

1 STATE OF OKLAHOMA

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

3 SENATE BILL 939

By: Sparks

4
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, 6615, as last amended by
11 Section 22, Chapter 353, O.S.L. 2008 and 6620, as
12 last amended by Section 24, Chapter 353, O.S.L. 2008
13 (36 O.S. Supp. 2008, Sections 6602, 6604, 6615 and
14 6620), which relate to the Service Warranty Insurance
15 Act; modifying definition; eliminating certain
16 registration requirement for certain business
17 entities; modifying amount of certain fee; exempting
18 certain persons from certain registration or filing
19 fee requirements; providing an effective date; and
20 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:

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

- 25 1. "Commissioner" means the Insurance Commissioner;
- 26 2. "Consumer product" means tangible personal property
27 primarily used for personal, family, or household purposes;
- 28 3. "Department" means the Insurance Department;

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

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

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

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

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

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

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

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

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

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

1 of the guaranteeing organization exceed the
2 amount of the receivable of the service warranty
3 association that is being guaranteed by the
4 guaranteeing organization, and

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

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

19 c. the association has knowingly overvalued its assets;

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

22 10. "Net assets" means the amount by which the total assets of
23 an association, excluding goodwill, franchises, customer lists,
24 patents or trademarks, and receivables from or advances to officers,

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

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

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

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

1 competency to engage in a particular business. However, in the case
2 of service warranty associations selling service warranties from
3 five or more business locations, the store manager or other person
4 in charge of each such location shall be considered the sales
5 representative;

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

- 16 a. maintenance service contracts under the terms of which
17 there are no provisions for such indemnification are
18 expressly excluded from this definition,
- 19 b. those contracts issued solely by the manufacturer,
20 distributor, importer or seller of the product, or any
21 affiliate or subsidiary of the foregoing entities,
22 whereby such entity has contractual liability
23 insurance in place, from an insurer licensed in the
24 state, which covers one hundred percent (100%) of the

1 claims exposure on all contracts written without being
2 predicated on the failure to perform under such
3 contracts, are expressly excluded from this
4 definition,

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

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

20 e. the term "service warranty" does not include
21 warranties, guarantees, extended warranties, extended
22 guarantees, contract agreements or any other service
23 contracts, whether or not such service contracts
24 otherwise meet the definition of service warranty,

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

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

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

20 17. "Warranty seller" means any service warranty association
21 engaged in the sale of service warranties and deriving more than
22 fifty percent (50%) of its gross income from the sale of service
23 warranties.
24

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~~
24 ~~business that is to be covered by the registration, and the entity~~

1 ~~shall pay the registration fee for each office, branch office, or~~
2 ~~place of business where the entity will sell service warranty~~
3 ~~contracts;~~

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

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

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

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

1 otherwise subject to the provisions of the Service Warranty
2 Insurance Act.

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

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

10 SECTION 3. AMENDATORY 36 O.S. 2001, Section 6615, as
11 last amended by Section 22, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
12 2008, Section 6615), is amended to read as follows:

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

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

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

10 D. Premiums and assessments received by associations and
11 insurers for service warranties shall not be subject to the premium
12 tax provided for in Section 624 of this title, but shall be subject
13 to an administrative fee of Two Dollars (\$2.00) for each service
14 warranty issued that provides coverage not to exceed Seventy-five
15 Dollars (\$75.00), Five Dollars (\$5.00) for each service warranty
16 issued that provides coverage in excess of Seventy-five Dollars
17 (\$75.00) but not to exceed Two Hundred Fifty Dollars (\$250.00), and
18 Ten Dollars (\$10.00) for each service warranty that provides
19 coverage in excess of Two Hundred Fifty Dollars (\$250.00). However,
20 associations and insurers that have contractual liability insurance
21 in place, from an insurer which satisfies the requirements of
22 subsection C of Section 6607 of this title and which covers one
23 hundred percent (100%) of the claims exposure of the association or
24 insurer on all contracts written shall be subject to an annual

1 administrative fee of ~~Three Thousand Dollars (\$3,000.00)~~ Two
2 Thousand Five Hundred Dollars (\$2,500.00). Said fees shall be paid
3 quarterly to the Insurance Commissioner. All such fees, up to a
4 maximum of Two Hundred Seventy-five Thousand Dollars (\$275,000.00)
5 per year, received by the Insurance Commissioner shall be deposited
6 into the State Treasury to the credit of the Insurance Commissioner
7 Revolving Fund for the payment of costs incurred by the Insurance
8 Department in the administration of the Service Warranty Insurance
9 Act. Amounts received in excess of the annual limitation shall be
10 deposited to the credit of the General Revenue Fund.

11 SECTION 4. AMENDATORY 36 O.S. 2001, Section 6620, as
12 last amended by Section 24, Chapter 353, O.S.L. 2008 (36 O.S. Supp.
13 2008, Section 6620), is amended to read as follows:

14 Section 6620. Each service warranty association or insurer
15 shall register, on forms prescribed by the Insurance Commissioner,
16 on or before March 1 of each odd-numbered year, the name and
17 business address of each sales representative required to be
18 registered under Section 6619 of this title utilized by it in this
19 state and, within thirty (30) days after termination of the
20 contract, shall notify the Commissioner of such termination. At the
21 time of biennial registration, a filing fee of Forty Dollars
22 (\$40.00) for each sales representative shall be paid by the service
23 warranty association or insurer to the Commissioner. All such
24 filing fees shall be deposited in the State Treasury to the credit

1 of the Insurance Commissioner Revolving Fund to be used for the
2 implementation of the Service Warranty Insurance Act. Any sales
3 representative utilized subsequent to the March 1 filing date shall
4 be registered with the Commissioner within ten (10) days after such
5 utilization. Pursuant to Section 6619 of this title, any individual
6 who is an attorney licensed to practice law in the State of Oklahoma
7 or an individual licensed under the Oklahoma Real Estate License
8 Code, Oklahoma Mortgage Broker Licensure Act or Home Inspection
9 Licensing Act, shall not be subject to the registration or filing
10 fee requirements of this section. No employee or sales
11 representative of a service warranty association or insurer may
12 directly or indirectly solicit or negotiate insurance contracts, or
13 hold himself out in any manner to be an insurance agent, unless so
14 qualified and licensed pursuant to Section 1421 et seq. of this
15 title.

16 SECTION 5. This act shall become effective July 1, 2009.

17 SECTION 6. It being immediately necessary for the preservation
18 of the public peace, health and safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

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