



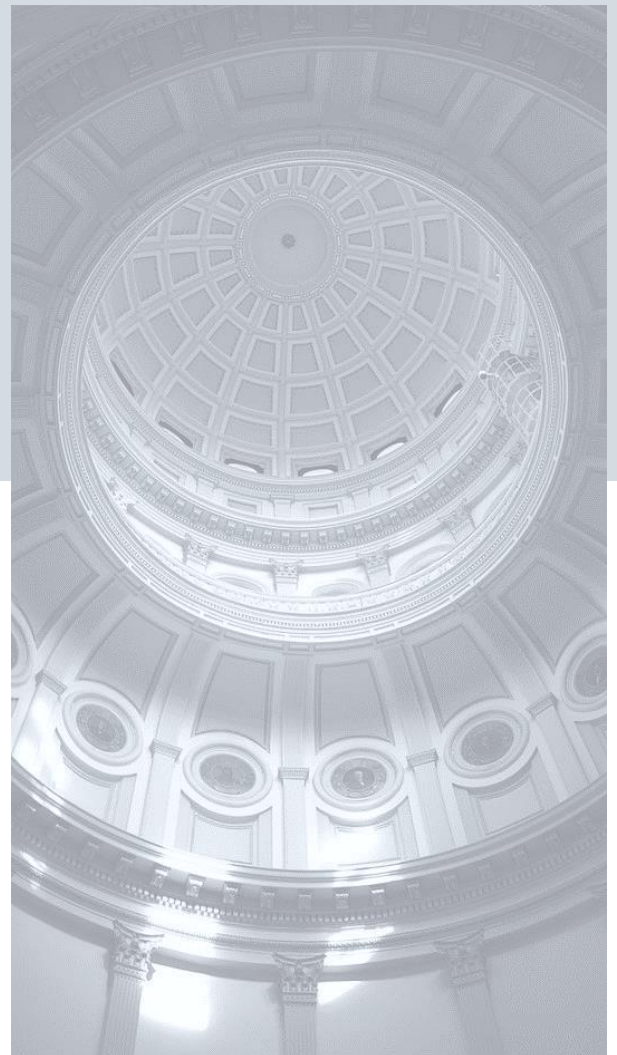
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Home Warranty Service Contracts



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the Office of Legislative Legal Services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the statutes governing home warranty service contracts. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

The report discusses the question of whether there is a need for the provisions of Part 6 of Article 61 of Title 12, C.R.S. The report also discusses the effectiveness of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "Patty Salazar".

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Home Warranty Service Contracts

SUMMARY

What is regulated?

Home warranty service contracts may be purchased on new or existing homes, and generally cover repair or replacement of a home's major systems, such as heating, air conditioning, electrical and plumbing, as well as major appliances. Rather than create a regulatory program, Part 6 of Article 62 of Title 12, Colorado Revised Statutes (C.R.S.), creates statutory obligations with which companies offering home warranty service contracts must comply.

Why is it regulated?

Although there is no state-administered regulatory program associated with home warranty service contracts, the Better Business Bureau serving Greater Denver and Central Colorado receives complaints involving companies that offer home warranty service contracts, indicating that consumers are harmed by companies offering such contracts.

Who is regulated?

Any company that offers home warranty service contracts in Colorado must comply with the provisions of Part 6 of Article 62 of Title 12, C.R.S.

How is it regulated?

Rather than create a regulatory program, Part 6 of Article 62 of Title 12, C.R.S., creates statutory obligations with which companies offering home warranty service contracts must comply. These contracts must contain provisions relating to how to file a claim, any exclusions, transferability and duration, among others.

What does it cost?

Since there is no program, there is no cost to the State.

What disciplinary activity is there?

Since there is no program, there is no disciplinary action by the State. Rather, consumers may bring civil suits to enforce breaches of home warranty service contracts.

KEY RECOMMENDATIONS

Continue the statutes governing home warranty service contracts for six years, until 2026.

The statutes governing home warranty service contracts do not create a regulatory program. Rather, they create a set of legal obligations with which home warranty service contracts must comply. The evidence suggests that some level of government intervention in the marketplace appears necessary to protect the public, and the current statutes appear to represent the least restrictive form of government intervention consistent with the public interest. Therefore, continuation is justified.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff conducted a literature search, interviewed stakeholders and representatives of national industry associations and reviewed Colorado statutes and rules.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Association of Realtors
Colorado Division of Insurance
Colorado Division of Real Estate
Colorado Office of the Attorney General
Better Business Bureau serving Greater Denver and Central Colorado
National Home Service Contract Association
Service Contract Industry Association

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104(6)(b), C.R.S.

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- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The provisions of Part 6 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.),² shall terminate on July 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the provisions under review pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether these statutory provisions should be continued and to evaluate whether they serve the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff conducted a literature search, interviewed stakeholders and representatives of national industry associations and reviewed Colorado statutes and rules.

² House Bill 19-1172 re-codified § 12-61-602, *et seq.*, C.R.S., and moved them to § 12-10-901, *et seq.*, C.R.S., effective October 1, 2019. In order to avoid confusion and erroneous citations and references, this sunset report consistently refers to the statutory provisions as if they remained in § 12-61-602, *et seq.*, C.R.S. A comparison table may be found in Appendix A.

Profile of the Industry

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the industry does, how it works, who it serves and any necessary qualifications.

As of April 2019, the median value of a home in Colorado was \$377,500.³ While median values fluctuate from region to region, according to one survey, 85 percent of U.S. homeowners maintain that their home is their largest investment.⁴

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. As with any investment, homeownership brings a certain level of risk and unpredictability. According to one report, 88 percent of U.S. homeowners were forced to make at least one major repair in the last year, and the average spent on repairs and improvements during that same period was \$4,958.⁵ According to another survey, 44 percent of Americans report that they experienced their first unexpected repair on their most recently purchased home within the first year of purchase, and 12 percent reported an unexpected repair within the first month.⁶ According to the same report, approximately one-third of homeowners do not have money set aside for repairs and improvements⁷. Not surprisingly, 48 percent of homeowners in the U.S. report that unexpected home repair costs have caused them anxiety.⁸

As a result, most homeowners purchase insurance to cover certain types of unexpected repairs. Some homeowners opt to also purchase home warranty service contracts, which are the subject of this sunset review.

While insurance typically indemnifies homeowners from loss due to sudden and fortuitous events, such as fire, windstorms or hail, home warranty service contracts

³ Zillow. *Colorado Home Prices & Values*. Retrieved April 30, 2019, from www.zillow.com/co/home-values/

⁴ Nerdwallet. *2018 Home Improvement Report*. Retrieved April 30, 2019, from www.nerdwallet.com/blog/2018-home-improvement/

⁵ Fool. *Here's What the Average American Spends on Home Repairs and Improvements*. Retrieved on April 30, 2019, from www.fool.com/retirement/2019/04/07/heres-what-the-average-american-spends-on-home-rep.aspx

⁶ Nerdwallet. *2018 Home Improvement Report*. Retrieved April 30, 2019, from www.nerdwallet.com/blog/2018-home-improvement/

⁷ Nerdwallet. *2018 Home Improvement Report*. Retrieved April 30, 2019, from www.nerdwallet.com/blog/2018-home-improvement/

⁸ Nerdwallet. *2018 Home Improvement Report*. Retrieved April 30, 2019, from www.nerdwallet.com/blog/2018-home-improvement/

generally provide a commitment to repair or replace items due to predictable wear and tear.⁹

Home warranty service contracts may be purchased on both new and existing homes, and generally cover repair or replacement of a home's major systems, such as heating, air conditioning, electrical and plumbing, as well as major appliances.¹⁰ Although such contracts can be purchased at any time during homeownership, they are particularly popular when selling or buying a home.¹¹

Home warranty service contract costs vary from state to state, provider to provider, and are dependent upon the items covered and excluded, but they typically cost between \$400 and \$550 per year,¹² and there is generally a fee of between \$75 and \$100 associated with each repair call.

According to the Better Business Bureau serving Greater Denver and Central Colorado, at least eight separate companies offer home warranty service contracts in the Denver Metro Area.

⁹ National Home Service Contract Association. *Regulatory History of Home Service Contracts in the United States*, by Arthur Chartrand. Retrieved March 27, 2019, from <https://homeservicecontract.org/about-nhsca/regulatory-statement/>

¹⁰ Service Contract Industry Council. *Home Service Contracts*. Retrieved March 27, 2019, from <https://go-scic.com/service-contracts/homes/>

¹¹ Service Contract Industry Council. *Home Service Contracts*. Retrieved March 27, 2019, from <https://go-scic.com/service-contracts/homes/>

¹² National Home Service Contract Association. *Frequently Asked Questions (FAQ)*. Retrieved March 27, 2019, from <https://homeservicecontract.org/resource-center/faqs/>

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

The General Assembly enacted the Colorado Preowned Home Warranty Service Company Act (Act) in 1979 by passing House Bill 79-1334. Among other things, the bill was limited to preowned housing, required those offering the contracts to register with the Colorado Real Estate Commission (Commission), required the posting of a bond of at least \$50,000, provided grounds for discipline of registered companies and prohibited lenders and those offering service contracts to require the purchase of such contracts.

Following a sunset review of the Commission in 1988, the General Assembly adopted Senate Bill 89-022, which implemented several sunset recommendations, including the substantial deregulation of the preowned home warranty service company industry. The bill repealed the registration and bonding requirements of the Act and instead delineated certain provisions that such home warranty service contracts must contain. The bill also repealed the name of the Act.

The statute underwent sunset reviews in 1998 and 2007, in conjunction with sunset reviews of the Commission, but no substantive statutory changes were recommended or implemented.

House Bill 15-1223 (HB 1223) clarified confusion raised by House Bill 14-1199, which pertained to appliance warranties. To resolve the confusion, HB 1223 amended the statute to clarify its applicability to service contracts sold for both new and preowned homes, but excluded such contracts sold by public utilities and a builder's warranty provided in connection with the sale of a new home. Finally, HB 1223 changed the sunset date of the statute such that it no longer coincides with the sunset date of the Commission.

Finally, effective October 1, 2019, the statutes governing home warranty service contracts were moved from section 12-61-602, *et seq.*, C.R.S., into section 12-10-901, *et seq.*, C.R.S. with the passage of House Bill 19-1172. Notwithstanding this

recodification, in order to avoid confusion and erroneous citations and references, this sunset report consistently refers to statutory provisions as if they remained in section 12-61-602, *et seq.*, C.R.S. A comparison table may be found in Appendix A.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Importantly, Part 6 of Title 12, C.R.S., which is the subject of this sunset review, does not create a program in the sense that companies that offer home warranty service contracts are not registered or licensed, and they are not subject to disciplinary action. Rather, the statutes dictate what home warranty service contracts must contain, as well as prohibit certain sales practices.

A home warranty service contract is defined as,

any contract or agreement whereby a person undertakes for a predetermined fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified new or preowned home: (I) Structural components, such as the roof, foundation, basement, walls, ceilings or floors; (II) Utility systems, such as electrical, air conditioning, plumbing, and heating systems, including furnaces; and (III) Appliances, such as stoves, washers, dryers, and dishwashers.¹³

¹³ § 12-61-602(2.5)(a), C.R.S.

Similar contracts or agreements whereby a public utility undertakes to repair or replace utility systems or appliances, and builders' warranties provided in connection with the sale of a new home are expressly excluded from this definition.¹⁴

Home warranty service contracts must contain:¹⁵

- A listing of all items or elements excluded from coverage;
- A listing of all other limitations on coverage;
- The procedure to be followed in order to obtain repairs or replacements;
- The time period within which the requested repairs will be made or replacements provided;
- The duration of the contract;
- A statement as to whether the contract is transferable; and
- A statement that actions under such a contract may be covered by the Colorado Consumer Protection Act or the Unfair Practices Act, and that a party to such a contract may have a right of civil action under those laws.

It is unlawful for a lending institution to require the purchase of such a contract as a condition for financing the purchase of a home,¹⁶ and companies that sell or issue home warranty service contracts are prohibited from requiring a home buyer, seller or person refinancing a home to purchase such contracts.¹⁷

Companies that transact business as home warranty service companies are specifically exempted from the state's insurance laws.¹⁸

A person who knowingly violates any provision of the statutes governing home warranty service contracts commits a Class 2 misdemeanor,¹⁹ which is punishable by between 3 and 12 months imprisonment, a fine of between \$250 and \$1,000, or both.²⁰

¹⁴ § 12-61-602(2.5)(b), C.R.S.

¹⁵ § 12-61-611.5(1), C.R.S.

¹⁶ § 12-61-614, C.R.S.

¹⁷ § 12-61-611, C.R.S.

¹⁸ § 10-3-903(2)(g), C.R.S.

¹⁹ § 12-61-612, C.R.S.

²⁰ § 18-1.3-501(1)(a), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), C.R.S. The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

Part 6 of Article 61 of Title 12, Colorado Revised Statutes, which is the subject of this sunset review, does not create a program in the sense that companies that offer home warranty service contracts are not registered or licensed, and they are not subject to disciplinary action. Rather, the statutes dictate what home warranty service contracts must contain, as well as prohibit certain sales practices. As a result, there is no program to describe in this section of the sunset report.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the statutes governing home warranty service contracts for six years, until 2026.

The statutes governing home warranty service contracts do not create a regulatory program. Rather, they merely create legal obligations with which home warranty service contracts must comply, and they prohibit certain sales practices. Specifically, such contracts must contain:²¹

- A listing of all items or elements excluded from coverage;
- A listing of all other limitations on coverage;
- The procedure to be followed in order to obtain repairs or replacements;
- The time period within which the requested repairs will be made or replacements provided;
- The duration of the contract;
- A statement as to whether the contract is transferable; and
- A statement that actions under such a contract may be covered by the Colorado Consumer Protection Act or the Unfair Practices Act, and that a party to such a contract may have a right of civil action under those laws.

These are provisions that the average person, often in the midst of the stressful home buying process, would not necessarily know to look or ask for in such a contract.

The first sunset criterion asks whether regulation, or in this case government intervention in the marketplace, is necessary to protect the public health, safety and welfare.

There is no regulatory program in place to enforce and administer the statutes, so it is difficult to ascertain the degree to which home warranty service companies comply with the statutes. Therefore, other, indirect methods are necessary to analyze this criterion.

Although the statutes reference the Colorado Consumer Protection Act, the Office of the Attorney General reports having no record of having received any complaints pursuant to the statutes or taken any related legal actions.

²¹ § 12-61-611.5(1), C.R.S.

As part of this sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) also contacted the Better Business Bureau serving Greater Denver and Central Colorado (BBB). According to the BBB, there are at least eight home warranty service companies operating in the Metro Denver Area, and all but one are rated as “A” or “A+”.

Between April 2016 and April 2019 (a three-year time span), the BBB received 1,159 complaints against home warranty service companies, mostly relating to denied claims and customer service issues. However, these figures are somewhat misleading as most of the complaints involved a single company that is headquartered in Colorado, and include complaints from across the nation. Regardless, the data provided by the BBB indicates that consumers do, at least occasionally, have disputes with home service warranty companies.

Additionally, during COPRRR’s stakeholder process, some anecdotal evidence was presented regarding repeatedly denied claims. This evidence, combined with the data provided by the BBB argues in favor of at least some level of government intervention in the marketplace.

The second sunset criterion asks whether the existing statutes and regulations establish the least restrictive form of regulation, or government intervention in this case, consistent with the public interest.

According to one industry expert, approximately 21 states register or license home warranty service companies, while four regulate them in a more passive manner, similar to Colorado.

During COPRRR’s stakeholder process, the input of real estate agents suggested that their clients generally do not have problems with home warranty service companies. This would seem to indicate that the current level of government intervention in the marketplace is appropriate. Thus, the current statutes appear to represent the least restrictive form of government intervention consistent with the public interest. Indeed, the statutes merely require home warranty service contracts contain certain provisions, but the statutes do not dictate the substance of those provisions.

Finally, because there is no government apparatus dedicated to administering the statutes, they cost the State nothing, yet still provide at least minimal consumer protections.

Because some government intervention in the marketplace appears necessary to protect the public and because the current statutes appear to represent the least restrictive form of government intervention consistent with the public interest, the General Assembly should continue the statutes governing home warranty service contracts for six years, until 2026. This will align the next sunset review of the statutes with the sunset review of the Colorado Real Estate Commission as is consistent with historical practices.

Recommendation 2 - Clarify that home warranty service contracts are not insurance.

Section 10-3-903(2)(g), Colorado Revised Statutes (C.R.S.), exempts from the definition of insurance, “the transaction of business by a home warranty service company pursuant to Part 6, of Article 61 of Title 12, C.R.S.”

However, section 12-61-614, C.R.S., provides:

It is unlawful for any lending institution to require the purchase of *home warranty insurance* as a condition for granting financing for the purchase of the home. [emphasis added]

This reference to “home warranty insurance” could be confusing. Therefore, the General Assembly should amend section 12-61-614, C.R.S., to reference “home warranty service contract” rather than “home warranty insurance.”

Appendix A - Title 12 Recodification Table

This table shows provisions of Part 6 of Article 61 of Title 12 of the Colorado Revised Statutes that were relocated as a result of the passage of House Bill 19-1172, concerning an organizational recodification of Title 12.

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-61-602 IP	12-10-901 IP	12-61-611.5	12-10-903
12-61-602(2.3)	12-10-901(1)	12-61-611.5 IP(1)	12-10-903 IP(1)
12-61-602 IP(2.5)(a)	12-10-901 IP(2)(a)	12-61-611.5(1)(a)	12-10-903(1)(a)
12-61-602(2.5)(a)(I)	12-10-901(2)(a)(I)	12-61-611.5(1)(b)	12-10-903(1)(b)
12-61-602(2.5)(a)(II)	12-10-901(2)(a)(II)	12-61-611.5(1)(c)	12-10-903(1)(c)
12-61-602(2.5)(a)(III)	12-10-901(2)(a)(III)	12-61-611.5(1)(d)	12-10-903(1)(d)
12-61-602 IP(2.5)(b)	12-10-901 IP(2)(b)	12-61-611.5(1)(e)	12-10-903(1)(e)
12-61-602(2.5)(b)(I)	12-10-901(2)(b)(I)	12-61-611.5(1)(f)	12-10-903(1)(f)
12-61-602(2.5)(b)(II)	12-10-901(2)(b)(II)	12-61-611.5(1)(g)	12-10-903(1)(g)
12-61-602(3)	12-61-602(3)	12-61-612	12-10-904
12-61-602(4)	12-10-901(4)	12-61-614	12-10-905
12-61-611	12-10-902	12-61-615	12-10-906