

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Eric Carter, Vice Chair at 3:30 P.M. on March 10, 2005 in Room 527-S of the Capitol.

All members were present except:

Representative Bonnie Sharp- excused
Representative Clark Shultz- excused
Representative Ray Cox- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Sue Fowler, Committee Secretary

Conferees appearing before the committee:

Art Chartrand, Overland Park, KS
Bill Sneed, Topeka, KS

Others attending:

See attached list.

Hearing on:

SB 178: **Home service contract act**

Proponents:

Art Chartrand, National Home Service Contract Association, (Attachment #1), presented testimony in support of **SB 178**.

Bill Sneed, SBC Communications, (Attachment #2), presented testimony in support of **SB 178** and provided comments on terminology in **SB 178**.

Hearing closed on **SB 178**.

Next meeting will be Tuesday, March 15, 2005.

Meeting adjourned at 4:10 P.M.

House Insurance Committee
Guest Sign Sheet
Thursday, March 10, 2005

Name	Representing
Bill Sneed	SBC
Alex Kotlyantz	PIA
David Hanson	KS Insur Assns
Bud Burke	NHSCA
Ang Cartman	NHSCA
[Signature]	KID
Chris Apess	Intern (Eric Carter)

March 10, 2005

In support of Senate Bill 178

The case for Kansas to adopt an NAIC style model position on *Home Service Contracts*.

By: Arthur J. Chartrand, JD. 913-768-4700 www.chartlaw.com

My name is Arthur J. Chartrand of Olathe, Kansas. I work exclusively in the insurance and regulatory arenas. I have visited every state and had the privilege of testifying before many state legislative bodies. I spent my early career as counsel to the National Association of Insurance Commissioners (NAIC). I authored many of the NAIC's position papers and served as counsel to the committees in the 1980's which examined the service contract industry.

I represent the National Home Service Contract Association (NHSCA). NHSCA is a non profit, **Kansas Corporation** dedicated to industry and consumer information about the use and benefits of annual based, home service contracts. Home service, repair and replacement on your household appliances, heating, air-conditioning and major electrical and mechanical systems that fail due to normal wear and tear. Pure and simple. They do not desire or project any measure of being "in the business of insurance." Home service contracts do not provide any typical insurance protection whether it be for fire, windstorm, collision, theft or liability.

Kansas has no existing definition, law or authoritative interpretation on the business of home service contracts. Confusion in other states between the fundamental differences of service contracts and that of insurance suggest a proactive approach is indicated. Equally, Kansas has no minimum standards or fundamental protection or regulation of entities in the rapidly growing home service contract industry. **Acting now to endorse the NAIC minimum standards model approach is good Kansas consumer protection and presents a fair approach to providers.** Waiting until some controversy arises is never a good climate in which to debate and address a balanced approach to a growing industry.

"Service contracts," as now defined and recognized by the National Association of Insurance Commissioners (NAIC) since 1995, do not constitute the "business of insurance." Regulation should be left to the state consumer protection laws

or a simple registration and financial assurance law administered by the insurance department. We recommend the latter approach embodied in SB 178.

This bill endorses limited registration with the Kansas Insurance Department, financial assurance mechanisms, consumer disclosures and clear power to the Commissioner to act in the event of a problem.

SB 178 is limited, it is balanced, it is proactive.

SB 178 is endorsed by the NAIC and is proven to work effectively.

SB 178 is endorsed by the Kansas Insurance Department.

SB 178's registration impact upon existing resources is negligible.

This bill does NOT address or affect:

- The automobile service contract industry which perhaps demands its own attention and potential other regulation.
- The homebuilder industry or deficient home construction—an issue for which we have significant consumer empathy as our industry tends to inherit home construction deficiencies.
- *Retail extended warranty* agreements on new goods or manufacturer warranties.
- Simple maintenance only plans offered by many heating, air conditioning and plumbing firms.
- Home or condo owner association, cooperative or non-profit service or maintenance programs.

Twelve states in the last five years have been simply declared by statute that home service contracts are not insurance. **Eighteen states** have adopted a limited registration and financial assurance law similar to the NAIC model and SB 178 as an additional measure of protection and balance.

While some states have considered or are placing home service contract registration with a state consumer services bureau or the attorney general, insurance departments often oversee non insurance providers simply because of the registration resources it has available. There is no appreciable increase in staff time or resource required for this modest role.

Home Service Providers

Home service contract providers offer a contract to service, repair or replace certain listed household systems or appliances for a period of one year, which may fail due to normal wear and tear. Retailers offer similar programs on a single product point of purchase basis, or telemarket contracts covering one or a group of products regardless of purchase. Retail sales most often are a hybrid only offering an “extended warranty” on new products after the expiration of the manufacturers warranty. Home service contracts provide immediate service and repair on existing or “used” home appliances and systems.

Home service contracts in some states provide limited, coverage to repair leaky roofs due to normal wear and tear. However, few, if any, home service companies are in the business of providing an actual “home warranty” on housing structures. Contracts covering actual structures or “new home builder warranties,” may or may not warrant other regulatory consideration or retention under the insurance code. States that enacted pre-1990 “home warranty acts” clearly were intended to primarily address that unique Existing laws on automobile plans and retail product warranties have been left largely intact.

What is critical to recognize is that no matter the provider or product covered, home service contracts provide no insurance coverage. Home service contracts repair or replace items due to predictable normal wear and tear for a set budgeted fee. They are the exact inverse of insurance in that they only cover what no insurance policy ever does—*normal wear and tear*. They do not cover nor afford protection from sudden and fortuitous events from unpredictable perils, which may never occur, such as fire, windstorm, hail or collision. Insurance contracts pay dollars for all financial losses from covered perils except that which are specifically excluded. The latter functional characteristics are what truly define the business of insurance.

Failure and wear rates of appliances are actually quite predictable. Consumers are simply paying a budgeted annual fee to maintain them by local plumbers and electricians, which have been qualified to do the work. Service contracts help level certain household expenses. They do not eliminate them. With the growth of the senior population and two working parents, the public has demanded the growth in this industry to economically and conveniently meet their daily household needs.

Providers of home service contracts may offer their services at the time of a house resale or at any time a consumer wishes to add the convenience on one

or a group of appliances/household systems. Home service companies provide service and repair only (not economic loss indemnification) on specifically listed products and failures. The generic term “home warranty” is still heavily utilized by Realtors to describe what are in reality, home service contracts. In the future, many companies will be redefining their product to better distinguish themselves as *home service contract* providers. This bill will encourage the real estate industry to embrace the *home service contract* terminology.

NAIC History on Service Contracts

From 1978 until 1995, the NAIC debated the concept and definition of service contracts. In the 1970’s, the NAIC contemplated that there were three emerging industries—one covering “automobile mechanical repair;” one covering “non-automotive consumer products;” and one covering “home warranty” contracts. The NAIC next researched potential insurance regulation for “warranty and service contract administrators.” The NAIC decided not to impose insurance treatment. [See *NAIC Proceedings* 1980 Vol. I, p. 847.]

In 1995, after several years of renewed hearings and debates, the NAIC resolved that a distinct “service contract” industry had emerged. The NAIC observed that regulation of this totally non-homogeneous business did not lend itself to the definition of insurance nor regulation under the insurance codes. The industry was simply too large and diverse and had permeated virtually every aspect of both consumer and commercial goods. In public meetings, the NAIC concluded, “service contracts” as it now defined them, “are not insurance.” Mike Bownes, General Counsel for the State of Alabama and principal author of the NAIC model, directed the NAIC to state that conclusion for the record. [See *Proceedings of the NAIC*, 4th Qtr, December 4, 1995, page 1027; *Service Contracts Model Act Subgroup of the Special Insurance Issues (E) Committee*.]

The insurance commissioners testified repeatedly in open hearings that they did not wish to regulate the service contract industry as the business of insurance. A minority reached a consensus that if there ever was a need to act upon a consumer complaint or potential insolvency of a service contract provider, the commissioners might be empowered with some limited level of authority. The NAIC Service Contracts Model Act was adopted in 1995 to meet that limited and balanced goal. This bill was crafted based upon that model.

We encourage Kansas to support Senate Bill 178 and its limited registration, financial assurance and consumer disclosure requirements for home service contract providers. Thank You.

Memorandum

TO: THE HONORABLE CLARK SHULTZ, CHAIRMAN
HOUSE INSURANCE COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
SBC, INC.

RE: SENATE BILL 178

DATE: MARCH 8, 2005

Mr. Chairman, Members of the committee: My name is William Sneed and I represent SBC. We appreciate the opportunity to provide comments on Senate Bill 178. As has been explained by the proponents of the bill, SB 178 is an attempt to effectuate registration on home service contracts. Part of the bill provides an exemption from coverage under this act, which is found primarily on page 1 of the bill.

Specifically, my client is interested in subsection (b)(3) dealing with warranty service contracts or maintenance agreements offered by public utilities. As you can see in line 19, there is the additional phrase "on transmission devices". We are uncertain as to what "on transmission device" could or shall mean. Thus, after consultation with the proponents of the bill, we would respectfully request that that phrase be eliminated and thus eliminating any uncertainty to the types of contracts that my client issues.

We appreciate the opportunity to present this and if you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed

WWS:pmk

018007 / 034290
WWSNE 1174865

House Insurance
Date: 3-10-05
Attachment # 2

SENATE BILL No. 178

By Committee on Financial Institutions and Insurance

2-2

9 AN ACT concerning home service contracts; enacting the home service
10 contract act; registration with the insurance commissioner.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Sections 1 through 12, and amendments thereto, shall
14 be known and may be cited as the home service contract act;

15 (b) The following are exempt from this act:

16 (1) Warranties;

17 (2) maintenance agreements;

18 (3) warranties, service contracts or maintenance agreements offered
19 by public utilities ~~on transmission devices~~ to the extent such utilities are
20 regulated by the Kansas corporation commission;

21 (4) service contracts sold or offered for sale to persons other than
22 consumers; and

23 (5) insurers otherwise licensed and regulated under the insurance
24 code of the state of Kansas, chapter 40, of the Kansas Statutes Annotated,
25 and amendments thereto.

26 Sec. 2. As used in sections 1 through 12, and amendments thereto:

27 (a) "Administrator" means the person who is responsible for the ad-
28 ministration of the home service contracts or the home service contracts
29 plan.

30 (b) "Commissioner" means the commissioner of insurance.

31 (c) "Consumer" means a person who buys, other than for purposes
32 of resale, any tangible personal property that is distributed in commerce
33 and that is normally used for personal, family or household purposes and
34 not for business or research purposes.

35 (d) "Maintenance agreement" means a contract of limited duration
36 that provides for scheduled maintenance only and does not include repair
37 or replacement.

38 (e) "Person" means an individual, partnership, corporation, incor-
39 porated or unincorporated association, joint stock company, reciprocal,
40 syndicate or any similar entity or combination of entities acting in concert.

41 (f) "Premium" means the consideration paid to an insurer for a re-
42 imbursement insurance policy.

43 (g) "Provider" means a person who is contractually obligated to the