

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 780

By: Aldridge of the Senate

and

Sullivan of the House

8 COMMITTEE SUBSTITUTE

9  
10 An Act relating to insurance; creating the Oklahoma  
11 Home Service Contract Act; providing short title;  
12 stating purpose; providing exemptions; specifying  
13 certain agreements are not insurance; defining terms;  
14 requiring provider to provide certain information  
15 before the issuance of home service contracts;  
16 requiring providers to register with the Insurance  
17 Commissioner; providing for registration fee;  
18 providing for Antifraud Assessment Fee; specifying  
19 certain fee shall not be subject to premium tax;  
20 providing for administrative fee; requiring quarterly  
21 payment of certain fee; requiring submission of  
22 certain report; providing exception; authorizing the  
23 purchase of certain insurance policy; specifying  
24 policy requirements; specifying forms of financial  
securities; specifying that providers are not subject  
to the Service Warranty Insurance Act; specifying  
certain contract providers may be subject to certain  
prior review; 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; specifying act shall not create a  
cause of action; providing penalties; providing for  
codification; and providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified  
3 in the Oklahoma Statutes as Section 6750 of Title 36, unless there  
4 is created a duplication in numbering, reads as follows:

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

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 6751 of Title 36, unless there  
9 is created a duplication in numbering, reads as follows:

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

24

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

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

11 C. The types of agreements covered by the Oklahoma Home Service  
12 Contract Act are not insurance and do not have to comply with any  
13 other provision of the Insurance Code outside of the Oklahoma Home  
14 Service Contract Act.

15 SECTION 3. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 6752 of Title 36, unless there  
17 is created a duplication in numbering, reads as follows:

18 As used in the Oklahoma Home Service Contract Act:

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

1        2. "Commissioner" means the Insurance Commissioner;

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

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

10       5. "Person" means an individual, partnership, corporation,  
11 incorporated or unincorporated association, joint stock company,  
12 reciprocal, syndicate or any similar entity or combination of  
13 entities acting in concert;

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

17       7. "Provider fee" means the consideration paid for a home  
18 service contract;

19       8. "Reimbursement insurance policy" means a policy of insurance  
20 issued to a provider to either provide reimbursement to the provider  
21 under the terms of the insured home service contracts issued or sold  
22 by the provider or, in the event of the provider's nonperformance,  
23 to pay on behalf of the provider all covered contractual obligations  
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1 incurred by the provider under the terms of the insured home service  
2 contracts issued or sold by the provider;

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

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

20 11. "Warranty" means a warranty made solely by the  
21 manufacturer, importer or seller of property or services, including  
22 builders on new home construction, without consideration, that is  
23 not negotiated or separated from the sale of the product and is  
24 incidental to the sale of the product, that guarantees indemnity for

1 defective parts, mechanical or electrical breakdown, labor or other  
2 remedial measures, such as repair or replacement of the property or  
3 repetition of services.

4 SECTION 4. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 6753 of Title 36, unless there  
6 is created a duplication in numbering, reads as follows:

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

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

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

14 B. Each provider of home service contracts sold in this state  
15 shall file a registration with, and on a form prescribed by, the  
16 Insurance Commissioner consisting of their name, full corporate  
17 physical street address, telephone number, contact person and a  
18 designated person in this state for service of process. Each  
19 provider shall pay to the Commissioner a fee in the amount of One  
20 Thousand Two Hundred Dollars (\$1,200.00) upon initial registration  
21 and every three (3) years thereafter. Each provider shall pay to  
22 the Commissioner an Antifraud Assessment Fee of Two Thousand Two  
23 Hundred Fifty Dollars (\$2,250.00) upon initial registration and  
24 every three (3) years thereafter. The registration need only be

1 updated by written notification to the Commissioner if material  
2 changes occur in the registration on file. A proper registration is  
3 de facto a license to conduct business in Oklahoma and may be  
4 suspended as provided in Section 6 of this act. Fees received from  
5 home service contract providers shall not be subject to any premium  
6 tax, but shall be subject to an administrative fee equal to two  
7 percent (2%) of the gross fees received on the sale of all home  
8 service contracts issued in this state during the preceding calendar  
9 quarter. The fees shall be paid quarterly to the Commissioner and  
10 submitted along with a report on a form prescribed by the  
11 Commissioner. However, service contract providers may elect to pay  
12 an annual administrative fee of Three Thousand Dollars (\$3,000.00)  
13 in lieu of the two-percent administrative fee, if the provider  
14 maintains an insurance policy as provided in paragraph 3 of  
15 subsection C of this section.

16 C. In order to assure the faithful performance of a provider's  
17 obligations to its contract holders, each provider shall be  
18 responsible for complying with the requirements of paragraph 1, 2 or  
19 3 of this subsection:

20 1. a. maintain a funded reserve account for its obligations  
21 under its contracts issued and outstanding in this  
22 state. The reserves shall not be less than forty  
23 percent (40%) of gross consideration received, less  
24 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;

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),  
22 excluding goodwill, intangible assets, customer lists  
23 and affiliated receivables, and  
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1           b.    upon request, provide the Commissioner with a copy of  
2                    the provider's or the provider's parent company's most  
3                    recent Form 10-K or Form 20-F filed with the  
4                    Securities and Exchange Commission (SEC) within the  
5                    last calendar year, or if the company does not file  
6                    with the SEC, a copy of the company's financial  
7                    statements, which shows a net worth of the provider or  
8                    its parent company of at least Twenty-five Million  
9                    Dollars (\$25,000,000.00) based upon Generally Accepted  
10                  Accounting Principles (GAAP) accounting standards. If  
11                  the provider's parent company's Form 10-K, Form 20-F,  
12                  or financial statements are filed to meet the  
13                  provider's financial stability requirement, then the  
14                  parent company shall agree to guarantee the  
15                  obligations of the provider relating to service  
16                  contracts sold by the provider in this state; or

17           3.    Purchase an insurance policy which demonstrates to the  
18                  satisfaction of the Insurance Commissioner that one hundred percent  
19                  (100%) of its claim exposure is covered by such policy. The  
20                  insurance shall be obtained from an insurer that is licensed,  
21                  registered, or otherwise authorized to do business in this state,  
22                  that is rated B++ or better by A.M. Best Company, Inc., and that  
23                  meets the requirements of subsection D of this section. For the  
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1 purposes of this paragraph, the insurance policy shall contain the  
2 following provisions:

3 a. in the event that the provider is unable to fulfill  
4 its obligation under contracts issued in this state  
5 for any reason, including insolvency, bankruptcy, or  
6 dissolution, the insurer shall pay losses and unearned  
7 premiums under such plans directly to the person  
8 making the claim under the contract,

9 b. the insurer issuing the insurance policy shall assume  
10 full responsibility for the administration of claims  
11 in the event of the inability of the provider to do  
12 so, and

13 c. the policy shall not be canceled or not renewed by  
14 either the insurer or the provider unless sixty (60)  
15 days' written notice thereof has been given to the  
16 Commissioner by the insurer before the date of such  
17 cancellation or nonrenewal.

18 D. The insurer providing the insurance policy used to satisfy  
19 the financial responsibility requirements of paragraph 3 of  
20 subsection C of this section shall meet one of the following  
21 standards:

22 1. The insurer shall, at the time the policy is filed with the  
23 Commissioner, and continuously thereafter:

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- 1 a. maintain surplus as to policyholders and paid-in  
2 capital of at least Fifteen Million Dollars  
3 (\$15,000,000.00), and  
4 b. annually file copies of the audited financial  
5 statements of the insurer, its National Association of  
6 Insurance Commissioners (NAIC) Annual Statement, and  
7 the actuarial certification required by and filed in  
8 the state of domicile of the insurer; or

9 2. The insurer shall, at the time the policy is filed with the  
10 Commissioner, and continuously thereafter:

- 11 a. maintain surplus as to policyholders and paid-in  
12 capital of less than Fifteen Million Dollars  
13 (\$15,000,000.00),  
14 b. demonstrate to the satisfaction of the Commissioner  
15 that the company maintains a ratio of net written  
16 premiums, wherever written, to surplus as to  
17 policyholders and paid-in capital of not greater than  
18 three to one, and  
19 c. annually file copies of the audited financial  
20 statements of the insurer, its NAIC Annual Statement,  
21 and the actuarial certification required by and filed  
22 in the state of domicile of the insurer.

23 E. Except for the registration requirements in subsection B of  
24 this section, providers, administrators and other persons marketing,

1 selling or offering to sell home service contracts are exempt from  
2 any licensing requirements of this state and shall not be subject to  
3 other registration information or security requirements. Home  
4 service contract providers as defined in Section 3 of this act and  
5 properly registered under this law are exempt from any treatment  
6 pursuant to the Service Warranty Insurance Act. Home service  
7 contract providers applying for registration under the Oklahoma Home  
8 Service Contract Act that have not been registered in the preceding  
9 twelve (12) months under the act may be subject to a thirty-day  
10 prior review before their registration is deemed complete. Said  
11 applications shall be deemed complete after thirty (30) days unless  
12 the Commissioner takes action in that period under Section 6 of this  
13 act, for cause shown, to suspend their registration.

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

19 SECTION 5. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 6754 of Title 36, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. Service contracts marketed, sold, offered for sale, issued,  
23 made, proposed to be made, or administered in this state shall be  
24 written, printed, or typed in clear, understandable language that is

1 easy to read, and shall disclose the requirements set forth in this  
2 section, as applicable.

3 B. Service contracts insured under an insurance policy pursuant  
4 to paragraph 3 of subsection C of Section 4 of this act shall  
5 contain a statement in substantially the following form:

6 "Obligations of the provider under this service contract are insured  
7 under a service contract reimbursement insurance policy." The  
8 service contract shall also state the name and address of the  
9 insurer.

10 C. Service contracts not insured under an insurance policy  
11 pursuant to paragraph 3 of subsection C of Section 4 of this act  
12 shall contain a statement in substantially the following form:

13 "Obligations of the provider under this service contract are backed  
14 by the full faith and credit of the provider."

15 D. Service contracts shall state the name and address of the  
16 provider, and shall identify any administrator if different from the  
17 provider, the service contract seller, and the service contract  
18 holder to the extent that the name of the service contract holder  
19 has been furnished by the service contract holder. The identities  
20 of such parties are not required to be preprinted on the service  
21 contract and may be added to the service contract at the time of  
22 sale.

23 E. Service contracts shall state the total purchase price and  
24 the terms under which service contract is sold. The purchase price

1 is not required to be preprinted on the service contract and may be  
2 negotiated at the time of sale with the service contract holder.

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

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

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

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

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

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

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

1           SECTION 6.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 6755 of Title 36, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. After initial registration, and upon complaint or proper  
5 cause shown, providers, administrators, insurers or other persons  
6 shall be subject to periodic examination by the Insurance  
7 Commissioner, in the same manner and subject to the same terms and  
8 conditions that apply to insurers.

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

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

23           a. a person aggrieved by an order issued under this  
24                 paragraph may request a hearing before the

1 Commissioner. The hearing request shall be filed with  
2 the Commissioner within twenty (20) days of the date  
3 the Commissioner's order is effective,

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

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

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

22 3. A person who is found to have violated the Oklahoma Home  
23 Service Contract Act or orders or rules of the Commissioner may be  
24 assessed a civil penalty in an amount determined by the Commissioner

1 of not more than Five Hundred Dollars (\$500.00) per violation and no  
2 more than Ten Thousand Dollars (\$10,000.00) in the aggregate for all  
3 violations of a similar nature. For purposes of this section,  
4 violations shall be of a similar nature if the violation consists of  
5 the same or similar course of conduct, action, or practice,  
6 irrespective of the number of times the act, conduct, or practice  
7 which is determined to be a violation of the Oklahoma Home Service  
8 Contract Act occurred. This act is administrative only and nothing  
9 in this act shall be construed to create a private cause of action  
10 hereunder.

11 SECTION 7. This act shall become effective November 1, 2011.

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