ENGROSSED HOUSE
BILL NO. <billnum>

By: Nations of the House

and

Nichols of the Senate

An Act relating to the Service Warranty Insurance Act; amending 36 O.S. 2001, Section 6602, as last amended by Section 3, Chapter 409, O.S.L. 2002 (36 O.S. Supp. 2002, Section 6602), which relates to definitions; modifying definitions; 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. 2002, 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 earning 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~~ distributed 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);

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. 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 5th day of March, 2003.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2003.

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Presiding Officer of the Senate