

[Senate, December 20, 1991 — Substituted by amendment (Bertonazzi) for the text of Senate No 567.]

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

1 SECTION 1. Chapter 175 of the General Laws, as appearing
2 in the 1990 Official Edition, is hereby amended by adding after
3 Section 149E the following new sections: —

4 Section 149F. The following words, as used in this section,
5 shall have the following meanings: —

6 Home Warranty Contract, a contract or agreement whereby a
7 person, other than a builder, seller, or lessor, agrees for a fee and
8 for a specified period of time, to repair or replace all or any part
9 of any structural component, appliance, or utility system of
10 residential property necessitated by wear and tear, malfunction,
11 deterioration, or inherent defect. A home warranty contract does
12 not include any service contract, maintenance contract,
13 performance guarantee or warranty sold, offered for sale or issued
14 by any manufacturer, seller, builder or installer of any structural
15 components, appliances or utility systems for residential property.

16 Home Warranty Company, any person who is not otherwise
17 licensed as an insurance company who issues, or offers to issue,
18 a home warranty contract. Except as otherwise provided herein,
19 a home warranty company shall not be considered to be an
20 insurance company or insurer for purposes of this chapter.

21 Section 149G. (A) No person shall establish or operate a home
22 warrant company in the Commonwealth, or issue home warranty
23 contracts, or sell, offer to sell, or solicit offers to purchase or
24 receive advance or periodic consideration in conjunction with a
25 home warranty contract unless the person has obtained and
26 maintains a certificate of authority under section one hundred
27 forty nine H.

28 (8) Every home warranty company that is established and
29 operating in the commonwealth on the effective date of this
30 section shall, within forty five days after such effective date,

31 submit an application for a certificate of authority under
32 section one hundred forty nine H.

33 (c) A home warranty company may market home warranty
34 contracts through insurance brokers or appointed agents licensed
35 pursuant to this chapter or through real estate brokers or
36 salespeople duly licensed in the Commonwealth.

37 Section 149H. (A) Any person, including but not limited to a
38 foreign corporation licensed to transact business in this state, may
39 apply to the commissioner of insurance for a certificate of
40 authority to offer home warranty contracts in compliance with
41 this section.

42 (B) Each application for a certificate of authority under this
43 section shall be certified by the applicant or by an officer or
44 authorized representative of the applicant. The application shall
45 be accompanied by all of the following:

46 (1) A copy of all basic organizational documents of the appli-
47 cant, if any, including but not limited to the articles of incorpo-
48 ration, articles of association, or other applicable documents, and
49 all amendments to such articles and documents;

50 (2) A copy of all bylaws, rules, or other similar documents, if
51 any, that regulate the conduct of the internal affairs of the appli-
52 cant and all amendments to such bylaws, rules and documents;

53 (3) A list of the names, addresses, and official positions of
54 persons who are responsible for the conduct of the affairs of the
55 applicant, including all members of its governing board and
56 principal officers;

57 (4) A description of the applicant, including, but not limited
58 to, a current financial statement showing the applicant's assets,
59 liabilities, income, other sources of financial support and
60 expenses;

61 (5) A copy of each type of home warranty contract that is to
62 be issued to prospective subscribers;

63 (6) A copy of the schedule of contract fees for each home
64 warranty contract;

65 (7) Administrative proceedings or investigations conducted
66 concerning the applicant by regulatory authorities in any state or
67 by any federal authority;

68 (8) The name and address of a resident of this state who is an
69 agent for service of process and upon whom notices or orders of

70 the commissioner of insurance or process issued at his discretion
71 may be served;

72 (9) An application fee as established pursuant to section
73 fourteen of this chapter.

74 (C) The commissioner shall examine the application and make
75 such further investigation and he deems appropriate.

76 (D) A certificate of authority shall be issued if the commis-
77 sioner is satisfied that the applicant meets the requirements of
78 section B(1) through B(9). An application for a certificate of
79 authority shall be considered approved unless disapproved within
80 sixty days of submittal, provided, however, that the commissioner
81 may postpone such action for such further time, not to exceed
82 thirty days, as he may deem necessary for proper consideration.

83 (E) The commissioner shall not issue a certificate of authority
84 to any home warranty company unless the commissioner finds all
85 of the following:

86 (1) The company's management is competent and trustworthy
87 and can reasonably be expected to successfully manage the affairs
88 of the company in compliance with law;

89 (2) The company has a minimum net worth of fifty thousand
90 dollars, based upon a current financial statement prepared in
91 accordance with generally accepted accounting principles and
92 certified by an independent certified public accountant;

93 (3) The company has furnished a surety bond as required under
94 section one hundred forty nine I.

95 Section 149I. To assure the faithful performance of obligations
96 under home warranty contracts issued and outstanding in the
97 commonwealth, a home warranty company shall, prior to the
98 issuance of a certificate of authority, file with the commissioner
99 a surety bond in the amount of twenty five thousand dollars, which
100 bond has been issued by an authorized surety company and
101 approved by the commissioner as to issuer, form and contents.
102 The bond shall not be canceled or be subject to cancellation unless
103 thirty days advance notice in writing is filed with the commis-
104 sioner. Notwithstanding the foregoing, if a bond is canceled for
105 any reason and a new bond in the required amount is not received
106 by the commissioner on or before the effective date of
107 cancellation, the certificate of authority of the home warranty
108 company shall be automatically revoked as of the date the bond

109 ceases to be in effect. A home warranty company whose certifi-
110 cate of authority is revoked under this section may file an appli-
111 cation for a new home warranty pursuant to section one hundred
112 forty nine K.

113 The bond posted by a home warranty pursuant to this
114 section shall be for the benefit of, and subject to recovery thereon,
115 by any home warranty contract holder sustaining injury due to
116 failure of the home warranty company to faithfully perform its
117 obligations under a home warranty contract because of insolvency
118 of the home warranty company.

119 If a home warranty company ceases to do business in the
120 commonwealth and furnishes to the commissioner satisfactory
121 proof that it has discharged all obligations to contract holders,
122 the surety bond shall be released.

123 Section 149J. (A) A home warranty company shall report to
124 the commissioner within ten days any amendments to or changes
125 in the documents and supplements or revisions to information
126 submitted pursuant to section one hundred forty nine H.

127 (B) A home warranty company shall file with the commissioner
128 within one hundred and twenty days of the close of its fiscal year
129 the following:

130 (1) A current financial statement including a balance sheet and
131 statement of operations prepared in accordance with generally
132 accepted accounting principles and certified by an independent
133 certified public accountant;

134 (2) With respect to home warranty contracts issued by the
135 home warranty company within the commonwealth, a report
136 showing the number of home warranty contracts issued during
137 the preceding fiscal year, the number canceled or expired during
138 that year, the number in effect at year end and the amount of home
139 warranty contract fees received during the year;

140 (3) Any other information relating to the performance and
141 solvency of the home warranty company required by the commis-
142 sioner.

143 The commissioner may, upon thirty days written notice,
144 suspend or revoke the certificate of authority of any home
145 warranty company which fails to file the foregoing information
146 within the time provided by this section.

147 Section 149K. The provisions of chapter one hundred seventy
148 six D shall be applicable to all home warranty companies.

149 Section 149L. To the extent that any provisions of sections one
150 hundred forty nine F through one hundred forty nine K conflict
151 with any other provisions of this chapter, the provisions of
152 sections one hundred forty F through one hundred forty nine K
153 shall govern.

