STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

HOUSE BILL 1680 By: Peterson

AS INTRODUCED

An Act relating to insurance; amending 36 O.S. 2001, Sections 6601, 6602, as last amended by Section 1, Chapter 169, O.S.L. 2004, 6604, 6605, 6607, 6614, 6615, as amended by Section 2, Chapter 169, O.S.L. 2004, 6616, 6617, 6619, as amended by Section 4, Chapter 409, O.S.L. 2002, 6620, as amended by Section 5, Chapter 409, O.S.L. 2002, 6622, 6626, 6628 and 6631 (36 O.S. Supp. 2006, Sections 6602, 6615, 6619 and 6620), which relate to the Service Warranty Insurance Act; updating language; modifying definitions; increasing fee; providing for appointment of administrator; excluding certain agreement from insurance; removing bond agreement; requiring consideration in lieu of premium; providing standards for insurer; modifying amount of premium returned after cancellation; requiring consideration in lieu of premium; providing exemptions for persons from registration; providing reference; deleting reference to exemption; clarifying grounds for certain actions by Insurance Commissioner; limiting amount of administrative penalty; modifying disclosure statement; limiting liability; repealing 36 O.S. 2001, Section 6606, which relates to the Service Warranty Insurance Act; and providing an effective date.

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

SECTION 1. AMENDATORY 36 O.S. 2001, Section 6601, is amended to read as follows:

Section 6601. Sections ~~1~~ 6601 through ~~39~~ 6639 of this ~~act~~ title shall be known and may be cited as the "Service Warranty Insurance Act".

SECTION 2. AMENDATORY 36 O.S. 2001, Section 6602, as last amended by Section 1, Chapter 169, O.S.L. 2004 (36 O.S. Supp. 2006, 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~~ consideration" means the total amount of ~~premiums~~ consideration, 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 total liabilities exceed the total 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~~ paid to an insurer for a reimbursement insurance policy;

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~~ a contract or agreement for a separately stated consideration for a specific duration to perform the repair or replacement of property or indemnification for repair or replacement for the operational or structural failure due to a defect in materials or workmanship, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, failure due to normal wear and tear, towing, rental and emergency road service, road hazard, power surge, and accidental damage from handling; 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 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,

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, and

e. the term "service warranty" does not include warranties, guarantees, extended warranties, extended guarantees, contract agreements or any other service contracts, whether or not such service contracts otherwise meet the definition of "service warranty", 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,~~ A service warranty association may use the net assets of a parent company to qualify under this section if the net assets of the company issuing the policy ~~shall~~ total at least Twenty-five Million Dollars ($25,000,000.00) and the parent company maintains net assets of at least Seventy-five Million Dollars ($75,000,000.00);

15. "Service warranty association" or "association" means any person, other than an authorized insurer, ~~issuing service warranties~~ contractually obligated to a service contract holder under the terms of a service warranty; 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 3. AMENDATORY 36 O.S. 2001, Section 6604, is amended to read as follows:

Section 6604. A. No person in this state shall ~~provide or offer to provide service warranties~~ act as a service warranty association unless licensed by the Insurance Commissioner.

B. A service warranty association shall pay to the Insurance Department a license fee of ~~Two Hundred Dollars ($200.00)~~ Three Hundred Dollars ($300.00) for such license for each year, or part thereof, the license is in force. All license fees received pursuant to this section shall be paid into the State Treasury to the credit of the Insurance Commissioner Revolving Fund and shall be used for the implementation of the Service Warranty Insurance Act.

C. An insurer, while authorized to transact property or casualty insurance in this state, may also transact a service warranty business without additional qualifications or licensure as required by the Service Warranty Insurance Act, but shall be otherwise subject to the provisions of the Service Warranty Insurance Act.

D. A service warranty association may appoint an administrator or other designee to be responsible for any or all of the administration of service contracts and compliance with this act.

E. An agreement which provides specified scheduled maintenance services over a stated period of time does not constitute insurance or a service warranty.

SECTION 4. AMENDATORY 36 O.S. 2001, Section 6605, is amended to read as follows:

Section 6605. The Insurance Commissioner shall not issue or renew a license to any service warranty association unless the association:

1. Is a solvent association;

2. Furnishes the Insurance Department with evidence satisfactory to it that the management of the association is competent and trustworthy and can successfully manage the affairs of the association in compliance with law;

3. Proposes to use and uses in its business a name together with a trademark or emblem, if any, which is distinctive and not so similar to the name or trademark of any other person already doing business in this state as will tend to mislead or confuse the public; and

4. ~~Makes the deposit or files the bond required by the Service Warranty Insurance Act; and~~

~~5.~~ Is formed under the laws of this state or another state, district, territory, or possession of the United States, if the association is other than a natural person.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 6607, is amended to read as follows:

Section 6607. A. An association licensed pursuant to the Service Warranty Insurance Act shall maintain a funded, unearned ~~premium~~ reserve account, consisting of unencumbered assets, equal to a minimum of twenty-five percent (25%) of the gross written ~~premiums~~

consideration received on all warranty contracts in force, wherever written. In the case of multiyear contracts which are offered by associations having net assets of less than Five Hundred Thousand Dollars ($500,000.00) for which ~~premiums are~~ consideration is collected in advance for coverage in a subsequent year, one hundred percent (100%) of the ~~premiums~~ consideration for such subsequent years shall be placed in the funded, unearned ~~premium~~ reserve account.

B. An association shall not be required to establish an unearned ~~premium~~ reserve or demonstrate minimum net worth if it has purchased ~~contractual liability~~ an insurance policy which demonstrates to the satisfaction of the Insurance Commissioner that one hundred percent (100%) of its claim exposure is covered by such policy and satisfies the requirements of this section. The ~~contractual liability~~ insurance shall be obtained from an insurer that ~~holds a certificate of authority to do business within the state or from an insurer approved by the Commissioner as financially capable of meeting the obligations incurred pursuant to the policy~~ is licensed, registered, or otherwise authorized to do business in this state and that meets the requirements of subsection C of this section. For the purposes of this subsection, the ~~contractual liability~~ insurance policy shall contain the following provisions:

1. In the event that the service warranty association is unable to fulfill its obligation under contracts issued in this state for

any reason, including insolvency, bankruptcy, or dissolution, the ~~contract liability~~ insurer will pay losses and unearned ~~premiums~~ consideration under such plans directly to the person making a claim under the contract;

2. The insurer issuing the ~~contractual liability~~ insurance policy shall assume full responsibility for the administration of claims in the event of the inability of the association to do so; and

3. The policy may not be canceled or not renewed by either the insurer or the association unless sixty (60) days' written notice thereof has been given to the Commissioner by the insurer before the date of such cancellation or nonrenewal.

C. The insurer providing the insurance policy used to satisfy the financial responsibility requirements of subsection B of this section must meet one of the following standards:

1. The insurer shall, at the time the policy is filed with the Commissioner, and continuously thereafter:

a. maintain surplus as to policyholders and paid-in capital of at least Fifteen Million Dollars ($15,000,000.00), and

b. annually file copies of the audited financial statements of the insurer, its NAIC Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer; or

2. The insurer shall, at the time the policy is filed with the Commissioner, and continuously thereafter:

a. maintain surplus as to policyholders and paid-in capital of less than Fifteen Million Dollars ($15,000,000.00) but at least equal to Ten Million Dollars ($10,000,000.00),

b. demonstrate to the satisfaction of the Commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and

c. annually file copies of the audited financial statements of the insurer, its NAIC Annual Statement, and the actuarial certification required by and filed in the state of domicile of the insurer.

D. No warrantor or warranty seller shall allow its gross written ~~premiums~~ consideration to exceed seven to one ratio to net assets.

~~D. No warranty seller shall allow its gross written premiums to exceed a five to one ratio to net assets.~~

E. If the gross written ~~premiums~~ consideration of a warrantor or a warranty seller ~~exceed~~ exceeds the required net asset ratios, the Commissioner may require, in addition to other measures as the Commissioner deems necessary, any one or more of the following:

1. A complete review of financial condition;

2. An increase in deposit;

3. A suspension of any new writings; or

4. Capital infusion into the business.

SECTION 6. AMENDATORY 36 O.S. 2001, Section 6614, is amended to read as follows:

Section 6614. A. No service warranty form or related form shall be issued or used in this state unless the form has been filed with and approved by the Insurance Commissioner.

B. Each filing of a form shall be made not less than thirty (30) days in advance of its issuance or use. At the expiration of thirty (30) days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively disapproved by written order of the Commissioner.

C. Each service warranty contract shall contain a cancellation provision. In the event the contract is canceled by the warranty holder, return of ~~premium~~ consideration shall be based upon ninety percent (90%) of the unearned pro rata ~~premium~~ consideration less the actual cost of any service provided under the service warranty contract. In the event the contract is canceled by the association, return of ~~premium~~ consideration shall be based upon one hundred percent (100%) of unearned pro rata ~~premium~~ consideration less the actual cost of any service provided under the service warranty contract.

D. The Commissioner shall disapprove any form filed pursuant to this section if the form:

1. Violates the Service Warranty Insurance Act;

2. Is misleading in any respect; or

3. Is reproduced so that any material provision is substantially illegible.

SECTION 7. AMENDATORY 36 O.S. 2001, Section 6615, as amended by Section 2, Chapter 169, O.S.L. 2004 (36 O.S. Supp. 2006, 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~~ gross written consideration 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 6607 of this 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~~ Consideration and assessments received by associations and insurers for service warranties shall not be subject to the premium tax provided for in Section 624 of 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,~~ an insurer which satisfies the requirements of subsection C of Section 6607 of this title and 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 8. AMENDATORY 36 O.S. 2001, Section 6616, is amended to read as follows:

Section 6616. A. Service warranty associations licensed pursuant to the Service Warranty Insurance Act are subject to periodic examination by the Insurance Commissioner, in the same manner and subject to the same terms and conditions that apply to insurers.

B. The Commissioner is not required to examine an association that has less than Twenty Thousand Dollars ($20,000.00) in gross written ~~premiums~~ consideration as reflected in its most recent annual statement. The Commissioner may examine such an association if the Commissioner has reason to believe that the association may be in violation of the Service Warranty Insurance Act or is otherwise in an unsound financial condition. If the Commissioner

examines such an association the examination fee shall not exceed five percent (5%) of the gross written ~~premiums~~ consideration of the association.

SECTION 9. AMENDATORY 36 O.S. 2001, Section 6617, is amended to read as follows:

Section 6617. As a minimum requirement for permanent office records, each licensed service warranty association shall maintain:

1. A complete set of accounting records, including but not limited to, a general ledger, cash receipts and disbursements journals, accounts receivable registers and accounts payable registers;

2. A detailed warranty register of warranties in force~~, by unique identifier~~. The register shall include the ~~unique identifier,~~ date of issue, issuing sales representative, ~~name of warranty holder, location of the property,~~ warranty period, gross ~~premium~~ consideration, commission to sales representative, and net ~~premium~~ consideration; and

3. A detailed centralized claims or service record register which includes the unique identifier, date of issue, date of claim, issuing service representative, amount of claim or service, date claim paid, and, if applicable, disposition other than payment and reason therefor.

SECTION 10. AMENDATORY 36 O.S. 2001, Section 6619, as amended by Section 4, Chapter 409, O.S.L. 2002 (36 O.S. Supp. 2006, Section 6619), is amended to read as follows:

Section 6619. A. No person shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person is registered as a sales representative or acts under the supervision of a sales representative, or is exempt from registration as provided herein. Sales representatives shall be responsible for the actions of persons under their supervision.

B. The following persons shall be exempt from registration as a sales representative:

a. an attorney licensed to practice law in the State of Oklahoma, ~~or~~

b. an individual licensed under the Oklahoma Real Estate License Code, Oklahoma Mortgage Broker Licensure Act, or Home Inspection Licensing Act,

c. an individual licensed under the Oklahoma Insurance Code as an Insurance Agent or Broker,

d. a service warranty association or an employee of either a service warranty association or an affiliate of a service warranty association,

e. a financial institution or an employee of a financial institution, or

f. a dealership licensed pursuant to Chapter 62 of Title 47 of the Oklahoma Statutes or an employee of such a dealership.

~~Sales representatives shall be responsible for the actions of persons under their supervision.~~

SECTION 11. AMENDATORY 36 O.S. 2001, Section 6620, as amended by Section 5, Chapter 409, O.S.L. 2002 (36 O.S. Supp. 2006, Section 6620), is amended to read as follows:

Section 6620. Each service warranty association or insurer shall register, on forms prescribed by the Insurance Commissioner, on or before March 1 of each odd-numbered year, the name and business address of each sales representative required to be registered under Section 6619 of this title utilized by it in this state and, within thirty (30) days after termination of the contract, shall notify the Commissioner of such termination. At the time of biennial registration, a filing fee of Forty Dollars ($40.00) for each sales representative shall be paid by the service warranty association or insurer to the Commissioner. All such filing fees shall be deposited in the State Treasury to the credit of the Insurance Commissioner Revolving Fund to be used for the implementation of the Service Warranty Insurance Act. Any sales representative utilized subsequent to the March 1 filing date shall be registered with the Commissioner within ten (10) days after such utilization. ~~Pursuant to Section 6619 of this title, any individual~~

~~who is an attorney licensed to practice law in the State of Oklahoma or an individual licensed under the Oklahoma Real Estate License Code, Oklahoma Mortgage Broker Licensure Act, or Home Inspection Licensing Act, shall not be subject to the registration or filing fee requirements of this section.~~ No employee or sales representative of a service warranty association or insurer may directly or indirectly solicit or negotiate insurance contracts, or hold himself out in any manner to be an insurance agent, unless so qualified and licensed pursuant to Section 1421 et seq. of ~~Title 36 of the Oklahoma Statutes~~ this title.

SECTION 12. AMENDATORY 36 O.S. 2001, Section 6622, is amended to read as follows:

Section 6622. The Insurance Commissioner shall deny, suspend, revoke, or refuse to renew or continue the registration of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist:

1. Material misstatement, misrepresentation, or fraud in registration;

2. The registration is willfully used to circumvent any of the requirements or prohibitions of the Service Warranty Insurance Act;

3. Willful misrepresentation of any service warranty contract or willful deception with regard to any such contract, done either in person or by any form of dissemination of information or advertising;

4. In the adjustment of claims arising out of warranties, material misrepresentation to a service warranty holder or other interested party of the terms and coverage of a contract with the intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract;

5. Demonstrated lack of fitness or trustworthiness to engage in the business of service warranty;

6. Demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the registration;

7. Fraudulent or dishonest practices in the conduct of business under the registration;

8. Misappropriation, conversion, or unlawful withholding of moneys belonging to an association, insurer, or warranty holder, or to others, and received in the conduct of business under the registration;

9. ~~Rebating~~ Unlawfully rebating, or attempting to unlawfully rebate, or unlawfully dividing, or offering to divide, his commission with another;

10. Willful failure to comply with, or willful violation of, any proper order or rule of the Commissioner, or willful violation of any provision of the Service Warranty Insurance Act; or

11. Being found guilty of or pleading nolo contendere to a felony or a crime punishable by imprisonment of one (1) year or more under the law of the United States of America or any state thereof or under the law of any other country involving moral turpitude, without regard to whether judgment of conviction has been entered by the court having jurisdiction of such case.

SECTION 13. AMENDATORY 36 O.S. 2001, Section 6626, is amended to read as follows:

Section 6626. A. If, pursuant to procedures provided for in the Service Warranty Insurance Act, it is found that one or more grounds exist for the suspension, revocation, or refusal to renew or continue any registration issued under the Service Warranty Insurance Act, on a first offense and except when such suspension, revocation, or refusal is mandatory, an order may be entered imposing upon the registrant, in lieu of such suspension, revocation, or refusal, an administrative penalty for each violation in the amount of One Hundred Dollars ($100.00), or in the event of willful misconduct or willful violation on the part of the registrant, an administrative fine not to exceed One Thousand Dollars ($1,000.00) for each violation. The administrative penalty may be augmented by an amount equal to any commissions received by or accruing to the credit of the registrant in connection with any transaction to which the grounds for suspension, revocation, or refusal are related. An administrative penalty imposed under this

section shall not exceed Five Thousand Dollars ($5,000.00) in the aggregate for all nonwillful violations of a similar nature or Fifty Thousand Dollars ($50,000.00) in the aggregate for all willful violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to be a violation of this act occurred.

B. The order may allow the registrant a reasonable period, not to exceed thirty (30) days, within which to pay to the Insurance Commissioner the amount of the penalty so imposed. If the registrant fails to pay the penalty in its entirety to the Commissioner within the period allowed, the registration of the registrant shall stand suspended or revoked or renewal or continuation may be refused, as the case may be, upon expiration of such period and without any further proceedings.

SECTION 14. AMENDATORY 36 O.S. 2001, Section 6628, is amended to read as follows:

Section 6628. ~~If a~~ A service warranty ~~is issued by a person or entity that is not the manufacturer of the product or a wholesale company marketing the product,~~ shall contain a disclosure statement containing substantially the following information ~~in ten point or larger type shall be attached to the buyer's copy of the service warranty: "This service warranty is not issued by the manufacturer~~

~~or wholesale company marketing the product. This warranty will not be honored by such manufacturer or wholesale company." No other information shall be placed on the disclosure statement~~: Coverage afforded under this contract is not guaranteed by the Oklahoma Insurance Guaranty Association.

SECTION 15. AMENDATORY 36 O.S. 2001, Section 6631, is amended to read as follows:

Section 6631. A. Any person damaged by a violation of the provisions of the Service Warranty Insurance Act may bring a civil action against a person violating such provisions in the district court of the county in which the alleged violator resides or has his principal place of business or in the county in which the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages or Five Hundred Dollars ($500.00) whichever is greater, together with court costs and reasonable attorney's fees incurred by the plaintiff. Liability under this section shall not exceed Fifty Thousand Dollars ($50,000.00) in the aggregate for all violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to be a violation of the Service Warranty Insurance Act occurred.

B. This section shall not be construed to authorize a civil action against the Insurance Department, its employees, or the Insurance Commissioner.

SECTION 16. REPEALER 36 O.S. 2001, Section 6606, is hereby repealed.

SECTION 17. This act shall become effective November 1, 2007.

51-1-6031 AB 01/16/07