

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB920
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Randy McDaniel _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

PROPOSED COMMITTEE
SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 920

By: Sparks of the Senate

and

McDaniel (Randy) of the
House

PROPOSED COMMITTEE SUBSTITUTE

(insurance - Service Warranty Insurance Act -
repealer - effective date -

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 17, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
2008, 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;

1 3. "Department" means the Insurance Department;

2 4. "Gross income" means the total amount of revenue received in
3 connection with business-related activity;

4 5. "Gross written premiums" means the total amount of premiums,
5 inclusive of commissions, for which the association is obligated
6 under service warranties issued in this state;

7 6. "Impaired" means having liabilities in excess of assets;

8 7. "Indemnify" means to undertake repair or replacement of a
9 consumer product or a newly-constructed residential structure,
10 including any appliances, electrical, plumbing, heating, cooling or
11 air conditioning systems, in return for the payment of a segregated
12 premium, when the consumer product or residential structure becomes
13 defective or suffers operational failure;

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

- 17 a. an association's total liabilities exceed the
18 association's total assets excluding goodwill,
19 franchises, customer lists, patents or trademarks, and
20 receivables from or advances to officers, directors,
21 employees, salesmen, and affiliated companies. In
22 order to include receivables from affiliated companies
23 as assets as defined pursuant to this subparagraph and
24 paragraph 10 of this section, the service warranty

1 association shall provide a written guarantee to
2 assure repayment of all receivables, loans, and
3 advances from affiliated companies. The written
4 guarantee must be made by a guaranteeing organization
5 which:

6 (1) has been in continuous operation for ten (10)
7 years or more and has net assets in excess of
8 Five Hundred Million Dollars (\$500,000,000.00),

9 (2) submits a guarantee on a form provided by the
10 Insurance Commissioner by rule that contains a
11 provision which requires that the guarantee be
12 irrevocable, unless the guaranteeing organization
13 can demonstrate to the Commissioner's
14 satisfaction that the cancellation of the
15 guarantee will not result in the net assets of
16 the service warranty association falling below
17 its minimum net asset requirement and the
18 Commissioner approves cancellation of the
19 guarantee,

20 (3) initially submits a statement from a certified
21 public accountant of the guaranteeing
22 organization attesting that the net assets of the
23 guaranteeing organization meets or exceeds the
24 net assets requirement as provided in division

1 (1) of this subparagraph and that the net assets
2 of the guaranteeing organization exceed the
3 amount of the receivable of the service warranty
4 association that is being guaranteed by the
5 guaranteeing organization, and

6 (4) submits annually to the Commissioner, within
7 three (3) months after the end of its fiscal
8 year, a statement from an independent certified
9 public accountant of the guaranteeing
10 organization attesting that the net assets of the
11 guaranteeing organization meet or exceed the net
12 assets requirement as provided in division (1) of
13 this subparagraph and that the net assets of the
14 guaranteeing organization exceed the amount of
15 the receivable of the service warranty
16 association that is being guaranteed by the
17 guaranteeing organization,

18 b. the business of any such association is being
19 conducted fraudulently, or

20 c. the association has knowingly overvalued its assets;

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

23 10. "Net assets" means the amount by which the total assets of
24 an association, excluding goodwill, franchises, customer lists,

1 patents or trademarks, and receivables from or advances to officers,
2 directors, employees, salesmen, and affiliated companies, exceed the
3 total liabilities of the association. For purposes of the Service
4 Warranty Insurance Act, the term "total liabilities" does not
5 include the capital stock, paid-in capital, or retained earning of
6 an association unless a written guaranty assures repayment and meets
7 the conditions specified in subparagraph a of paragraph 8 of this
8 section;

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

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

19 13. "Sales representative" means any person utilized by an
20 insurer or service warranty association for the purpose of selling
21 or issuing service warranties ~~and includes any individual possessing~~
22 ~~a certificate of competency who has the power to legally obligate~~
23 ~~the insurer or service warranty association or who merely acts as~~
24 ~~the qualifying agent to qualify the association in instances when a~~

1 ~~state statute or local ordinance requires a certificate of~~
2 ~~competency to engage in a particular business;~~

3 14. "Service warranty" means a contract or agreement for a
4 separately stated consideration for a specific duration to perform
5 the repair or replacement of property or indemnification for repair
6 or replacement for the operational or structural failure due to a
7 defect or failure in materials or workmanship, with or without
8 additional provision for incidental payment of indemnity under
9 limited circumstances, including, but not limited to, failure due to
10 normal wear and tear, towing, rental and emergency road service,
11 road hazard, power surge, and accidental damage from handling or as
12 otherwise provided for in said contract or agreement; however:

- 13 a. maintenance service contracts under the terms of which
14 there are no provisions for such indemnification are
15 expressly excluded from this definition,
- 16 b. those contracts issued solely by the manufacturer,
17 distributor, importer or seller of the product, or any
18 affiliate or subsidiary of the foregoing entities,
19 whereby such entity has contractual liability
20 insurance in place, from an insurer licensed in the
21 state, which covers one hundred percent (100%) of the
22 claims exposure on all contracts written without being
23 predicated on the failure to perform under such

24

1 contracts, are expressly excluded from this
2 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,

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, and

18 e. the term "service warranty" does not include
19 warranties, guarantees, extended warranties, extended
20 guarantees, contract agreements or any other service
21 contracts, whether or not such service contracts
22 otherwise meet the definition of service warranty,
23 issued by a company which has net assets in excess of
24 One Hundred Million Dollars (\$100,000,000.00). A

1 service warranty association may use the net assets of
2 a parent company to qualify under this section if the
3 net assets of the company issuing the policy total at
4 least Twenty-five Million Dollars (\$25,000,000.00) and
5 the parent company maintains net assets of at least
6 Seventy-five Million Dollars (\$75,000,000.00) not
7 including the net assets held by the service warranty
8 associations;

9 15. "Service warranty association" or "association" means any
10 person, other than an authorized insurer, contractually obligated to
11 a service contract holder under the terms of a service warranty;
12 provided, this term shall not mean any person engaged in the
13 business of erecting or otherwise constructing a new home;

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

18 17. "Warranty seller" means any service warranty association
19 engaged in the sale of service warranties and deriving more than
20 fifty percent (50%) of its gross income from the sale of service
21 warranties.

22 SECTION 2. AMENDATORY 36 O.S. 2001, Section 6604, as
23 amended by Section 18, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
24 Section 6604), is amended to read as follows:

1 Section 6604. A. No person in this state shall act as a
2 service warranty association unless licensed by the Insurance
3 Commissioner.

4 B. A service warranty association shall pay to the Insurance
5 Department a license fee of Four Hundred Dollars (\$400.00) for such
6 license for each year, or part thereof, the license is in force.
7 All license fees received pursuant to this subsection shall be paid
8 into the State Treasury to the credit of the Insurance Commissioner
9 Revolving Fund and shall be used for the implementation of the
10 Service Warranty Insurance Act.

11 ~~C. Each business entity that offers to sell service warranty~~
12 ~~contracts shall be registered by the Insurance Department and shall~~
13 ~~meet the following criteria:~~

14 ~~1. A registration issued to a business entity that offers to~~
15 ~~sell service warranty contracts shall encompass each office, branch~~
16 ~~office, or place of business making use of the entity's business~~
17 ~~name in order to offer, solicit, and sell service warranty contracts~~
18 ~~pursuant to this subsection;~~

19 ~~2. The registration application must list the name, address,~~
20 ~~and phone number for each office, branch office, or place of~~
21 ~~business that is to be covered by the registration, and the entity~~
22 ~~shall pay the registration fee for each office, branch office, or~~
23 ~~place of business where the entity will sell service warranty~~
24 ~~contracts;~~

1 ~~3. The registered entity shall notify the Department of the~~
2 ~~name, address, and phone number of any new location that is to be~~
3 ~~covered by the registration before the new office, branch office, or~~
4 ~~place of business engages in the sale of service warranty contracts~~
5 ~~pursuant to this subsection;~~

6 ~~4. The registered entity shall notify the Department within~~
7 ~~thirty (30) days after closing or terminating an office, branch~~
8 ~~office, or place of business. Upon receipt of the notice, the~~
9 ~~department shall delete the office, branch office, or place of~~
10 ~~business from the entity's registration; and~~

11 ~~5. A business entity shall pay to the Department a business~~
12 ~~entity registration fee of Four Hundred Dollars (\$400.00) for each~~
13 ~~registration separate and in addition to a service warranty~~
14 ~~association license fee. All registration fees received pursuant to~~
15 ~~this subsection shall be paid into the State Treasury to the credit~~
16 ~~of the Insurance Commissioner Revolving Fund and shall be used for~~
17 ~~the implementation of the Service Warranty Insurance Act.~~

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

1 ~~E.~~ D. A service warranty association may appoint an
2 administrator or other designee to be responsible for any or all of
3 the administration of service contracts and compliance with ~~this act~~
4 the Service Warranty Insurance Act.

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

8 SECTION 3. AMENDATORY 36 O.S. 2001, Section 6607, as
9 amended by Section 20, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
10 Section 6607), is amended to read as follows:

11 Section 6607. A. An association licensed pursuant to the
12 Service Warranty Insurance Act shall maintain a funded, unearned
13 premium reserve account, consisting of unencumbered assets, equal to
14 a minimum of twenty-five percent (25%) of the gross written premiums
15 received on all warranty contracts in force, wherever written. In
16 the case of multiyear contracts which are offered by associations
17 having net assets of less than Five Hundred Thousand Dollars
18 (\$500,000.00) for which premiums are collected in advance for
19 coverage in a subsequent year, one hundred percent (100%) of the
20 premiums for such subsequent years shall be placed in the funded,
21 unearned premium reserve account. Additionally, an association
22 establishing such reserve account shall also place in trust with the
23 Insurance Commissioner a surety bond issued by an authorized surety
24 having a value of not less than five percent (5%) of the gross

1 premium received, less claims paid, on the sale of the service
2 warranties for all service contracts issued and in force in this
3 state, but in no event shall the bond be less than Twenty-five
4 Thousand Dollars (\$25,000.00).

5 B. An association shall not be required to establish an
6 unearned premium reserve or demonstrate the minimum net worth
7 writing ratio required by subsection D of this section if it has
8 purchased an insurance policy which demonstrates to the satisfaction
9 of the Insurance Commissioner that one hundred percent (100%) of its
10 claim exposure is covered by such policy and satisfies the
11 requirements of this section. The insurance shall be obtained from
12 an insurer that is licensed, registered, or otherwise authorized to
13 do business in this state and that meets the requirements of
14 subsection C of this section. For the purposes of this subsection,
15 the insurance policy shall contain the following provisions:

16 1. In the event that the service warranty association is unable
17 to fulfill its obligation under contracts issued in this state for
18 any reason, including insolvency, bankruptcy, or dissolution, the
19 insurer will pay losses and unearned premiums under such plans
20 directly to the person making a claim under the contract;

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

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

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

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

10 a. maintain surplus as to policyholders and paid-in
11 capital of at least Fifteen Million Dollars
12 (\$15,000,000.00), and

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

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

19 a. maintain surplus as to policyholders and paid-in
20 capital of less than Fifteen Million Dollars
21 (\$15,000,000.00) but at least equal to Ten Million
22 Dollars (\$10,000,000.00),

23 b. demonstrate to the satisfaction of the Commissioner
24 that the company maintains a ratio of net written

1 premiums, wherever written, to surplus as to
2 policyholders and paid-in capital of not greater than
3 three to one, and

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

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

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

- 14 1. A complete review of financial condition;
- 15 2. An increase in deposit;
- 16 3. A suspension of any new writings; or
- 17 4. Capital infusion into the business.

18 SECTION 4. AMENDATORY 36 O.S. 2001, Section 6611, is
19 amended to read as follows:

20 Section 6611. A. Suspension or revocation of the license of a
21 service warranty association shall be by order of the Insurance
22 Commissioner mailed to the association by certified mail with return
23 receipt requested. ~~The Commissioner shall also promptly give notice~~
24 ~~of such suspension or revocation to the association's sales~~

1 ~~representatives in this state which are of record in the Insurance~~
2 ~~Department.~~ The association shall not solicit or acquire any new
3 service warranties in this state during the period of any such
4 suspension or revocation.

5 B. At the discretion of the Commissioner, the Commissioner may
6 cause notice of any such revocation or suspension to be published in
7 one or more newspapers of general circulation published in this
8 state.

9 SECTION 5. AMENDATORY 36 O.S. 2001, Section 6612, is
10 amended to read as follows:

11 Section 6612. A. A suspension of the license of a service
12 warranty association shall be for such period, not to exceed one (1)
13 year, as is fixed in the order of suspension, unless such suspension
14 or the order upon which the suspension is based is modified,
15 rescinded, or reversed.

16 B. During the period of suspension, the association shall file
17 its annual statement and pay any fees as required by the Service
18 Warranty Insurance Act as if the license had been continued in full
19 force.

20 C. Upon expiration of the suspension period, if within such
21 period the license has not otherwise terminated the license of the
22 association shall automatically be reinstated, unless the causes of
23 the suspension have not been removed or the association is otherwise
24 not in compliance with the requirements of the Service Warranty

1 Insurance Act. ~~Upon reinstatement of the license of an association~~
2 ~~or upon reinstatement of the certificate of authority of an insurer,~~
3 ~~following suspension, the authority of the sales representatives of~~
4 ~~the association in this state to represent the association or~~
5 ~~insurer shall likewise be reinstated.~~

6 SECTION 6. AMENDATORY 36 O.S. 2001, Section 6615, as
7 last amended by Section 22, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
8 2008, Section 6615), is amended to read as follows:

9 Section 6615. A. In addition to the license fees provided in
10 the Service Warranty Insurance Act for service warranty associations
11 each such association and insurer shall, annually on or before May
12 1, file with the Insurance Commissioner its annual statement in the
13 form prescribed by the Commissioner showing gross written premium or
14 assessments received by it in connection with the issuance of
15 service warranties in this state during the preceding calendar year
16 and other relevant financial information as deemed necessary by the
17 Commissioner, using accounting principles which will enable the
18 Commissioner to ascertain whether the financial requirements set
19 forth in Section 6607 of this title have been satisfied.

20 B. The Commissioner may levy a fine of up to One Hundred
21 Dollars (\$100.00) a day for each day an association neglects to file
22 the annual statement in the form and within the time provided by the
23 Service Warranty Insurance Act.

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1 C. In addition to an annual statement, the Commissioner may
2 require of licensees, under oath and in the form prescribed by it,
3 quarterly statements or special reports which the Commissioner deems
4 necessary for the proper supervision of licensees under the Service
5 Warranty Insurance Act.

6 D. Premiums and assessments received by associations and
7 insurers for service warranties shall not be subject to the premium
8 tax provided for in Section 624 of this title, but shall be subject
9 to an administrative fee of ~~Two Dollars (\$2.00) for each service~~
10 ~~warranty issued that provides coverage not to exceed Seventy five~~
11 ~~Dollars (\$75.00), Five Dollars (\$5.00) for each service warranty~~
12 ~~issued that provides coverage in excess of Seventy five Dollars~~
13 ~~(\$75.00) but not to exceed Two Hundred Fifty Dollars (\$250.00), and~~
14 ~~Ten Dollars (\$10.00) for each service warranty that provides~~
15 ~~coverage in excess of Two Hundred Fifty Dollars (\$250.00) equal to~~
16 two percent (2%) of the gross premium received on the sale of all
17 service contracts issued in this state during the preceding calendar
18 quarter. Said fees shall be paid quarterly to the Insurance
19 Commissioner. However, licensed associations and, licensed insurers
20 and entities with applications for licensure as a service warranty
21 association pending with the Department that have contractual
22 liability insurance in place as of March 31, 2009, from an insurer
23 which satisfies the requirements of subsection C of Section 6607 of
24 this title and which covers one hundred percent (100%) of the claims

1 exposure of the association or insurer on all contracts written
2 ~~shall be subject to~~ may elect to pay an annual administrative fee of
3 Three Thousand Dollars (\$3,000.00) in lieu of the two-percent
4 administrative fee. ~~Said fees shall be paid quarterly to the~~
5 ~~Insurance Commissioner.~~ All such fees, up to a maximum of ~~Two~~
6 ~~Hundred Seventy five Thousand Dollars (\$275,000.00)~~ Three Hundred
7 Seventy-five Thousand Dollars (\$375,000.00) per year, received by
8 the Insurance Commissioner shall be deposited into the State
9 Treasury to the credit of the Insurance Commissioner Revolving Fund
10 for the payment of costs incurred by the Insurance Department in the
11 administration of the Service Warranty Insurance Act. Amounts
12 received in excess of the annual limitation shall be deposited to
13 the credit of the General Revenue Fund.

14 SECTION 7. AMENDATORY 36 O.S. 2001, Section 6620, as
15 last amended by Section 24, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
16 2008, Section 6620) is amended to read as follows:

17 Section 6620. ~~Each~~ Along with the annual statement filed
18 pursuant to Section 6618 of this title, each service warranty
19 association or insurer shall provide ~~register, on forms prescribed~~
20 ~~by the Insurance Commissioner, on or before March 1 of each odd-~~
21 ~~numbered year,~~ the name and business address of each sales
22 representative ~~required to be registered under Section 6619 of this~~
23 ~~title utilized by it in this state and, within thirty (30) days~~
24 ~~after termination of the contract, shall notify the Commissioner of~~

1 ~~such termination. At the time of biennial registration, a filing fee~~
2 ~~of Forty Dollars (\$40.00) for each sales representative shall be~~
3 ~~paid by the service warranty association or insurer to the~~
4 ~~Commissioner. All such filing fees shall be deposited in the State~~
5 ~~Treasury to the credit of the Insurance Commissioner Revolving Fund~~
6 ~~to be used for the implementation of the Service Warranty Insurance~~
7 ~~Act. Any sales representative utilized subsequent to the March 1~~
8 ~~filing date shall be registered with the Commissioner within ten~~
9 ~~(10) days after such utilization. No employee or sales~~
10 ~~representative of a service warranty association or insurer may~~
11 ~~directly or indirectly solicit or negotiate insurance contracts, or~~
12 ~~hold himself out in any manner to be an insurance agent, unless so~~
13 ~~qualified and licensed pursuant to Section 1421 et seq. of this~~
14 ~~title.~~

15 SECTION 8. REPEALER 36 O.S. 2001, Sections 6619, as
16 amended by Section 4, Chapter 409, O.S.L. 2002, 6622, as amended by
17 Section 25, Chapter 353, O.S.L. 2008, 6623, 6624 and 6625 (36 O.S.
18 Supp. 2008, Sections 6619 and 6622), are hereby repealed.

19 SECTION 9. This act shall become effective July 1, 2009.

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

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