

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2040

By: Sullivan

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5
6 AS INTRODUCED

7 An Act relating to insurance; creating the Oklahoma
8 Home Service Contract Act; providing short title;
9 stating purpose; providing exemptions; specifying
10 certain agreements are not insurance; defining terms;
11 requiring provider to provide certain information
12 before the issuance of home service contracts;
13 requiring providers to register with the Insurance
14 Commissioner; providing for registration fee;
15 specifying forms of financial securities; specifying
16 that providers are not subject to the Service
17 Warranty Insurance Act; specifying requirements of
18 service contracts; allowing the Commissioner to
19 conduct certain examinations; authorizing the
20 Commissioner to take certain actions; providing
21 procedures relating to enforcement; allowing the
22 Commissioner to bring certain actions; providing
23 penalties; providing for codification; and providing
24 an effective date.

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

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

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

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

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

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

- 20 1. Warranties as defined in Section 3 of this act;
- 21 2. Maintenance only agreements as defined in Section 3 of this
22 act; and
- 23 3. Service contracts sold or offered for sale to persons other
24 than consumers, consumer product (extended warranty) service

1 contracts on new, retail goods if made at the time of sale and motor
2 vehicle service contracts, all of which may be separately regulated
3 elsewhere in the Oklahoma Statutes.

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

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

12 As used in the Oklahoma Home Service Contract Act:

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

19 2. "Commissioner" means the Insurance Commissioner;

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

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

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

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

11 7. "Provider fee" means the consideration paid for a home
12 service contract;

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

20 9. "Home service contract" or "home warranty" means a contract
21 or agreement for a separately stated consideration for a specific
22 duration to perform the service, repair, replacement or maintenance
23 of property or indemnification for service, repair, replacement or
24 maintenance, for the operational or structural failure of any

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

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

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

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

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

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

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

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

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

23 1. a. maintain a funded reserve account for its obligations
24 under its contracts issued and outstanding in this

1 state. The reserves shall not be less than forty
2 percent (40%) of gross consideration received, less
3 claims paid, on the sale of the service contract for
4 all in-force contracts. The reserve account shall be
5 subject to examination and review by the Commissioner,
6 and

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

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

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

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

20 D. Except for the registration requirements in subparagraph b
21 of paragraph 2 of subsection C of this section, providers,
22 administrators and other persons marketing, selling or offering to
23 sell home service contracts are exempt from any licensing
24 requirements of this state and shall not be subject to other

1 registration information or security requirements. Home service
2 contract providers as defined in Section 3 of this act and properly
3 registered under this law are exempt from any treatment pursuant to
4 the Service Warranty Insurance Act.

5 E. 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 shall be exempt from all other provisions of the
9 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 a reimbursement insurance
19 policy pursuant to paragraph 3 of subsection C of Section 4 of this
20 act shall 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
23 service contract shall also state the name and address of the
24 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 preprinted 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.

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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
9 preexisting conditions, if applicable. Service contracts may, but
10 are 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 6755 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
24 Commissioner, the provider shall make all accounts, books, and

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

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

9 1. If a provider has violated the Oklahoma Home Service
10 Contract Act or the Commissioner's rules or orders, the Commissioner
11 may issue an order directed to that provider to cease and desist
12 from committing violations of the Oklahoma Home Service Contract Act
13 or the Commissioner's rules or orders, may issue an order
14 prohibiting a service contract provider from selling or offering for
15 sale service contracts in violation of the Oklahoma Home Service
16 Contract Act, or may issue an order imposing a civil penalty on that
17 provider, or any combination 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,
- 23 b. if a hearing is requested, an order issued by the
24 Commissioner under this section shall be suspended

1 from the original effective date of the order until
2 completion of the hearing and final decision of the
3 Commissioner, and

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

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

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

1 irrespective of the number of times the act, conduct, or practice
2 which is determined to be a violation of the Oklahoma Home Service
3 Contract Act occurred.

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

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