

EHB 1117

1 THE STATE SENATE  
2 Monday, March 31, 2003

3 ENGROSSED

4 House Bill No. 1117

5 ENGROSSED HOUSE BILL NO. 1117 - By: NATIONS of the House and NICHOLS  
6 of the Senate.

7 An Act relating to the Service Warranty Insurance Act;  
8 amending 36 O.S. 2001, Section 6602, as last amended by  
9 Section 3, Chapter 409, O.S.L. 2002 (36 O.S. Supp. 2002,  
10 Section 6602), which relates to definitions; modifying  
11 definitions; and declaring an emergency.

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

13 SECTION 1. AMENDATORY 36 O.S. 2001, Section 6602, as  
14 last amended by Section 3, Chapter 409, O.S.L. 2002 (36 O.S. Supp.  
15 2002, Section 6602), is amended to read as follows:

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

- 17 1. "Commissioner" means the Insurance Commissioner;
- 18 2. "Consumer product" means tangible personal property  
19 primarily used for personal, family, or household purposes;
- 20 3. "Department" means the Insurance Department;
- 21 4. "Gross income" means the total amount of revenue received in  
22 connection with business-related activity;
- 23 5. "Gross written premiums" means the total amount of premiums,  
24 inclusive of commissions, for which the association is obligated  
25 under service warranties issued in this state;
- 26 6. "Impaired" means having liabilities in excess of assets;

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

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

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

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

17       10. "Net assets" means the amount by which the total assets of  
18 an association, excluding goodwill, franchises, customer lists,  
19 patents or trademarks, and receivables from or advances to officers,  
20 directors, employees, salesmen, and affiliated companies, exceed the  
21 total liabilities of the association. For purposes of the Service  
22 Warranty Insurance Act, the term "total liabilities" does not

1 include the capital stock, paid-in capital, or retained earning of  
2 an association;

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

5 12. "Premium" means the total consideration received or to be  
6 received, by whatever name called, by an insurer or service warranty  
7 association for, or related to, the issuance and delivery of a  
8 service warranty, including any charges designated as assessments or  
9 fees for membership, policy, survey, inspection, or service or other  
10 charges. However, a repair charge is not a premium unless it  
11 exceeds the usual and customary repair fee charged by the  
12 association, provided the repair is made before the issuance and  
13 delivery of the warranty;

14 13. "Sales representative" means any person utilized by an  
15 insurer or service warranty association for the purpose of selling  
16 or issuing service warranties and includes any individual possessing  
17 a certificate of competency who has the power to legally obligate  
18 the insurer or service warranty association or who merely acts as  
19 the qualifying agent to qualify the association in instances when a  
20 state statute or local ordinance requires a certificate of  
21 competency to engage in a particular business. However, in the case  
22 of service warranty associations selling service warranties from  
23 five or more business locations, the store manager or other person

1 in charge of each such location shall be considered the sales  
2 representative;

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

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

15 b. those contracts ~~issued solely~~ distributed by the  
16 manufacturer, distributor, importer or seller of the  
17 product, or any affiliate or subsidiary of the  
18 foregoing entities, whereby such entity has  
19 contractual liability insurance in place, from a  
20 company licensed in the state, which covers one  
21 hundred percent (100%) of ~~its~~ the claims exposure on  
22 all contracts written without being predicated on the

1 failure to perform under such contracts, are expressly  
2 excluded from this definition,

3 c. the term "service warranty" does not include service  
4 contracts entered into between consumers and nonprofit  
5 organizations or cooperatives the members of which  
6 consist of condominium associations and condominium  
7 owners, which contracts require the performance of  
8 repairs and maintenance of appliances or maintenance  
9 of the residential property, and

10 d. the term "service warranty" does not include  
11 warranties, guarantees, extended warranties, extended  
12 guarantees, contract agreements or any other service  
13 contracts issued by a company which performs at least  
14 seventy percent (70%) of the service work itself and  
15 not through subcontractors, which has been selling and  
16 honoring such contracts in Oklahoma for at least  
17 twenty (20) years, or which has net assets in excess  
18 of One Hundred Million Dollars (\$100,000,000.00);

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

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

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

9        SECTION 2. It being immediately necessary for the preservation  
10 of the public peace, health and safety, an emergency is hereby  
11 declared to exist, by reason whereof this act shall take effect and  
12 be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON COMMERCE, dated 3-27-03 - DO PASS.