

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 1411

By: Nichols of the Senate

and

Nations of the House

( Service Warranty Insurance Act - definitions -  
emergency )

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"An Act relating to warranties and deceptive trade practices; amending 36 O.S. 2001, Sections 6602, as last amended by Section 3, Chapter 409, O.S.L. 2002 and 6615 (36 O.S. Supp. 2003, Section 6602), which relate to the Service Warranty Insurance Act; modifying definitions; subjecting certain associations and insurers to an annual administrative fee; amending 78 O.S. 2001, Section 53, which relates to deceptive trade practices; clarifying certain deceptive trade practices; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6602, as last amended by Section 3, Chapter 409, O.S.L. 2002 (36 O.S. Supp. 2003, Section 6602), is amended to read as follows:

Section 6602. As used in the Service Warranty Insurance Act:

1. "Commissioner" means the Insurance Commissioner;
2. "Consumer product" means tangible personal property primarily used for personal, family, or household purposes;
3. "Department" means the Insurance Department;
4. "Gross income" means the total amount of revenue received in connection with business-related activity;

5. "Gross written premiums" means the total amount of premiums, inclusive of commissions, for which the association is obligated under service warranties issued in this state;

6. "Impaired" means having liabilities in excess of assets;

7. "Indemnify" means to undertake repair or replacement of a consumer product or a newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated premium, when the consumer product or residential structure becomes defective or suffers operational failure;

8. "Insolvent" means any actual or threatened delinquency including, but not limited to, any one or more of the following circumstances:

- a. an association's ~~net assets~~ total liabilities exceed the total ~~liabilities~~ assets of the association,
- b. the business of any such association is being conducted fraudulently, or
- c. the association has knowingly overvalued its assets;

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

10. "Net assets" means the amount by which the total assets of an association, excluding goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies, exceed the total liabilities of the association. For purposes of the Service Warranty Insurance Act, the term "total liabilities" does not include the capital stock, paid-in capital, or retained earnings of an association;

11. "Person" includes an individual, company, corporation, association, insurer, agent and any other legal entity;

12. "Premium" means the total consideration received or to be received, by whatever name called, by an insurer or service warranty

association for, or related to, the issuance and delivery of a service warranty, including any charges designated as assessments or fees for membership, policy, survey, inspection, or service or other charges. However, a repair charge is not a premium unless it exceeds the usual and customary repair fee charged by the association, provided the repair is made before the issuance and delivery of the warranty;

13. "Sales representative" means any person utilized by an insurer or service warranty association for the purpose of selling or issuing service warranties and includes any individual possessing a certificate of competency who has the power to legally obligate the insurer or service warranty association or who merely acts as the qualifying agent to qualify the association in instances when a state statute or local ordinance requires a certificate of competency to engage in a particular business. However, in the case of service warranty associations selling service warranties from five or more business locations, the store manager or other person in charge of each such location shall be considered the sales representative;

14. "Service warranty" means any warranty, home warranty, guaranty, extended warranty or extended guaranty, contract agreement, or other written promise entered into between a consumer and a service warranty association under the terms of which there is an undertaking to indemnify against the cost of repair or replacement of a consumer product or newly-constructed residential structure, including any appliances, electrical, plumbing, heating, cooling or air conditioning systems, in return for the payment of a segregated charge by the consumer; however:

- a. maintenance service contracts under the terms of which there are no provisions for such indemnification are expressly excluded from this definition,

- b. those contracts issued solely by the manufacturer, distributor, importer or seller of the product, or any affiliate or subsidiary of the foregoing entities, whereby such entity has contractual liability insurance in place, from a company licensed in the state, which covers one hundred percent (100%) of ~~its~~ the claims exposure on all contracts written without being predicated on the failure to perform under such contracts, are expressly excluded from this definition,
- c. the term "service warranty" does not include service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners, which contracts require the performance of repairs and maintenance of appliances or maintenance of the residential property, ~~and~~
- d. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company which performs at least seventy percent (70%) of the service work itself and not through subcontractors, which has been selling and honoring such contracts in Oklahoma for at least twenty (20) years, ~~or which has net assets in excess of One Hundred Million Dollars (\$100,000,000.00)~~ and
- e. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts issued by a company which has net assets in excess of One Hundred Million Dollars (\$100,000,000.00). The calculation of the net assets

shall include the assets of a parent company. When the net assets of the parent company are used to calculate the total net assets of the company, the net assets of the company issuing the policy shall total at least Twenty-five Million Dollars (\$25,000,000.00);

15. "Service warranty association" or "association" means any person, other than an authorized insurer, issuing service warranties; provided, this term shall not mean any person engaged in the business of erecting or otherwise constructing a new home;

16. "Warrantor" means any service warranty association engaged in the sale of service warranties and deriving not more than fifty percent (50%) of its gross income from the sale of service warranties; and

17. "Warranty seller" means any service warranty association engaged in the sale of service warranties and deriving more than fifty percent (50%) of its gross income from the sale of service warranties.

SECTION 2. AMENDATORY 36 O.S. 2001, Section 6615, is amended to read as follows:

Section 6615. A. In addition to the license fees provided in the Service Warranty Insurance Act for service warranty associations each such association and insurer shall, annually on or before the last day of February, file with the Insurance Commissioner its annual statement in the form prescribed by the Commissioner showing all premiums or assessments received by it in connection with the issuance of service warranties in this state during the preceding calendar year and other relevant financial information as deemed necessary by the Commissioner, using accounting principles which will enable the Commissioner to ascertain whether the financial requirements set forth in Section 7 6607 of this ~~act~~ title have been satisfied.

B. The Commissioner may levy a fine of up to One Hundred Dollars (\$100.00) a day for each day an association neglects to file the annual statement in the form and within the time provided by the Service Warranty Insurance Act.

C. In addition to an annual statement, the Commissioner may require of licensees, under oath and in the form prescribed by it, quarterly statements or special reports which the Commissioner deems necessary for the proper supervision of licensees under the Service Warranty Insurance Act.

D. Premiums and assessments received by associations and insurers for service warranties shall not be subject to the premium tax provided for in Section 624 of ~~Title 36 of the Oklahoma Statutes~~ this title, but shall be subject to an administrative fee of Two Dollars (\$2.00) for each service warranty issued that provides coverage not to exceed Seventy-five Dollars (\$75.00), Five Dollars (\$5.00) for each service warranty issued that provides coverage in excess of Seventy-five Dollars (\$75.00) but not to exceed Two Hundred Fifty Dollars (\$250.00), and Ten Dollars (\$10.00) for each service warranty that provides coverage in excess of Two Hundred Fifty Dollars (\$250.00). However, associations and insurers that have contractual liability insurance in place, from a company licensed or registered to issue automobile service warranties in the state, which covers one hundred percent (100%) of the claims exposure of the association or insurer on all contracts written without being predicated on the failure to perform under such contracts shall be subject to an annual administrative fee of Two Thousand Five Hundred Dollars (\$2,500.00). Said fees shall be paid quarterly to the Insurance Commissioner. All such fees, up to a maximum of Two Hundred Seventy-five Thousand Dollars (\$275,000.00) per year, received by the Insurance Commissioner shall be deposited into the State Treasury to the credit of the Insurance Commissioner Revolving Fund for the payment of costs incurred by the Insurance

Department in the administration of the Service Warranty Insurance Act. Amounts received in excess of the annual limitation shall be deposited to the credit of the General Revenue Fund.

SECTION 3. AMENDATORY 78 O.S. 2001, Section 53, is amended to read as follows:

Section 53. A. A person engages in a deceptive trade practice when in the course of business, vocation, or occupation, the person:

1. Passes off goods or services as those of another;
2. Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods or services;
3. Knowingly makes a false representation as to affiliation, connection, association with, or certification by another;
4. Uses deceptive representations or designations of geographic origin in connection with goods or services;
5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits or quantities of goods or services or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;
6. Represents that goods are original or new if they are not;
7. Represents that goods or services are a particular standard, quality, or grade, or that goods are a particular style or model, if they are another;
8. Disparages the goods, services, or business of another by false or misleading representation of fact;
9. Advertises goods or services which differ from those offered for sale in the advertisements;
10. Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
11. Makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

12. Advertises the price of an item after deduction of a rebate unless the actual selling price is advertised and clear and conspicuous notice is given in the advertisement that a mail-in rebate is required to achieve the lower net price;

13. Misrepresents the geographic location of the supplier by listing a fictitious business name or an assumed business name in a local telephone directory if:

- a. the name misrepresents the geographic location of the supplier,
- b. the listing fails to identify the locality and state of the business of the supplier,
- c. calls to the local telephone number are routinely forwarded or otherwise transferred to a business location that is outside the calling area covered by the local telephone directory, ~~and~~ or
- d. the business location of the supplier is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory;  
or

14. Lists a fictitious business name or assumed business name in a directory assistance database if:

- a. the name misrepresents the geographic location of the supplier,
- b. calls to the local telephone number are routinely forwarded or otherwise transferred to a business location that is outside the local calling area, ~~and~~ or
- c. the business location of the supplier is located in a county that is not contiguous to a county in the local calling area.



B. Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

C. The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 8th day of April, 2004.

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Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2004.

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Presiding Officer of the Senate