

SB 1484

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THE STATE SENATE  
Monday, February 23, 2004

Senate Bill No. 1484

As Amended

SENATE BILL NO. 1484 - By: SNYDER of the Senate and BRADDOCK of the House.

[ **contracts - Service Warranty Insurance Act - modifying definitions - effective date** ]

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;

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~~ total liabilities exceed total  
11               assets ~~exceed the total liabilities of the~~  
12               association,

13           b. the business of any such association is being  
14               conducted fraudulently, or

15           c. the association has knowingly overvalued its assets;

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

18       10. "Net assets" means the amount by which the total assets of  
19 an association, excluding goodwill, franchises, customer lists,  
20 patents or trademarks, and receivables from or advances to officers,  
21 directors, employees, salesmen, and affiliated companies, exceed the  
22 total liabilities of the association. For purposes of the Service  
23 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 by the manufacturer,  
16 distributor, importer or seller of the product, or any  
17 affiliate or subsidiary of the foregoing entities,  
18 whereby such entity has contractual liability  
19 insurance in place, from a company licensed in the  
20 state, which covers one hundred percent (100%) of its  
21 claims exposure on all contracts written without being  
22 predicated on the failure to perform under such

1 contracts, are expressly excluded from this definition  
2 only if:

3 (1) the manufacturer, distributor, importer or seller  
4 of the product that is the subject of the  
5 contract or any affiliate or subsidiary of the  
6 foregoing entities who issued the contract is  
7 liable for and is contractually bound to pay any  
8 proper claims arising under the contract and that  
9 person or entity is identified as such in the  
10 contract,

11 (2) the contract provides that the contractual  
12 liability insurance is in place,

13 (3) the contract sets out the name and contact  
14 information for the insurance company providing  
15 the contractual liability insurance,

16 (4) the issuer provides a copy of the following to  
17 the Insurance Commissioner:

18 (a) the contract,

19 (b) the contractual liability insurance policy,

20 and

21 (c) any other information the Insurance

22 Commissioner may by rule reasonably require,

1                   (5) the Insurance Commissioner provides prior notice  
2                   in writing to the person or entity issuing the  
3                   contract that the contract is excluded from the  
4                   definition of service warranty,

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

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

21           15. "Service warranty association" or "association" means any  
22           person, other than an authorized insurer, issuing service

1 warranties; provided, this term shall not mean any person engaged in  
2 the business of erecting or otherwise constructing a new home;

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

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

11 SECTION 2. This act shall become effective November 1, 2004.

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