SB920 FULLPCS2 Randy McDaniel-MAH
3/31/2009 2:23:04 pm

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB920 _____
Of the printed Bill

Page _____ Section _____ Lines _____
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

Amendment submitted by: Randy McDaniel _____

Adopted: _____

_____
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

An Act relating to insurance; amending 36 O.S. 2001, Sections 6602, as last amended by Section 17, Chapter 353, O.S.L. 2008, 6604, as amended by Section 18, Chapter 353, O.S.L. 2008, 6607, as amended by Section 20, Chapter 353, O.S.L. 2008, 6608, 6611, 6612, 6615, as last amended by Section 22, Chapter 353, O.S.L. 2008, 6617, as amended by Section 23, Chapter 353, O.S.L. 2008 and 6620, as last amended by Section 24, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008, Sections 6602, 6604, 6607, 6615, 6617 and 6620), which relate to the Service Warranty Insurance Act; modifying definitions; deleting requirements related to registration and compliance with criteria; modifying certain requirement related to purchase of insurance policy; modifying provisions related to certain license fee; modifying provisions related to notice of license suspension; modifying provisions related to authority of certain licensees; modifying provisions related to fees based upon service warranties; modifying reference to certain sales representatives; modifying information required to be provided by service warranty association or insurers; deleting requirements for certain information to be provided to Insurance Commissioner; repealing 36 O.S. 2001, Sections 6619, as amended by Section 4, Chapter 409, O.S.L. 2002, 6622, as amended by Section 25,

Chapter 353, O.S.L. 2008, 6623, 6624 and 6625 (36 O.S. Supp. 2008, Sections 6619 and 6622), which relate to the Service Warranty Insurance Act; providing an effective date; and declaring an 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;

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, 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 association's total assets excluding goodwill, franchises, customer lists, patents or trademarks, and receivables from or advances to officers, directors, employees, salesmen, and affiliated companies. In order to include receivables from affiliated companies as assets as defined pursuant to this subparagraph and paragraph 10 of this section, the service warranty association shall provide a written guarantee to assure repayment of all receivables, loans, and advances from affiliated companies. The written guarantee must be made by a guaranteeing organization which:

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

(2) submits a guarantee on a form provided by the Insurance Commissioner by rule that contains a provision which requires that the guarantee be

irrevocable, unless the guaranteeing organization can demonstrate to the Commissioner's satisfaction that the cancellation of the guarantee will not result in the net assets of the service warranty association falling below its minimum net asset requirement and the Commissioner approves cancellation of the guarantee,

(3) initially submits a statement from a certified public accountant of the guaranteeing organization attesting that the net assets of the guaranteeing organization meets or exceeds the net assets requirement as provided in division (1) of this subparagraph and that the net assets of the guaranteeing organization exceed the amount of the receivable of the service warranty association that is being guaranteed by the guaranteeing organization, and

(4) submits annually to the Commissioner, within three (3) months after the end of its fiscal year, a statement from an independent certified public accountant of the guaranteeing organization attesting that the net assets of the guaranteeing organization meet or exceed the net

assets requirement as provided in division (1) of this subparagraph and that the net assets of the guaranteeing organization exceed the amount of the receivable of the service warranty association that is being guaranteed by the guaranteeing organization,

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 unless a written guaranty assures repayment and meets the conditions specified in subparagraph a of paragraph 8 of this section;

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 a 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;

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~~;

14. “Service warranty” means 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 or failure 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 or as otherwise provided for in said contract or agreement; 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 an insurer 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). 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 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) not including the net assets held by the service warranty associations;

15. "Service warranty association" or "association" means any person, other than an authorized insurer, 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 2. AMENDATORY 36 O.S. 2001, Section 6604, as amended by Section 18, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008, Section 6604), is amended to read as follows:

Section 6604. A. No person in this state shall 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 Four Hundred Dollars ($400.00) for such license for each year, or part thereof, the license is in force. All license fees received pursuant to this subsection 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. ~~Each business entity that offers to sell service warranty contracts shall be registered by the Insurance Department and shall meet the following criteria:~~

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

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

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

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

~~5. A business entity shall pay to the Department a business entity registration fee of Four Hundred Dollars ($400.00) for each registration separate and in addition to a service warranty association license fee. All registration fees received pursuant to this subsection 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.~~

~~D.~~ 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.

~~E.~~ 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~~ the Service Warranty Insurance Act.

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

SECTION 3. AMENDATORY 36 O.S. 2001, Section 6607, as amended by Section 20, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008, 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 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 collected in advance for coverage in a subsequent year, one hundred percent (100%) of the premiums for such subsequent years shall be placed in the funded, unearned premium reserve account. Additionally, an association establishing such reserve account shall also place in trust with the Insurance Commissioner a surety bond issued by an authorized surety having a value of not less than five percent (5%) of the gross premium received, less claims paid, on the sale of the service warranties for all service contracts issued and in force in this state, but in no event shall the bond be less than Twenty-five Thousand Dollars ($25,000.00).

B. An association shall not be required to establish an unearned premium reserve or demonstrate the minimum ~~net worth~~ writing ratio required by subsection D of this section if it has purchased 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 insurance shall be obtained from an insurer that 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 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 insurer will pay losses and unearned premiums under such plans directly to the person making a claim under the contract;

2. The insurer issuing the 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 to exceed seven to one ratio to net assets.

E. If the gross written premiums of a warrantor or a warranty seller exceed 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 4. AMENDATORY 36 O.S. 2001, Section 6608, is amended to read as follows:

Section 6608. A. An application for license as a service warranty association shall be made to, and filed with, the Insurance Commissioner on printed forms as prescribed and furnished by the Insurance Commissioner.

B. In addition to information relative to its qualifications as required under Section ~~5~~ 6605 of this ~~act~~ title, the Commissioner may require that the application show:

1. The location of the home office of the applicant;

2. The name and residence address of each director or officer of the applicant; and

3. Such other pertinent information as may be required by the Commissioner.

C. The Commissioner may require that the application, when filed, be accompanied by:

1. A copy of the articles of incorporation of the applicant, certified by the public official having custody of the original, and a copy of the bylaws of the applicant, certified by the chief executive officer of the applicant;

2. A copy of the most recent financial statement of the applicant, verified under oath of at least two of its principal officers; and

3. A license fee ~~in the amount of Two Hundred Dollars ($200.00)~~ as required pursuant to Section ~~4~~ 6604 of this ~~act~~ title.

D. Upon completion of the application for license, the Commissioner shall examine the application and make such further investigation of the applicant as the Commissioner deems advisable. If the Commissioner finds that the applicant is qualified, the Commissioner shall issue to the applicant a license as a service warranty association. If the Commissioner does not find the applicant to be qualified the Commissioner shall refuse to issue the license and shall give the applicant written notice of such refusal, setting forth the grounds therefor.

SECTION 5. AMENDATORY 36 O.S. 2001, Section 6611, is amended to read as follows:

Section 6611. A. Suspension or revocation of the license of a service warranty association shall be by order of the Insurance Commissioner mailed to the association by certified mail with return receipt requested. ~~The Commissioner shall also promptly give notice~~

~~of such suspension or revocation to the association's sales representatives in this state which are of record in the Insurance Department.~~ The association shall not solicit or acquire any new service warranties in this state during the period of any such suspension or revocation.

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

SECTION 6. AMENDATORY 36 O.S. 2001, Section 6612, is amended to read as follows:

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

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

C. Upon expiration of the suspension period, if within such period the license has not otherwise terminated the license of the association shall automatically be reinstated, unless the causes of the suspension have not been removed or the association is otherwise

not in compliance with the requirements of the Service Warranty Insurance Act. ~~Upon reinstatement of the license of an association or upon reinstatement of the certificate of authority of an insurer, following suspension, the authority of the sales representatives of the association in this state to represent the association or insurer shall likewise be reinstated.~~

SECTION 7. AMENDATORY 36 O.S. 2001, Section 6615, as last amended by Section 22, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008, 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 May 1, file with the Insurance Commissioner its annual statement in the form prescribed by the Commissioner showing gross written premium 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 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)~~ equal to two percent (2%) of the gross premium received on the sale of all service contracts issued in this state during the preceding calendar quarter. Said fees shall be paid quarterly to the Insurance Commissioner. However, licensed associations ~~and~~, licensed insurers and entities with applications for licensure as a service warranty association pending with the Department that have contractual liability insurance in place as of March 31, 2009, from 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 ~~shall be subject~~ may elect to pay an annual administrative fee of Three Thousand Dollars ($3,000.00) in lieu of the two-percent administrative fee. ~~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)~~ Three Hundred Seventy-five Thousand Dollars ($375,000.00) 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 6617, as amended by Section 23, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008, 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. The register shall include the date of issue, issuing sales

representative, name of warranty holder, warranty period, gross premium, ~~commission to sales representative,~~ and net premium; 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 9. AMENDATORY 36 O.S. 2001, Section 6620, as last amended by Section 24, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008, Section 6620) is amended to read as follows:

Section 6620. ~~Each~~ Along with the annual statement filed pursuant to Section 6618 of this title, each service warranty association or insurer shall provide ~~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. 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 this title~~.

SECTION 10. REPEALER 36 O.S. 2001, Sections 6619, as amended by Section 4, Chapter 409, O.S.L. 2002, 6622, as amended by Section 25, Chapter 353, O.S.L. 2008, 6623, 6624 and 6625 (36 O.S. Supp. 2008, Sections 6619 and 6622), are hereby repealed.

SECTION 11. This act shall become effective July 1, 2009.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

52-1-7538 MAH 03/31/09