

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 780

By: Aldridge of the Senate

and

Sullivan of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to insurance; creating the Oklahoma
12 Home Service Contract Act; providing short title;
13 stating purpose; providing exemptions; specifying
14 certain agreements are not insurance; defining terms;
15 requiring provider to provide certain information
16 before the issuance of home service contracts;
17 requiring providers to register with the Insurance
18 Commissioner; providing for registration fee;
19 providing for Antifraud Assessment Fee; specifying
20 certain fee shall not be subject to premium tax;
21 providing for administrative fee; requiring quarterly
22 payment of certain fee; requiring submission of
23 certain report; providing exception; authorizing the
24 purchase of certain insurance policy; specifying
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

1 cause of action; providing penalties; providing for
2 codification; and providing an effective date.

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

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

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

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

13 A. The purpose of the Oklahoma Home Service Contract Act is to
14 create an independent legal framework within which home service
15 contracts are defined, may be sold and are regulated in this state.
16 The Oklahoma Home Service Contract Act declares that home service
17 contracts, as defined in Section 3 of this act, are not insurance
18 and not otherwise subject to the Insurance Code. The Oklahoma Home
19 Service Contract Act requires simple registration, financial
20 assurance options and enforcement by the Insurance Commissioner.
21 Proper registration under the Oklahoma Home Service Contract Act
22 exempts applicability under the Service Warranty Insurance Act,
23 which may regulate extended warranty, retail, automobile and

1 agreements not defined in the Oklahoma Home Service Contract Act.
2 Nothing in the Service Warranty Insurance Act is changed or amended
3 by the Oklahoma Home Service Contract Act.

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

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

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

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

21 As used in the Oklahoma Home Service Contract Act:

- 22 1. "Administrator" means the person who is responsible for the
23 administration of home service contracts or the home service

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 contracts plan, who may promote the contract under their own private
2 label or brand as long as the provider is clearly identified on the
3 contract, or who is responsible for any submission required by the
4 Oklahoma Home Service Contract Act;

5 2. "Commissioner" means the Insurance Commissioner;

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

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

14 5. "Person" means an individual, partnership, corporation,
15 incorporated or unincorporated association, joint stock company,
16 reciprocal, syndicate or any similar entity or combination of
17 entities acting in concert;

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

21 7. "Provider fee" means the consideration paid for a home
22 service contract;

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

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

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

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

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

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

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

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

22 B. Each provider of home service contracts sold in this state
23 shall file a registration with, and on a form prescribed by, the

1 Insurance Commissioner consisting of their name, full corporate
2 physical street address, telephone number, contact person and a
3 designated person in this state for service of process. Each
4 provider shall pay to the Commissioner a fee in the amount of One
5 Thousand Two Hundred Dollars (\$1,200.00) upon initial registration
6 and every three (3) years thereafter. Each provider shall pay to
7 the Commissioner an Antifraud Assessment Fee of Two Thousand Two
8 Hundred Fifty Dollars (\$2,250.00) upon initial registration and
9 every three (3) years thereafter. The registration need only be
10 updated by written notification to the Commissioner if material
11 changes occur in the registration on file. A proper registration is
12 de facto a license to conduct business in Oklahoma and may be
13 suspended as provided in Section 6 of this act. Fees received from
14 home service contract providers shall not be subject to any premium
15 tax, but shall be subject to an administrative fee equal to two
16 percent (2%) of the gross fees received on the sale of all home
17 service contracts issued in this state during the preceding calendar
18 quarter. The fees shall be paid quarterly to the Commissioner and
19 submitted along with a report on a form prescribed by the
20 Commissioner. However, service contract providers may elect to pay
21 an annual administrative fee of Three Thousand Dollars (\$3,000.00)
22 in lieu of the two-percent administrative fee, if the provider

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1 maintains an insurance policy as provided in paragraph 3 of
2 subsection C of this section.

3 C. In order to assure the faithful performance of a provider's
4 obligations to its contract holders, each provider shall be
5 responsible for complying with the requirements of paragraph 1, 2 or
6 3 of this subsection:

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

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

22 (1) a surety bond issued by an authorized surety,
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- (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;

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 Generally Accepted Accounting Principles (GAAP) accounting standards. If the provider's parent company's Form 10-K, Form 20-F,

1 or financial statements are filed to meet the
2 provider's financial stability requirement, then the
3 parent company shall agree to guarantee the
4 obligations of the provider relating to service
5 contracts sold by the provider in this state; or

6 3. Purchase an insurance policy which demonstrates to the
7 satisfaction of the Insurance Commissioner that one hundred percent
8 (100%) of its claim exposure is covered by such policy. The
9 insurance shall be obtained from an insurer that is licensed,
10 registered, or otherwise authorized to do business in this state,
11 that is rated B++ or better by A.M. Best Company, Inc., and that
12 meets the requirements of subsection D of this section. For the
13 purposes of this paragraph, the insurance policy shall contain the
14 following provisions:

- 15 a. in the event that the provider is unable to fulfill
16 its obligation under contracts issued in this state
17 for any reason, including insolvency, bankruptcy, or
18 dissolution, the insurer shall pay losses and unearned
19 premiums under such plans directly to the person
20 making the claim under the contract,
- 21 b. the insurer issuing the insurance policy shall assume
22 full responsibility for the administration of claims
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1 in the event of the inability of the provider to do
2 so, and

3 c. the policy shall not be canceled or not renewed by
4 either the insurer or the provider unless sixty (60)
5 days' written notice thereof has been given to the
6 Commissioner by the insurer before the date of such
7 cancellation or nonrenewal.

8 D. The insurer providing the insurance policy used to satisfy
9 the financial responsibility requirements of paragraph 3 of
10 subsection C of this section shall meet one of the following
11 standards:

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

14 a. maintain surplus as to policyholders and paid-in
15 capital of at least Fifteen Million Dollars
16 (\$15,000,000.00), and

17 b. annually file copies of the audited financial
18 statements of the insurer, its National Association of
19 Insurance Commissioners (NAIC) Annual Statement, and
20 the actuarial certification required by and filed in
21 the state of domicile of the insurer; or

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

- 1 a. maintain surplus as to policyholders and paid-in
2 capital of less than Fifteen Million Dollars
3 (\$15,000,000.00),
4 b. demonstrate to the satisfaction of the Commissioner
5 that the company maintains a ratio of net written
6 premiums, wherever written, to surplus as to
7 policyholders and paid-in capital of not greater than
8 three to one, and
9 c. annually file copies of the audited financial
10 statements of the insurer, its NAIC Annual Statement,
11 and the actuarial certification required by and filed
12 in the state of domicile of the insurer.

13 E. Except for the registration requirements in subsection B of
14 this section, providers, administrators and other persons marketing,
15 selling or offering to sell home service contracts are exempt from
16 any licensing requirements of this state and shall not be subject to
17 other registration information or security requirements. Home
18 service contract providers as defined in Section 3 of this act and
19 properly registered under this law are exempt from any treatment
20 pursuant to the Service Warranty Insurance Act. Home service
21 contract providers applying for registration under the Oklahoma Home
22 Service Contract Act that have not been registered in the preceding
23 twelve (12) months under the act may be subject to a thirty-day
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1 prior review before their registration is deemed complete. Said
2 applications shall be deemed complete after thirty (30) days unless
3 the Commissioner takes action in that period under Section 6 of this
4 act, for cause shown, to suspend their registration.

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

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

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

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

21 "Obligations of the provider under this service contract are insured
22 under a service contract reimbursement insurance policy." The
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1 service contract shall also state the name and address of the
2 insurer.

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

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

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

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

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

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

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

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

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

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

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

22 A. After initial registration, and upon complaint or proper
23 cause shown, providers, administrators, insurers or other persons

1 shall be subject to periodic examination by the Insurance
2 Commissioner, in the same manner and subject to the same terms and
3 conditions that apply to insurers.

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

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

18 a. a person aggrieved by an order issued under this
19 paragraph may request a hearing before the
20 Commissioner. The hearing request shall be filed with
21 the Commissioner within twenty (20) days of the date
22 the Commissioner's order is effective,
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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. This act is administrative only and nothing
7 in this act shall be construed to create a private cause of action
8 hereunder.

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

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11 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04-18-2011 - DO
12 PASS, As Amended.

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