

SB 1411

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THE STATE SENATE
Wednesday, February 18, 2004

Senate Bill No. 1411

As Amended

SENATE BILL NO. 1411 - By: NICHOLS of the Senate and NATIONS of the House.

[Service Warranty Insurance Act - definitions - 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,

1 including any appliances, electrical, plumbing, heating, cooling or
2 air conditioning systems, in return for the payment of a segregated
3 premium, when the consumer product or residential structure becomes
4 defective or suffers operational failure;

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

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

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

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

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

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

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

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

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

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

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

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

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

21 16. "Warrantor" means any service warranty association engaged
22 in the sale of service warranties and deriving not more than fifty

1 percent (50%) of its gross income from the sale of service
2 warranties; and

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-16-04 -
12 DO PASS, As Amended and Coauthored.