

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 920

By: Sparks

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5
6 AS INTRODUCED

7 An Act relating to insurance; amending 36 O.S. 2001,
8 Sections 6602, as last amended by Section 17, Chapter
9 353, O.S.L. 2008, 6604, as amended by Section 18,
10 Chapter 353, O.S.L. 2008, 6611, 6612, 6615, as last
11 amended by Section 22, Chapter 353, O.S.L. 2008, and
12 6617, as amended by Section 23, Chapter 353, O.S.L.
13 2008 (36 O.S. Supp. 2008, Sections 6602, 6604, 6615
14 and 6617), which relate to the Service Warranty
15 Insurance Act; modifying definition; eliminating
16 definition; eliminating certain registration
17 requirement for certain business entities;
18 eliminating certain notice; eliminating certain
19 reinstatement requirement; modifying fee; giving an
20 association or insurer the option to pay an annual
21 administrative fee; deleting references to sales
22 representative; repealing 36 O.S. 2001, Sections
23 6619, as amended by Section 4, Chapter 409, O.S.L.
24 2002, 6620, as last amended by Section 24, Chapter
353, O.S.L. 2008 and 6622, as amended by Section 25,
Chapter 353, O.S.L. 2008 (36 O.S. Supp. 2008,
Sections 6619, 6620 and 6622), which relate to
service representatives under the Service Warranty
Insurance Act; providing an effective date; and
declaring an emergency.

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

22 SECTION 1. AMENDATORY 36 O.S. 2001, Section 6602, as
23 last amended by Section 17, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
24 2008, Section 6602), is amended to read as follows:

1 Section 6602. As used in the Service Warranty Insurance Act:

2 1. "Commissioner" means the Insurance Commissioner;

3 2. "Consumer product" means tangible personal property
4 primarily used for personal, family, or household purposes;

5 3. "Department" means the Insurance Department;

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

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

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

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

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

- 21 a. an association's total liabilities exceed the
22 association's total assets excluding goodwill,
23 franchises, customer lists, patents or trademarks, and
24 receivables from or advances to officers, directors,

1 employees, salesmen, and affiliated companies. In
2 order to include receivables from affiliated companies
3 as assets as defined pursuant to this subparagraph and
4 paragraph 10 of this section, the service warranty
5 association shall provide a written guarantee to
6 assure repayment of all receivables, loans, and
7 advances from affiliated companies. The written
8 guarantee must be made by a guaranteeing organization
9 which:

10 (1) has been in continuous operation for ten (10)
11 years or more and has net assets in excess of
12 ~~Five Hundred Million Dollars (\$500,000,000.00)~~
13 Fifty Million Dollars (\$50,000,000.00),

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

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

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

23 b. the business of any such association is being
24 conducted fraudulently, or

1 c. the association has knowingly overvalued its assets;

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

4 10. "Net assets" means the amount by which the total assets of
5 an association, excluding goodwill, franchises, customer lists,
6 patents or trademarks, and receivables from or advances to officers,
7 directors, employees, salesmen, and affiliated companies, exceed the
8 total liabilities of the association. For purposes of the Service
9 Warranty Insurance Act, the term "total liabilities" does not
10 include the capital stock, paid-in capital, or retained earning of
11 an association unless a written guaranty assures repayment and meets
12 the conditions specified in subparagraph a of paragraph 8 of this
13 section;

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

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

1 13. ~~"Sales representative" means any person utilized by an~~
2 ~~insurer or service warranty association for the purpose of selling~~
3 ~~or issuing service warranties and includes any individual possessing~~
4 ~~a certificate of competency who has the power to legally obligate~~
5 ~~the insurer or service warranty association or who merely acts as~~
6 ~~the qualifying agent to qualify the association in instances when a~~
7 ~~state statute or local ordinance requires a certificate of~~
8 ~~competency to engage in a particular business;~~

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

- 19 a. maintenance service contracts under the terms of which
20 there are no provisions for such indemnification are
21 expressly excluded from this definition,
- 22 b. those contracts issued solely by the manufacturer,
23 distributor, importer or seller of the product, or any
24 affiliate or subsidiary of the foregoing entities,

1 whereby such entity has contractual liability
2 insurance in place, from an insurer licensed in the
3 state, which covers one hundred percent (100%) of the
4 claims exposure on all contracts written without being
5 predicated on the failure to perform under such
6 contracts, are expressly excluded from this
7 definition,

8 c. the term "service warranty" does not include service
9 contracts entered into between consumers and nonprofit
10 organizations or cooperatives the members of which
11 consist of condominium associations and condominium
12 owners, which contracts require the performance of
13 repairs and maintenance of appliances or maintenance
14 of the residential property,

15 d. the term "service warranty" does not include
16 warranties, guarantees, extended warranties, extended
17 guarantees, contract agreements or any other service
18 contracts issued by a company which performs at least
19 seventy percent (70%) of the service work itself and
20 not through subcontractors, which has been selling and
21 honoring such contracts in Oklahoma for at least
22 twenty (20) years, and

23 e. the term "service warranty" does not include
24 warranties, guarantees, extended warranties, extended

1 guarantees, contract agreements or any other service
2 contracts, whether or not such service contracts
3 otherwise meet the definition of service warranty,
4 issued by a company which has net assets in excess of
5 One Hundred Million Dollars (\$100,000,000.00). A
6 service warranty association may use the net assets of
7 a parent company to qualify under this section if the
8 net assets of the company issuing the policy total at
9 least Twenty-five Million Dollars (\$25,000,000.00) and
10 the parent company maintains net assets of at least
11 Seventy-five Million Dollars (\$75,000,000.00) not
12 including the net assets held by the service warranty
13 associations;

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

19 ~~16.~~ 15. "Warrantor" means any service warranty association
20 engaged in the sale of service warranties and deriving not more than
21 fifty percent (50%) of its gross income from the sale of service
22 warranties; and

23 ~~17.~~ 16. "Warranty seller" means any service warranty
24 association engaged in the sale of service warranties and deriving

1 more than fifty percent (50%) of its gross income from the sale of
2 service warranties.

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

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

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

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

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

24

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

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

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

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

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

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

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

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

16 Section 6611. A. Suspension or revocation of the license of a
17 service warranty association shall be by order of the Insurance
18 Commissioner mailed to the association by certified mail with return
19 receipt requested. ~~The Commissioner shall also promptly give notice~~
20 ~~of such suspension or revocation to the association's sales~~
21 ~~representatives in this state which are of record in the Insurance~~
22 ~~Department.~~ The association shall not solicit or acquire any new
23 service warranties in this state during the period of any such
24 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~~

24

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
24

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
24 Seventy-five Thousand Dollars (\$275,000.00) per year, received by

1 the Insurance Commissioner shall be deposited into the State
2 Treasury to the credit of the Insurance Commissioner Revolving Fund
3 for the payment of costs incurred by the Insurance Department in the
4 administration of the Service Warranty Insurance Act. Amounts
5 received in excess of the annual limitation shall be deposited to
6 the credit of the General Revenue Fund.

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

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

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

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

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

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

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

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

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