

1 **SENATE FLOOR VERSION**

2 February 28, 2011

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 780

By: Aldridge of the Senate

and

Sullivan of the House

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9 An Act relating to insurance; creating the Oklahoma
10 Home Service Contract Act; providing short title;
11 stating purpose; providing exemptions; specifying
12 certain agreements are not insurance; defining terms;
13 requiring provider to provide certain information
14 before the issuance of home service contracts;
15 requiring providers to register with the Insurance
16 Commissioner; providing for registration fee;
17 specifying forms of financial securities; specifying
18 that providers are not subject to the Service
19 Warranty Insurance Act; specifying requirements of
20 service contracts; allowing the Commissioner to
21 conduct certain examinations; authorizing the
22 Commissioner to take certain actions; providing
23 procedures relating to enforcement; allowing the
24 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 6750 of Title 36, unless there
is created a duplication in numbering, reads as follows:

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

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

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

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

- 22 1. Warranties as defined in Section 3 of this act;
- 23 2. Maintenance only agreements as defined in Section 3 of this
24 act; and

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

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

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

14 As used in the Oklahoma Home Service Contract Act:

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

21 2. "Commissioner" means the Insurance Commissioner;

22 3. "Consumer" means a natural person who buys other than for
23 purposes of resale any tangible personal property that is
24 distributed in commerce and that is normally used for personal,

1 family or household purposes and not for business or research
2 purposes;

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

6 5. "Person" means an individual, partnership, corporation,
7 incorporated or unincorporated association, joint stock company,
8 reciprocal, syndicate or any similar entity or combination of
9 entities acting in concert;

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

13 7. "Provider fee" means the consideration paid for a home
14 service contract;

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

22 9. "Home service contract" or "home warranty" means a contract
23 or agreement for a separately stated consideration for a specific
24 duration to perform the service, repair, replacement or maintenance

1 of property or indemnification for service, repair, replacement or
2 maintenance, for the operational or structural failure of any
3 residential property due to a defect in materials, workmanship,
4 inherent defect or normal wear and tear, with or without additional
5 provisions for incidental payment or indemnity under limited
6 circumstances. Home service contracts may provide for the service,
7 repair, replacement, or maintenance of property for damage resulting
8 from power surges or interruption and accidental damage from
9 handling and may provide for leak or repair coverage to house
10 roofing systems. Home service contracts are not insurance in this
11 state or otherwise regulated under the Insurance Code;

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

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

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

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

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

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

11 B. Each provider of home service contracts sold in this state
12 shall file a registration with the Insurance Commissioner consisting
13 of their name, full corporate physical street address, telephone
14 number, contact person and a designated person in this state for
15 service of process. Each provider shall pay to the Commissioner a
16 fee in the amount of Six Hundred Dollars (\$600.00) upon initial
17 registration and every three (3) years thereafter. The registration
18 need only be updated by written notification to the Commissioner if
19 material changes occur in the registration on file. A proper
20 registration is de facto a license to conduct business in Oklahoma
21 and may be suspended as provided in Section 6 of this act.

22 C. In order to assure the faithful performance of a provider's
23 obligations to its contract holders, each provider shall be

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1 responsible for complying with the requirements of one of the three
2 paragraphs of this subsection:

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

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

- 18 (1) a surety bond issued by an authorized surety,
19 (2) securities of the type eligible for deposit by
20 authorized insurers in this state,
21 (3) cash,
22 (4) a letter of credit issued by a qualified
23 financial institution, or
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1 (5) another form of security prescribed by rule
2 promulgated by the Commissioner;

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

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

1 D. Except for the registration requirements in subparagraph b
2 of paragraph 2 of subsection C of this section, providers,
3 administrators and other persons marketing, selling or offering to
4 sell home service contracts are exempt from any licensing
5 requirements of this state and shall not be subject to other
6 registration information or security requirements. Home service
7 contract providers as defined in Section 3 of this act and properly
8 registered under this law are exempt from any treatment pursuant to
9 the Service Warranty Insurance Act.

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

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

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

23 B. Service contracts insured under a reimbursement insurance
24 policy pursuant to paragraph 3 of subsection C of Section 4 of this

1 act shall contain a statement in substantially the following form:
2 "Obligations of the provider under this service contract are insured
3 under a service contract reimbursement insurance policy." The
4 service contract shall also state the name and address of the
5 insurer.

6 C. Service contracts not insured under a reimbursement
7 insurance policy pursuant to paragraph 3 of subsection C of Section
8 4 of this act shall contain a statement in substantially the
9 following form: "Obligations of the provider under this service
10 contract are backed by the full faith and credit of the provider."

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

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

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

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

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

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

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

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

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

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

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1 A. The Insurance Commissioner may conduct examinations of
2 providers, administrators, insurers or other persons to enforce the
3 provisions of the Oklahoma Home Service Contract Act and protect
4 home service contract holders in this state. Upon request of the
5 Commissioner, the provider shall make all accounts, books, and
6 records concerning service contracts sold by the provider available
7 to the Commissioner, which are necessary to enable the Commissioner
8 to reasonably determine compliance or noncompliance with the
9 Oklahoma Home Service Contract Act.

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

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

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

10 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT & INSURANCE, dated
11 2-24-11 - DO PASS, As Amended and Coauthored.

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