

CS for SB 920

THE STATE SENATE  
Monday, February 23, 2009

Committee Substitute for  
Senate Bill No. 920

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 920 - By: Sparks of the Senate and McDaniel (Randy) of the House.

[ insurance - Service Warranty Insurance Act - 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;
- 3. "Department" means the Insurance Department;
- 4. "Gross income" means the total amount of revenue received in connection with business-related activity;
- 5. "Gross written premiums" means the total amount of premiums, inclusive of commissions, for which the association is obligated under service warranties issued in this state;
- 6. "Impaired" means having liabilities in excess of assets;

1           7. "Indemnify" means to undertake repair or replacement of a  
2 consumer product or a newly-constructed residential structure,  
3 including any appliances, electrical, plumbing, heating, cooling or  
4 air conditioning systems, in return for the payment of a segregated  
5 premium, when the consumer product or residential structure becomes  
6 defective or suffers operational failure;

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

10           a. an association's total liabilities exceed the  
11                association's total assets excluding goodwill,  
12                franchises, customer lists, patents or trademarks, and  
13                receivables from or advances to officers, directors,  
14                employees, salesmen, and affiliated companies. In  
15                order to include receivables from affiliated companies  
16                as assets as defined pursuant to this subparagraph and  
17                paragraph 10 of this section, the service warranty  
18                association shall provide a written guarantee to  
19                assure repayment of all receivables, loans, and  
20                advances from affiliated companies. The written  
21                guarantee must be made by a guaranteeing organization  
22                which:

- 1 (1) has been in continuous operation for ten (10)  
2 years or more and has net assets in excess of  
3 ~~Five Hundred Million Dollars (\$500,000,000.00)~~  
4 Fifty Million Dollars (\$50,000,000.00),
- 5 (2) submits a guarantee on a form provided by the  
6 Insurance Commissioner by rule that contains a  
7 provision which requires that the guarantee be  
8 irrevocable, unless the guaranteeing organization  
9 can demonstrate to the Commissioner's  
10 satisfaction that the cancellation of the  
11 guarantee will not result in the net assets of  
12 the service warranty association falling below  
13 its minimum net asset requirement and the  
14 Commissioner approves cancellation of the  
15 guarantee,
- 16 (3) initially submits a statement from a certified  
17 public accountant of the guaranteeing  
18 organization attesting that the net assets of the  
19 guaranteeing organization meets or exceeds the  
20 net assets requirement as provided in division  
21 (1) of this subparagraph and that the net assets  
22 of the guaranteeing organization exceed the  
23 amount of the receivable of the service warranty

1 association that is being guaranteed by the  
2 guaranteeing organization, and

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

15 b. the business of any such association is being  
16 conducted fraudulently, or

17 c. the association has knowingly overvalued its assets;

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

20 10. "Net assets" means the amount by which the total assets of  
21 an association, excluding goodwill, franchises, customer lists,  
22 patents or trademarks, and receivables from or advances to officers,  
23 directors, employees, salesmen, and affiliated companies, exceed the

1 total liabilities of the association. For purposes of the Service  
2 Warranty Insurance Act, the term "total liabilities" does not  
3 include the capital stock, paid-in capital, or retained earning of  
4 an association unless a written guaranty assures repayment and meets  
5 the conditions specified in subparagraph a of paragraph 8 of this  
6 section;

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

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

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

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

1           One Hundred Million Dollars (\$100,000,000.00). A  
2           service warranty association may use the net assets of  
3           a parent company to qualify under this section if the  
4           net assets of the company issuing the policy total at  
5           least Twenty-five Million Dollars (\$25,000,000.00) and  
6           the parent company maintains net assets of at least  
7           Seventy-five Million Dollars (\$75,000,000.00) not  
8           including the net assets held by the service warranty  
9           associations;

10       ~~15.~~ 14. "Service warranty association" or "association" means  
11 any person, other than an authorized insurer, contractually  
12 obligated to a service contract holder under the terms of a service  
13 warranty; provided, this term shall not mean any person engaged in  
14 the business of erecting or otherwise constructing a new home;

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

19       ~~17.~~ 16. "Warranty seller" means any service warranty  
20 association engaged in the sale of service warranties and deriving  
21 more than fifty percent (50%) of its gross income from the sale of  
22 service warranties.

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

4 Section 6604. A. No person in this state shall act as a  
5 service warranty association unless licensed by the Insurance  
6 Commissioner.

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

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

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

22 2. ~~The registration application must list the name, address,~~  
23 ~~and phone number for each office, branch office, or place of~~

1 ~~business that is to be covered by the registration, and the entity~~  
2 ~~shall pay the registration fee for each office, branch office, or~~  
3 ~~place of business where the entity will sell service warranty~~  
4 ~~contracts;~~

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

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

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

22 ~~D.~~ An insurer, while authorized to transact property or  
23 casualty insurance in this state, may also transact a service

1 warranty business without additional qualifications or licensure as  
2 required by the Service Warranty Insurance Act, but shall be  
3 otherwise subject to the provisions of the Service Warranty  
4 Insurance Act.

5 ~~F.~~ D. A service warranty association may appoint an  
6 administrator or other designee to be responsible for any or all of  
7 the administration of service contracts and compliance with ~~this act~~  
8 the Service Warranty Insurance Act.

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

12 SECTION 3. AMENDATORY 36 O.S. 2001, Section 6611, is  
13 amended to read as follows:

14 Section 6611. A. Suspension or revocation of the license of a  
15 service warranty association shall be by order of the Insurance  
16 Commissioner mailed to the association by certified mail with return  
17 receipt requested. ~~The Commissioner shall also promptly give notice~~  
18 ~~of such suspension or revocation to the association's sales~~  
19 ~~representatives in this state which are of record in the Insurance~~  
20 ~~Department.~~ The association shall not solicit or acquire any new  
21 service warranties in this state during the period of any such  
22 suspension or revocation.

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

5           SECTION 4.           AMENDATORY           36 O.S. 2001, Section 6612, is  
6 amended to read as follows:

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

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

16          C. Upon expiration of the suspension period, if within such  
17 period the license has not otherwise terminated the license of the  
18 association shall automatically be reinstated, unless the causes of  
19 the suspension have not been removed or the association is otherwise  
20 not in compliance with the requirements of the Service Warranty  
21 Insurance Act. ~~Upon reinstatement of the license of an association~~  
22 ~~or upon reinstatement of the certificate of authority of an insurer,~~  
23 ~~following suspension, the authority of the sales representatives of~~

1 ~~the association in this state to represent the association or~~  
2 ~~insurer shall likewise be reinstated.~~

3 SECTION 5. AMENDATORY 36 O.S. 2001, Section 6615, as  
4 last amended by Section 22, Chapter 353, O.S.L. 2008 (36 O.S. Supp.  
5 2008, Section 6615), is amended to read as follows:

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

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

21 C. In addition to an annual statement, the Commissioner may  
22 require of licensees, under oath and in the form prescribed by it,  
23 quarterly statements or special reports which the Commissioner deems

1 necessary for the proper supervision of licensees under the Service  
2 Warranty Insurance Act.

3 D. Premiums and assessments received by associations and  
4 insurers for service warranties shall not be subject to the premium  
5 tax provided for in Section 624 of this title, but shall be subject  
6 to an administrative fee ~~of Two Dollars (\$2.00) for each service~~  
7 ~~warranty issued that provides coverage not to exceed Seventy-five~~  
8 ~~Dollars (\$75.00), Five Dollars (\$5.00) for each service warranty~~  
9 ~~issued that provides coverage in excess of Seventy-five Dollars~~  
10 ~~(\$75.00) but not to exceed Two Hundred Fifty Dollars (\$250.00), and~~  
11 ~~Ten Dollars (\$10.00) for each service warranty that provides~~  
12 ~~coverage in excess of Two Hundred Fifty Dollars (\$250.00) equal to~~  
13 two percent (2%) of the gross premium received on the sale of all  
14 service contracts issued in this state during the preceding calendar  
15 quarter. However, associations and insurers that have contractual  
16 liability insurance in place, from an insurer which satisfies the  
17 requirements of subsection C of Section 6607 of this title and which  
18 covers one hundred percent (100%) of the claims exposure of the  
19 association or insurer on all contracts written ~~shall be subject to~~  
20 may elect to pay an annual administrative fee of Three Thousand  
21 Dollars (\$3,000.00) in lieu of the two percent (2%) administrative  
22 fee. Said fees shall be paid quarterly to the Insurance  
23 Commissioner. All such fees, up to a maximum of Two Hundred

1 Seventy-five Thousand Dollars (\$275,000.00) per year, received by  
2 the Insurance Commissioner shall be deposited into the State  
3 Treasury to the credit of the Insurance Commissioner Revolving Fund  
4 for the payment of costs incurred by the Insurance Department in the  
5 administration of the Service Warranty Insurance Act. Amounts  
6 received in excess of the annual limitation shall be deposited to  
7 the credit of the General Revenue Fund.

8 SECTION 6. AMENDATORY 36 O.S. 2001, Section 6617, as  
9 amended by Section 23, Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,  
10 Section 6617), is amended to read as follows:

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

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

17 2. A detailed warranty register of warranties in force. The  
18 register shall include the date of issue, ~~issuing sales~~  
19 ~~representative~~, name of warranty holder, warranty period, gross  
20 premium, ~~commission to sales representative~~, and net premium; and

21 3. A detailed centralized claims or service record register  
22 which includes the unique identifier, date of issue, date of claim,  
23 issuing service representative, amount of claim or service, date

1 claim paid, and, if applicable, disposition other than payment and  
2 reason therefor.

3 SECTION 7. REPEALER 36 O.S. 2001, Sections 6619, as  
4 amended by Section 4, Chapter 409, O.S.L. 2002, 6620, as last  
5 amended by Section 24, Chapter 353, O.S.L. 2008, 6622, as amended by  
6 Section 25, Chapter 353, O.S.L. 2008, 6623, 6624 and 6625 (36 O.S.  
7 Supp. 2008, Sections 6619, 6620 and 6622), are hereby repealed.

8 SECTION 8. This act shall become effective July 1, 2009.

9 SECTION 9. It being immediately necessary for the preservation  
10 of the public peace, health and safety, an emergency is hereby  
11 declared to exist, by reason whereof this act shall take effect and  
12 be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-18-09 - DO  
14 PASS, As Amended and Coauthored.