SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT No. _____ _____

☐ COMMITTEE AMENDMENT _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 823, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

_____

Senator Committee on Insurance

Committee on Insurance-MD-FS-Req#1582
2/18/2016 5:01 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely ☐ Amendment Cycle Extended ☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 823

By: Committee on Insurance of the Senate

and

McDaniel (Randy) of the House

FLOOR SUBSTITUTE

An Act relating to service warranties; amending Sections 13 and 26, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2014, Sections 141.13 and 141.26), which relate to the Service Warranty Act; modifying information required on certain service contracts; authorizing Insurance Commissioner to exempt certain requirements under certain circumstances; defining additional circumstances as unfair methods of competition and unfair or deceptive acts or practices; defining term; requiring certain claim files to be subject to examination and include certain contents; providing procedures for inquiry or examination by Insurance Commissioner; providing penalty; providing procedures for cease and desist orders; providing for certain notice and hearing and judicial review; providing for recovery of attorney fees; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 13, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2014, Section 141.13), is amended to read as follows:

Section 141.13. A. No service warranty form or related form shall be issued or used in this state unless the form has been filed with and approved by the Insurance Commissioner.

B. Each filing of a form shall be made not less than thirty (30) days in advance of its issuance or use. At the expiration of thirty (30) days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively disapproved by written order of the Commissioner.

C. Each service warranty contract shall contain a cancellation provision. In the event the contract is canceled by the warranty holder, return of the provider fee shall be based upon ninety percent (90%) of the unearned pro rata provider fee less the actual cost of any service provided under the service warranty contract. In the event the contract is canceled by the association, return of premium shall be based upon one hundred percent (100%) of unearned pro rata provider fee less the actual cost of any service provided under the service warranty contract.

D. Service contracts shall state the name and address of the ~~provider~~ service warranty association and shall identify any administrator if different from the ~~provider~~ service warranty association, the service contract seller and the service contract

holder to the extent that the name of the service contract holder has been furnished by the service contract holder. ~~The identities of the parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale~~ For service contracts issued on and after July 1, 2016, the identity of the service warranty association and its license number shall be preprinted on the service contract.

E. The Commissioner shall disapprove any form filed pursuant to this section if the form:

1. Violates the Service Warranty Act;

2. Is misleading in any respect; or

3. Is reproduced so that any material provision is substantially illegible.

F. The Insurance Commissioner may, by order, exempt from the requirements of this section for so long as he or she deems proper any document or form or type thereof as specified in such order, to which, in his or her discretion this section may not practicably be applied, or the filing and approval of which are, in his or her opinion, not desirable or necessary for the protection of the public.

SECTION 2. AMENDATORY Section 26, Chapter 150, O.S.L. 2012 (15 O.S. Supp. 2014, Section 141.26), is amended to read as follows:

Section 141.26. For purposes of the Service Warranty Act, the following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

1. MISREPRESENTATION AND FALSE ADVERTISING OF SERVICE WARRANTIES - Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

a. misrepresents the benefits, advantages, conditions, or terms of any service warranty contract,

b. is misleading or is a misrepresentation as to the financial condition of any person,

c. uses any name or title of any contract misrepresenting the true nature thereof, or

d. is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any service warranty contract;

2. FALSE INFORMATION AND ADVERTISING GENERALLY - Knowingly making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public:

a. in a newspaper, magazine, or other publication,

b. in the form of a notice, circular, pamphlet, letter, or poster,

c. over any radio or television station, or

d. in any other way,

an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of service warranty, which assertion, representation, or statement is untrue, deceptive, or misleading;

3. DEFAMATION - Knowingly making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of, any oral or written statement, or any pamphlet, circular, article, or literature, which is false or maliciously critical of, or derogatory to, any person and which is calculated to injure such person;

4. FALSE STATEMENTS AND ENTRIES - Knowingly:

a. filing with any supervisory or other public official,

b. making, publishing, disseminating, or circulating,

c. delivering to any person,

d. placing before the public,

e. causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement, or

f. making any false entry of a material fact in any book, report, or statement of any person;

5. UNFAIR CLAIM SETTLEMENT PRACTICES -

a. attempting to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the warranty holder,

b. making a material misrepresentation to the warranty holder for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract on less favorable terms than those provided in, and contemplated by, such contract, or

c. committing or performing with such frequency as to indicate a general business practice any of the following practices:

(1) failure properly to investigate claims,

(2) misrepresentation of pertinent facts or contract provisions relating to coverages at issue,

(3) failure to acknowledge and act promptly upon communications with respect to claims,

(4) denial of claims without conducting reasonable investigations based upon available information,

(5) failure to affirm or deny coverage of claims upon written request of the warranty holder within a

reasonable time after proof-of-loss statements have been completed, or

(6) failure to promptly provide a reasonable explanation to the warranty holder of the basis in the contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

6. FAILURE TO MAINTAIN PROCEDURES FOR HANDLING COMPLAINTS - Failing to maintain a record of each complaint received for a three-year period after the date of the receipt of the written complaint; ~~and~~

7. DISCRIMINATORY REFUSAL TO ISSUE A CONTRACT - Refusing to issue a contract solely because of an individual's race, color, creed, marital status, sex, or national origin; and

8. FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE - Failing to provide a consumer with a complete sample copy of the terms and conditions of the service warranty prior to before the time of sale upon a request for the same by the consumer. A service warranty association may comply with the provisions of this paragraph by providing the consumer with a sample copy of the terms and conditions of the warranty contract or by directing the consumer to a website that displays a complete sample of the terms and conditions of the contract.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 141.33 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Claim files of service warranty associations licensed pursuant to the Service Warranty Act shall be subject to examination by the Insurance Commissioner or by duly appointed designees. Such files shall contain all notes and work papers pertaining to a claim in such detail that pertinent events and the dates of such events can be reconstructed. In addition, the Commissioner and authorized employees and examiners shall have access to any files of a service warranty association that may relate to a particular complaint under investigation or to an inquiry or examination by the Insurance Department.

B. Every service warranty association, upon receipt of any inquiry from the Commissioner, shall, within thirty (30) days from the date of the inquiry, furnish the Commissioner with an adequate response to the inquiry.

C. Every service warranty association, upon receipt of any pertinent written communication including, but not limited to, electronic mail or other forms of written electronic communication or documentation by the service warranty association of a verbal communication from a claimant which reasonably suggests that a response is expected, shall, within thirty (30) days after receipt

thereof, furnish the claimant with an adequate response to the communication.

D. Any violation by a service warranty association of this section shall subject the service warranty association to discipline including a civil penalty of not less than One Hundred Dollars ($100.00) nor more than Five Thousand Dollars ($5,000.00).

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 141.34 of Title 15, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may issue a cease and desist order, ex parte, if:

1. The Commissioner believes that:

a. an unauthorized service warranty association is engaging in the business of service warranties in violation of the Service Warranty Act, or

b. an unauthorized person engaged in the business of service warranties acting in violation of the Service Warranty Act is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Section 141.26 of Title 15 of the Oklahoma Statutes, or

2. It appears to the Commissioner that the alleged conduct is fraudulent or hazardous or creates an immediate danger to the public

safety or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 141.35 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Upon issuance of an emergency cease and desist order under Section 4 of this act, the Insurance Commissioner shall serve on the person affected by the order, by registered or certified mail, return receipt requested, to the person's last-known address, or by other lawful means, an order that contains a statement of the charges and require the person immediately to cease and desist from the acts, methods or practices stated.

B. 1. If a person affected by an emergency cease and desist order seeks to contest that order, the person may request a hearing before the Commissioner. The person affected must request the hearing not later than the thirtieth day after the date on which the person receives the order. A request to contest an order must be in writing and directed to the Commissioner and must state the grounds for the request to set aside or modify the order.

2. On receiving the request for a hearing, the Commissioner shall serve notice of the time and place of the hearing at which the person requesting the hearing shall have the opportunity to show cause why the order should not be affirmed. The hearing is to be held not later than the tenth day after the date the Commissioner

receives the request for a hearing unless the parties mutually agree to a later hearing date.

3. Pending the hearing, an emergency cease and desist order shall continue in full force and effect unless the order is stayed by the Commissioner.

4. The hearing on the order shall be conducted according to the procedures for contested cases under the Administrative Procedures Act.

5. At the hearing, the Commissioner shall affirm, modify or set aside in whole or in part the emergency cease and desist order.

C. A person aggrieved by a final order and decision of the Commissioner may seek judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

D. The Commissioner may recover reasonable attorney fees if judicial action is necessary for enforcement of the order.

E. A cease and desist order is final thirty-one (31) days after the date it is received if the person affected by the order does not request a hearing as provided by subsection B of this section.

SECTION 6. This act shall become effective November 1, 2015.

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