

SB 1903

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THE STATE SENATE
Wednesday, February 17, 2010

Senate Bill No. 1903
As Amended

SENATE BILL NO. 1903 - By: Aldridge of the Senate and Sullivan of the House.

[insurance - creating the Oklahoma Home Service Contract Act - requirements of service contracts - providing penalties - codification - 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 2 of this act, are not insurance and not otherwise subject to the Insurance Code. The Oklahoma Home Service Contract Act requires simple registration, financial

1 assurance options and enforcement by the Insurance Commissioner.
2 Proper registration under the Oklahoma Home Service Contract Act
3 exempts applicability under the Oklahoma Service Warranty Insurance
4 Act, which may regulate extended warranty, retail, automobile and
5 agreements not defined in the Oklahoma Home Service Contract Act.
6 Nothing in the Oklahoma Service Warranty Insurance Act is changed or
7 amended by the Oklahoma Home Service Contract Act.

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

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

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

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

4 As used in the Oklahoma Home Service Contract Act:

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

11 2. "Commissioner" means the Insurance Commissioner;

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

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

20 5. "Person" means an individual, partnership, corporation,
21 incorporated or unincorporated association, joint stock company,
22 reciprocal, syndicate or any similar entity or combination of
23 entities acting in concert;

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

4 7. "Provider fee" means the consideration paid for a home
5 service contract;

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

13 9. "Home service contract" or "home warranty" means a contract
14 or agreement for a separately stated consideration for a specific
15 duration to perform the service, repair, replacement or maintenance
16 of property or indemnification for service, repair, replacement or
17 maintenance, for the operational or structural failure of any
18 residential property due to a defect in materials, workmanship,
19 inherent defect or normal wear and tear, with or without additional
20 provisions for incidental payment or indemnity under limited
21 circumstances. Home service contracts may provide for the service,
22 repair, replacement, or maintenance of property for damage resulting
23 from power surges or interruption and accidental damage from

1 handling and may provide for leak or repair coverage to house
2 roofing systems. Home service contracts are not insurance in this
3 state or otherwise regulated under the Insurance Code;

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

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

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

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

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

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

4 B. Each provider of home service contracts sold in this state
5 shall file a registration with the Insurance Commissioner consisting
6 of their name, full corporate physical street address, telephone
7 number, contact person and a designated person in this state for
8 service of process. Each provider shall pay to the Commissioner a
9 fee in the amount of Six Hundred Dollars (\$600.00) upon initial
10 registration and every three years thereafter. The registration
11 need only be updated by written notification to the Commissioner if
12 material changes occur in the registration on file. A proper
13 registration is defacto a license to conduct business in Oklahoma
14 and may be suspended as provided in Section 5 of this act.

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

19 1. a. Maintain a funded reserve account for its obligations
20 under its contracts issued and outstanding in this
21 state. The reserves shall not be less than forty
22 percent (40%) of gross consideration received, less
23 claims paid, on the sale of the service contract for

1 all in-force contracts. The reserve account shall be
2 subject to examination and review by the Commissioner,
3 and

4 b. place in trust with the Commissioner a financial
5 security deposit, having a value of not less than five
6 percent (5%) of the gross consideration received, less
7 claims paid, on the sale of the service contract for
8 all service contracts issued and in force, but not
9 less than Twenty-five Thousand Dollars (\$25,000.00),
10 consisting of one of the following:

- 11 (1) a surety bond issued by an authorized surety,
- 12 (2) securities of the type eligible for deposit by
13 authorized insurers in this state,
- 14 (3) cash,
- 15 (4) a letter of credit issued by a qualified
16 financial institution, or
- 17 (5) another form of security prescribed by rule
18 promulgated by the Commissioner; or

19 2. a. Maintain, or together with its parent company
20 maintain, a net worth or stockholders' equity of
21 Twenty-five Million Dollars (\$25,000,000.00), and

22 b. upon request, provide the Commissioner with a copy of
23 the provider's or the provider's parent company's most

1 recent Form 10-K or Form 20-F filed with the
2 Securities and Exchange Commission (SEC) within the
3 last calendar year, or if the company does not file
4 with the SEC, a copy of the company's financial
5 statements, which shows a net worth of the provider or
6 its parent company of at least Twenty-Five Million
7 Dollars (\$25,000,000.00) based upon GAAP accounting
8 standards. If the provider's parent company's Form
9 10-K, Form 20-F, or financial statements are filed to
10 meet the provider's financial stability requirement,
11 then the parent company shall agree to guarantee the
12 obligations of the provider relating to service
13 contracts sold by the provider in this state; or

14 3. Insure all service contracts under a reimbursement insurance
15 policy issued by an insurer licensed, registered, or otherwise
16 authorized to do business in this state.

17 D. Except for the registration requirements in subparagraph b
18 of paragraph 2 of subsection C of this section, providers,
19 administrators and other persons marketing, selling or offering to
20 sell home service contracts are exempt from any licensing
21 requirements of this state and shall not be subject to other
22 registration information or security requirements. Home Service
23 contract providers as defined in Section 2 of this act and properly

1 registered under this law are exempt from any treatment pursuant to
2 the Service Warranty Insurance Act.

3 E. The marketing, sale, offering for sale, issuance, making,
4 proposing to make and administration of home service contracts by
5 providers and related service contract sellers, administrators, and
6 other persons shall be exempt from all other provisions of the
7 Insurance Code.

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

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

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

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

6 D. Service contracts shall state the name and address of the
7 provider, and shall identify any administrator if different from the
8 provider, the service contract seller, and the service contract
9 holder to the extent that the name of the service contract holder
10 has been furnished by the service contract holder. The identities
11 of such parties are not required to be preprinted on the service
12 contract and may be added to the service contract at the time of
13 sale.

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

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

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

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

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

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

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

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

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

20 A. The Insurance Commissioner may conduct examinations of
21 providers, administrators, insurers or other persons to enforce the
22 provisions of the Oklahoma Home Service Contract Act and protect
23 home service contract holders in this state. Upon request of the

1 Commissioner, the provider shall make all accounts, books, and
2 records concerning service contracts sold by the provider available
3 to the Commissioner, which are necessary to enable the Commissioner
4 to reasonably determine compliance or noncompliance with the
5 Oklahoma Home Service Contract Act.

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

10 1. If a provider has violated the Oklahoma Home Service
11 Contract Act or the Commissioner's rules or orders, the Commissioner
12 may issue an order directed to that provider to cease and desist
13 from committing violations of the Oklahoma Home Service Contract Act
14 or the Commissioner's rules or orders, may issue an order
15 prohibiting a service contract provider from selling or offering for
16 sale service contracts in violation of the Oklahoma Home Service
17 Contract Act, or may issue an order imposing a civil penalty on that
18 provider, or any combination of the foregoing, as applicable.

19 a. A person aggrieved by an order issued under this
20 paragraph may request a hearing before the
21 Commissioner. The hearing request shall be filed with
22 the commissioner within twenty (20) days of the date
23 the Commissioner's order is effective;

1 b. if a hearing is requested, an order issued by the
2 Commissioner under this section shall be suspended
3 from the original effective date of the order until
4 completion of the hearing and final decision of the
5 Commissioner; and

6 c. at the hearing, the burden shall be on the
7 Commissioner to show why the order issued pursuant to
8 this paragraph is justified. The hearing requested
9 under this section shall be held in accordance with
10 the Administrative Procedures Act and the laws and
11 rules of the Insurance Department.

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

19 3. A person who is found to have violated the Oklahoma Home
20 Service Contract Act or orders or rules of the Commissioner may be
21 assessed a civil penalty in an amount determined by the Commissioner
22 of not more than Five Hundred Dollars (\$500.00) per violation and no
23 more than Ten Thousand Dollars (\$10,000.00) in the aggregate for all

1 violations of a similar nature. For purposes of this section,
2 violations shall be of a similar nature if the violation consists of
3 the same or similar course of conduct, action, or practice,
4 irrespective of the number of times the act, conduct, or practice
5 which is determined to be a violation of the Oklahoma Home Service
6 Contract Act occurred.

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

8 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated
9 2-11-10 - DO PASS, As Amended and Coauthored.