

ENROLLED SENATE
BILL NO. 1903

By: Aldridge and Brown of the
Senate

and

Sullivan and Sherrer of the
House

An Act relating to insurance; creating the Oklahoma Home Service Contract Act; providing short title; stating purpose; providing exemptions; specifying certain agreements are not insurance; defining terms; requiring provider to provide certain information before the issuance of home service contracts; requiring providers to register with the Insurance Commissioner; providing for fees; specifying forms of financial securities; specifying that providers are not subject to the Service Warranty Insurance Act; specifying requirements of service contracts; allowing the Commissioner to conduct certain examinations; authorizing the Commissioner to take certain actions; providing procedures relating to enforcement; allowing the Commissioner to bring certain actions; providing penalties; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6670 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Home Service Contract Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6671 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The purpose of the Oklahoma Home Service Contract Act is to create an independent legal framework within which home service contracts are defined, may be sold and are regulated in this state. The Oklahoma Home Service Contract Act declares that home service contracts, as defined in Section 3 of this act, are not insurance and not otherwise subject to the Insurance Code. The Oklahoma Home Service Contract Act requires simple registration, financial assurance options and enforcement by the Insurance Commissioner. Proper registration under the Oklahoma Home Service Contract Act exempts applicability under the Oklahoma Service Warranty Insurance Act, which may regulate extended warranty, retail, automobile and agreements not defined in the Oklahoma Home Service Contract Act. Nothing in the Oklahoma Service Warranty Insurance Act is changed or amended by the Oklahoma Home Service Contract Act.

B. The following items are exempt from the provisions of the Oklahoma Home Service Contract Act:

1. Warranties as defined in Section 3 of this act;
2. Maintenance agreements as defined in Section 3 of this act;
and
3. Service contracts sold or offered for sale to persons other than consumers, consumer product (extended warranty) service contracts on new, retail goods if made at the time of sale and motor vehicle service contracts, all of which may be separately regulated elsewhere in the Oklahoma Statutes.

C. The types of agreements covered by the Oklahoma Home Service Contract Act or exempt pursuant to subsection B of this section are not insurance and do not have to comply with any other provision of the Insurance Code outside of the Oklahoma Home Service Contract Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6672 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Home Service Contract Act:

1. "Administrator" means the person who is responsible for the administration of home service contracts or the home service contracts plan, who may promote the contract under their own private label or brand as long as the provider is clearly identified on the contract, or who is responsible for any submission required by the Oklahoma Home Service Contract Act;

2. "Commissioner" means the Insurance Commissioner;

3. "Consumer" means a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family or household purposes and not for business or research purposes;

4. "Home service contract" or "home warranty" means a contract or agreement for a separately stated consideration for a specific duration to perform the service, repair, replacement or maintenance of property or indemnification for service, repair, replacement or maintenance, for the operational or structural failure of any residential property due to a defect in materials, workmanship, inherent defect or normal wear and tear, with or without additional provisions for incidental payment or indemnity under limited circumstances. Home service contracts may provide for the service, repair, replacement, or maintenance of property for damage resulting from power surges or interruption and accidental damage from handling and may provide for leak or repair coverage to house roofing systems. Home service contracts are not insurance in this state or otherwise regulated under the Insurance Code;

5. "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not include repair or replacement;

6. "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company,

reciprocal, syndicate or any similar entity or combination of entities acting in concert;

7. "Provider" means the person who is the contractually named obligor to the home service contract holder under the terms of the service contract;

8. "Provider fee" means the consideration paid for a home service contract;

9. "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured home service contracts issued or sold by the provider or, in the event of the provider's non-performance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured home service contracts issued or sold by the provider;

10. "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a home service contract; and

11. "Warranty" means a warranty made solely by the manufacturer, importer or seller of property or services, including builders on new home construction, without consideration, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6673 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Home service contracts shall not be issued, sold or offered for sale in this state unless the provider has:

1. Provided a receipt for, or other written evidence of, the purchase of the home service contract to the contract holder; and

2. Provided a copy of the home service contract to the service contract holder within a reasonable period of time from the date of purchase.

B. Each provider of home service contracts sold in this state shall file a registration with the Insurance Commissioner consisting of their name, full corporate physical street address, telephone number, contact person and a designated person in this state for service of process. Each provider shall pay to the Commissioner a fee in the amount of One Thousand Two Hundred Dollars (\$1,200.00) upon initial registration and every three years thereafter. Each provider shall pay to the Commissioner a fraud fee of Two Thousand Two Hundred Fifty Dollars (\$2,250.00) upon initial registration and every three (3) years thereafter. The registration need only be updated by written notification to the Commissioner if material changes occur in the registration on file. A proper registration is defacto a license to conduct business in Oklahoma and may be suspended as provided in Section 6 of this act. Fees received from home service contract providers shall not be subject to any premium tax, but shall be subject to an administrative fee equal to two percent (2%) of the gross fees received on the sale of all home service contracts issued in this state during the preceding calendar quarter. The fees shall be paid quarterly to the Commissioner. However, service contract providers may elect to pay an annual administrative fee of Three Thousand Dollars (\$3,000.00) in lieu of the two-percent administrative fee, if the provider maintains a reimbursement insurance policy as defined in Section 3 of this act and provided for in paragraph 3 of Subsection C of this section.

C. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider shall be responsible for complying with the requirements of one of the three paragraphs of this subsection:

1. a. Maintain a funded reserve account for its obligations under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent (40%) of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the Commissioner, and

- b. place in trust with the Commissioner a financial security deposit, having a value of not less than five percent (5%) of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than Twenty-five Thousand Dollars (\$25,000.00), consisting of one of the following:
 - (1) a surety bond issued by an authorized surety,
 - (2) securities of the type eligible for deposit by authorized insurers in this state,
 - (3) cash,
 - (4) a letter of credit issued by a qualified financial institution, or
 - (5) another form of security prescribed by rule promulgated by the Commissioner; or

- 2. a. Maintain, or together with its parent company maintain, a net worth or stockholders' equity of Twenty-five Million Dollars (\$25,000,000.00), excluding goodwill, intangible assets, customer lists and affiliated receivables, and

- b. upon request, provide the Commissioner with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's financial statements, which shows a net worth of the provider or its parent company of at least Twenty-Five Million Dollars (\$25,000,000.00) based upon GAAP accounting standards. If the provider's parent company's Form 10-K, Form 20-F, or financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the

obligations of the provider relating to service contracts sold by the provider in this state; or

3. Insure all service contracts under a reimbursement insurance policy issued by an insurer licensed, registered, or otherwise authorized to do business in this state that maintains at least a AM Best B++ rating and such policy covers one hundred percent (100%) of the contracts issued by the home services contract provider and which covers one hundred percent (100%) of the claims exposure of the provider on all contracts currently in force.

D. Except for the registration requirements in subparagraph b of paragraph 2 of subsection C of this section, providers, administrators and other persons marketing, selling or offering to sell home service contracts are exempt from any licensing requirements of this state and shall not be subject to other registration information or security requirements. Home service contract providers as defined in Section 3 of this act and properly registered under this law are exempt from any treatment pursuant to the Service Warranty Insurance Act. New home service contract provider registrants that have not been registered in the past year under the Oklahoma Service Warranty Insurance Act may be subject to a thirty-day prior review by the Insurance Department before their registration is deemed complete.

E. The marketing, sale, offering for sale, issuance, making, proposing to make and administration of home service contracts by providers and related service contract sellers, administrators, and other persons, including but not limited to real estate licensees, shall be exempt from all other provisions of the Insurance Code.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6674 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state shall be written, printed, or typed in clear, understandable language that is easy to read, and shall disclose the requirements set forth in this section, as applicable.

B. Service contracts insured under a reimbursement insurance policy pursuant to paragraph 3 of subsection C of Section 4 of this act shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall also state the name and address of the insurer.

C. Service contracts not insured under a reimbursement insurance policy pursuant to paragraph 3 of subsection C of Section 4 of this act shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

D. Service contracts shall state the name and address of the provider, and shall identify any administrator if different from the provider, 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 such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

E. Service contracts shall state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be pre-printed on the service contract and may be negotiated at the time of sale with the service contract holder.

F. Service contracts shall state the existence of any trade service fee, if applicable.

G. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

H. Service contracts shall state any restrictions governing the transferability of the service contract, if applicable.

I. Service contracts shall state the terms, restrictions or conditions governing cancellation of the service contract.

J. Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and any requirement to follow the owner's manual.

K. Service contracts shall state whether or not the service contract provides for or excludes consequential damages or pre-existing conditions, if applicable. Service contracts may, but are not required to, cover damage resulting from rust, corrosion or damage caused by a noncovered part or system.

L. If prior approval of repair work is required, a service contract shall state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6675 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. After initial registration, and upon complaint or proper cause shown, the Insurance Commissioner may conduct examinations of providers, administrators, insurers or other persons to enforce the provisions of the Oklahoma Home Service Contract Act and protect home service contract holders in this state. Upon request of the Commissioner, the provider shall make all accounts, books, and records concerning service contracts sold by the provider in Oklahoma available to the Commissioner, which are necessary to enable the Commissioner to reasonably determine compliance or noncompliance with the Oklahoma Home Service Contract Act.

B. The Commissioner may take action, which is necessary or appropriate, to enforce the provisions of the Oklahoma Home Service Contract Act and the orders of the Commissioner and to protect service contract holders in this state.

1. If a provider has violated the Oklahoma Home Service Contract Act or the Commissioner's rules or orders, the Commissioner may issue an order directed to that provider to cease and desist from committing violations of the Oklahoma Home Service Contract Act or the Commissioner's rules or orders, may issue an order

prohibiting a service contract provider from selling or offering for sale service contracts or may issue an order imposing a civil penalty on that provider, or any combination of the foregoing, as applicable.

- a. A person aggrieved by an order issued under this paragraph may request a hearing before the Commissioner. The hearing request shall be filed with the Commissioner within twenty (20) days of the date the Commissioner's order is effective;
- b. If a hearing is requested, an order issued by the Commissioner under this section shall be suspended from the original effective date of the order until completion of the hearing and final decision of the Commissioner; and
- c. At the hearing, the burden shall be on the Commissioner to show why the order issued pursuant to this paragraph is justified. The hearing requested under this section shall be held in accordance with the Administrative Procedures Act and the laws and rules of the Insurance Department.

2. The Commissioner may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of the Oklahoma Home Service Contract Act or of the Commissioner's orders or rules. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of the Oklahoma Home Service Contract Act or orders or rules of the Commissioner.

3. A person who is found to have violated the Oklahoma Home Service Contract Act or orders or rules of the Commissioner may be assessed a civil penalty in an amount determined by the Commissioner of not more than Five Hundred Dollars (\$500.00) per violation and no more than Ten Thousand Dollars (\$10,000.00) in the aggregate for all violations of a similar nature. For purposes of this section, violations shall be of a similar nature if the violation consists of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice

which is determined to be a violation of the Oklahoma Home Service Contract Act occurred.

SECTION 7. This act shall become effective November 1, 2010.

Passed the Senate the 26th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of May, 2010.

Presiding Officer of the House
of Representatives