Florida Statutes, notwithstanding the provisions of the Regulatory Sunset Act.

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

Section 1. Section 634.301.

Subsection (3). Amends definition of home warranty to provide that a home warranty may be offered in connection with a loan of $5,000 or more which is secured by residential property which is the subject of the warranty, but not in connection with the sale of such property.

Subsection (6). The definition of premium would be expanded to include total consideration received by the association in connection with issuance of a contract.
Subsection (11). Would add a definition of net assets for purposes of calculating premium reserve and premium - net worth ratio.

Subsections (12)-(15) amend financial definitions.

Section 2. Section 634.304, would apply the same requirements necessary to obtain a license to those who would renew that license.

Section 3. Section 634.3045 would provide the minimum financial requirements that must be met by a warrantor in order to maintain its license. The requirements here listed were contained in various sections of part II, chapter 634. A new provision permits an association to have net assets of less than 1/6 of premiums written if the association has net assets of not less than $500,000 and a funded unearned premium reserve of unencumbered assets equal to 40 percent of gross written premiums on all warranty contracts in force.

The net asset requirement definition is amended to exclude goodwill, franchises, customer lists, patents or trademarks, receivables from or advances to officers, directors, employees, salesmen or affiliated companies and assets deposited outside the United States. Purchase of contractual liability insurance is authorized as an alternative to an unearned premium reserve.

Section 4. Section 634.305 permits $100,000 of eligible securities, a surety bond or a letter of credit as acceptable forms of deposit for associations to ensure that future obligations will be met. The bill eliminates letters of credit. It requires deposit of $100,000 in securities or $25,000 in securities and a $75,000 bond. Revises requirements relating to cancellation of bonds and requires 60 days rather than 30 days notice of cancellation. Requires replacement of a cancelled bond with another bond or with securities. It requires that if the value of deposited securities drops below 95 percent, an additional deposit must be made.

Section 5. Section 634.306 is amended to delete language authorizing refund of the $200 license fee if an applicant is refused a license.

Section 6. Section 634.307 is amended to provide for license renewal on June 1 rather than September 30.

Section 7. Section 634.308 is amended to reflect changes elsewhere in the bill relating to revocation of an association's license.

Section 8. Technical - name change of agents.


Section 10. Creates s. 634.3112 to provide for administrative fine in lieu of suspension or revocation of license.

Section 11. Section 634.3125 is created to provide grounds for disapproval of forms.

Section 12. Section 634.3126 is created to provide that rates must be filed for informational purposes.

Section 13. Section 634.313(1)(2) provides what must be included in an annual statement.
Section 14. Section 634.3135 is created to specify what must be included in office records. Provides that computer records are permitted.

Section 15. Section 634.315 provides for service of process procedures that conform with those in the Insurance Code.

Section 16. Section 634.317 requires registration of sales representatives who solicit or effectuate home warranty contracts for remuneration. Requires certain real estate brokers to be registered.

Section 17. Provides for biennial registration of sales representatives and increases fees accordingly.

Section 18. Section 634.319 corrects penalty reference for agents who divert funds.

Section 19. Section 634.320 provides the standards for compulsory suspension or revocation of a sales representative's registration. A new subsection is added to include being found guilty or pleading nolo contendere to a felony charge involving moral turpitude.

Section 20. Section 634.321 provides the standards for discretionary suspension or revocation of a sales representative's registration. A new subsection is added to include being found guilty or pleading nolo contendere to a felony charge.

Section 21. Makes various technical changes.

Section 22. Section 634.3225 is created to provide for the duration of suspension or revocation of registration.

Section 23. Section 634.323(1) is amended to increase fines in lieu of suspension or revocation of registration from $100 to $500 and from $500 to $1,000 for each willful violation.

Section 24. Technical changes.

Section 25. Section 634.326 would prevent an insurer or home warranty association from transferring any instead of "substantially all" of the risk of loss under its warranty contracts to unauthorized insurers.

Section 26. Provides that department investigative records are confidential until completion of investigations.

Section 27. Provides that any person damaged by a violation of the home 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. The provision does not authorize class action suits.

Section 28. Section 634.3285 is created to require department approval prior to merger or consolidation of associations.

Section 29. Prohibits unfair trade and competition, provides definitions of such, provides remedies.

Section 30. Prohibits coercion of debtors.

Section 31. Requires buyer to have 10 days to cancel a home warranty purchased in connection with certain loans.

Section 32. Reenacts part III of ch. 634 as amended.
Section 33. Part II, chapter 634, would be repealed on October 1, 1993, to be reviewed pursuant to the Regulatory Sunset Act.

Section 34. Repeals the former Sunset repeal date of July 1, 1983.

Section 35. The act would take effect on October 1, 1983, except that section 34 is retroactive.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The last available information indicates that there were six home warranty associations licensed in Florida. In 1981 a total of $7,017,501 was earned in premiums. Of this amount, $6,381,305 was generated by one company.

Eliminating the letter of credit to meet the deposit requirement may affect entry into the marketplace. However, no home warranty associations are using letters of credit at this time.

The increase in administrative fines may impact on the industry but the extent of this is unknown. It is not anticipated that the bill will impact significantly upon the industry.

The civil remedy section may result in consumers bringing suits against home warranty associations. This would impact on consumers and the industry but the precise effect is unquantifiable.

B. Government:

None.

III. COMMENTS:

Only one cease and desist order has been issued by the department for failure to meet the requirements of chapter 634. None of the 34 complaints received by the department regarding home warranty associations has required any administrative action.

IV. AMENDMENTS: